



**ST. MAARTEN 2015**  
NATIONAL INTEGRITY  
SYSTEM ASSESSMENT

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# I. INTRODUCTION

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In 2010 the Dutch part of the Caribbean island of St. Maarten (see Chapter IV, Country Profile) became an autonomous country within the Kingdom of the Netherlands. This major transition meant drastic changes in the country's institutions, which are still in progress. Being a small-scale (island) society with associated challenges, St. Maarten is now facing new opportunities in its democratic objectives.

In December 2013 the government of St. Maarten signed an agreement with Transparency International to undertake an assessment to explore the country's weaknesses and strengths with regard to integrity and good governance.

The main purpose of a Transparency International assessment of a National Integrity System (NIS) is to assess the systemic defences against corruption of a country and formulate a set of recommendations to be used by all actors within society to promote integrity. The NIS process is consultative, meaning it uses a participatory approach and involves some of society's relevant sectors and their key stakeholders. Data is collected from interviews with these key stakeholders and from legislation and official reports.

In March 2014 the Transparency International staff visited St. Maarten to introduce the project team and to meet with key stakeholders. A country visit including in-depth interviews was conducted during June and July of that same year. Preliminary recommendations were discussed with key stakeholders in December 2014. The final report was launched in July 2015.

This report is only a beginning. It is part of a longer-term process of change and awareness raising on what integrity means in St. Maarten. Recommendations serve as a tool to help bring about change in the accountability of St. Maarten's leaders, as well as the awareness of the people and society at large.

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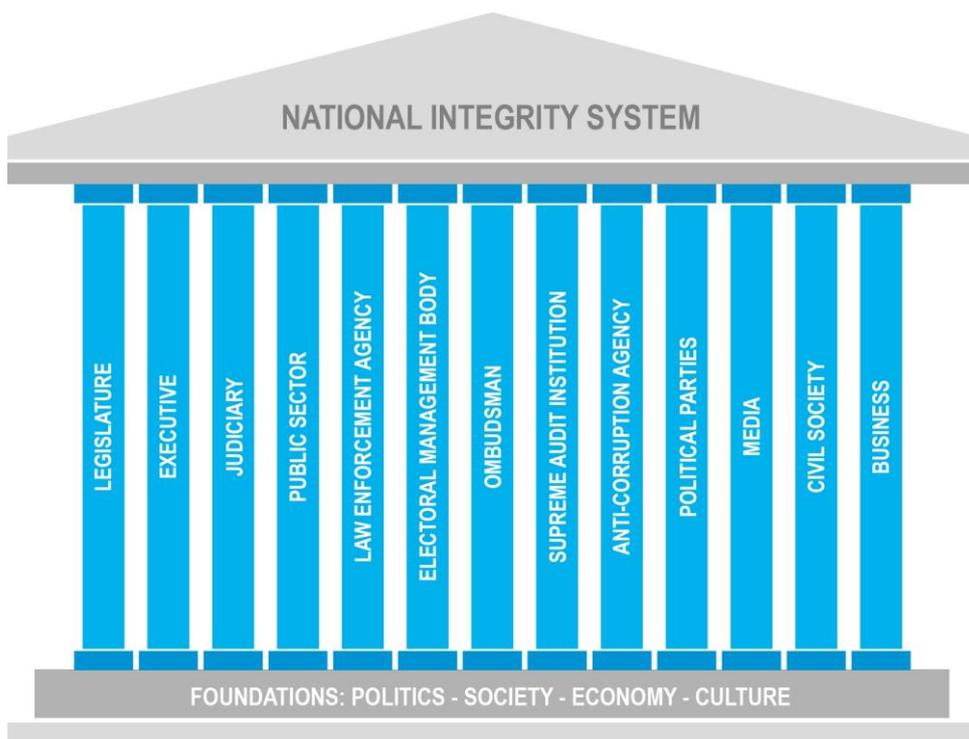
Transparency International would like to thank all those who contributed to this assessment. We would like to give a special thanks to the members of the advisory group, who provided essential local expertise and guidance to help ensure an assessment of the highest quality possible. We also wish to thank the people who were interviewed and gave their time and input to this assessment and all those who participated in sessions with Transparency International. The St. Maarten assessment by Transparency International was funded by Uitvoeringsorganisatie Stichting Ontwikkeling Nederlandse Antillen.

## II. ABOUT THE NIS ASSESSMENT

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The NIS assessment approach used in this report provides a framework to analyse both the vulnerabilities of a given country to corruption and the effectiveness of national anti-corruption efforts. The framework includes all principal institutions and actors that form a state. These include all branches of government, the public and private sectors, the media, and civil society (the “pillars” as represented in the diagram below). The concept of the NIS has been developed and promoted by Transparency International as part of its holistic approach to fighting corruption. While there is no blueprint for an effective system to prevent corruption, there is a growing international consensus as to the salient institutional features that work best to prevent corruption and promote integrity.

A NIS assessment is a powerful advocacy tool that delivers a holistic picture of a country’s institutional landscape with regard to integrity, accountability and transparency. A strong and functioning NIS serves as a bulwark against corruption and guarantor of accountability, while a weak system typically harbours systemic corruption and produces a myriad of governance failures. The resulting assessment yields not only a comprehensive outline of reform needs but also a profound understanding of their political feasibility. Strengthening the NIS promotes better governance across all aspects of society and, ultimately, contributes to a more just society.



## DEFINITIONS

The following definition of “corruption” is used by Transparency International:

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The abuse of entrusted power for private gain. Corruption can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs.<sup>1</sup>

“Grand corruption” is defined as “Acts committed at a high level of government that distort policies or the functioning of the state, enabling leaders to benefit at the expense of the public good”. “Petty corruption” is defined as “Everyday abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies”. “Political corruption” is defined as “Manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth”.<sup>2</sup>

## OBJECTIVES

The key objectives of the assessment of St. Maarten’s NIS are to generate:<sup>3</sup>

- an improved understanding within the anti-corruption community and beyond of the strengths and weaknesses of St. Maarten’s NIS
- momentum among key anti-corruption stakeholders in St. Maarten for addressing priority areas in the NIS

The primary aim of the assessment is therefore to evaluate the effectiveness of St. Maarten’s institutions in preventing and fighting corruption and in fostering transparency and integrity. In addition, it seeks to promote the assessment process as a springboard for action within the government and anti-corruption community in terms of policy reform, evidence-based advocacy or further in-depth evaluations of specific governance issues. This assessment should serve as a basis for key stakeholders in St. Maarten to advocate for sustainable and effective reform.

## METHODOLOGY

Transparency International’s methodology, the National Integrity System (NIS), is a qualitative research tool based on a combination of desk research and first-hand interviews. The NIS is formed of 13 pillars representing all key public and private institutions in a country’s government system. The St. Maarten NIS report addresses 12 pillars; the anti-corruption agencies are not covered due to the fact that at the time of the assessment they were not present in St. Maarten. The judiciary pillar covers the same institutional structure and in fact the same organisation as the judicial pillar for the

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<sup>1</sup> Transparency International, *The Anti-Corruption Plain Language Guide*, (Transparency International, 2009), p.14.

<sup>2</sup> Transparency International, 2009: 23, 33, 35.

<sup>3</sup> <http://www.transparency.org/whoweare/work>.

country of Curaçao, and has therefore not been assessed for St. Maarten. Chapter III of this St. Maarten report makes reference to the Curaçao report, discussing the Constitutional Court as a unique institution within the judiciary system of St. Maarten and in the Kingdom of the Netherlands.

**The St. Maarten assessment report covers 12 pillars:**

CORE GOVERNMENT INSTITUTIONS	PUBLIC SECTOR AGENCIES	NON-GOVERNMENTAL ACTORS
Legislature	Public sector	
Executive	Law Enforcement Agencies	Political Parties
Judiciary	Electoral Management Bodies	Media
	Ombudsman	Civil Society
	Supreme Audit Institution	Business
	<i>(anti-corruption agencies non-existent)</i>	

Each of the 12 pillars is assessed along three dimensions that are essential to its ability to prevent corruption:

- its overall capacity, in terms of resources and independence
- its internal governance regulations and practices, focussing on whether the institutions in the pillar are transparent and accountable and act with integrity
- its role in the overall integrity system, focussing on the extent to which the institutions in the pillar fulfil their assigned role with regard to preventing and fighting corruption

Each dimension is measured by a set of indicators. For every dimension the assessment examines both the legal framework of each pillar and the actual institutional practice. When assessing compliance, discrepancies between formal provisions and reality in practice will become transparent.

DIMENSION	INDICATORS (LAW AND PRACTICE)
Capacity	Resources Independence
Governance	Transparency Accountability Integrity
Role within governance system	Pillar-specific indicators

The assessment does not seek to offer an in-depth evaluation of each pillar. Rather it seeks a broad overview covering all relevant pillars across a wide number of indicators in order to gain a view of

the overall system. The assessment also looks at the interactions between pillars, as weaknesses in a single institution could lead to serious flaws in the entire system. Understanding the interactions between pillars helps to prioritise areas for reform.

In order to take account of important contextual factors, the evaluation is embedded in an analysis of the overall political, social, economic and cultural conditions – the “foundations” – in which the 12 pillars operate.

POLITICS	SOCIETY	ECONOMY	CULTURE
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The NIS assessment is a qualitative research tool. It is guided by a set of indicator score sheets. These consist of a “scoring question” for each indicator, supported by more specific guiding questions and scoring guidelines.

The following scheme, showing the scoring and guiding questions for the legislature pillar with regard to legal reforms, serves as an example:

PILLAR	LEGISLATURE
Indicator number	1.3.2
Indicator name	Legal reforms
Scoring question	To what extent does the legislature prioritise anti-corruption and good governance as a concern in the country?
Guiding questions	What legislation in the field of anti-corruption has been passed by the legislature in recent years? To what extent has the legislature passed legal reforms that strengthen the integrity, transparency and accountability of the countries governance system? What is the quality of this legislation? What international legal instruments have been passed/ratified?
Minimum score (0)	The legislature does not pay attention to the promotion of public accountability and the fight against corruption.
Mid-point score (50)	While there are a number of legal reforms to counter corruption and promote integrity, they are piecemeal efforts, which are considered largely ineffective in achieving their goals.
Maximum score (100)	Comprehensive, concrete and effective legal reforms to counter corruption and promote integrity have been enacted by the legislature.

The guiding questions for each indicator, used by Transparency International worldwide, were developed by examining international best practices, as well as by using the research team’s own experiences of existing assessment tools for each of the respective pillars, and by seeking input from other experts on the respective institutions. These indicator score sheets provide guidance for the St. Maarten assessment, but when appropriate the lead researcher has added questions or left some questions unanswered, as not all aspects are relevant to the national context. The full toolkit with information on the methodology and score sheets are available on the Transparency International website.<sup>4</sup>

To answer the guiding questions, the research team relied on three main sources of information: national legislation, secondary reports and research, and interviews with key respondents and experts.

To gain an extensive view of the current situation, a minimum of two key informants were interviewed for each pillar – at least one representing the pillar under assessment, and one expert on the subject pillar but external to it. In addition, key informants, people “from the field” were interviewed. Professionals with expertise in more than one pillar were also interviewed in order to get a cross-pillar view.

## The scoring system

While the NIS is a qualitative assessment, numerical scores are assigned in order to summarise the information and to help highlight key weaknesses and strengths of the integrity system. Scores are assigned on a 100-point scale, with five possible values: 0, 25, 50, 75 and 100. The indicator scores help to promote a holistic view of the system, rather than focussing only on its individual parts. Indicator scores are averaged for each dimension and the three dimensions scores are averaged to get an overall score for each pillar, providing a general description of the system’s overall robustness.

Very strong	81-100
Strong	61-80
Moderate	41-60
Weak	21-40
Very weak	0-20

The scores are not suitable for cross-country rankings or other quantitative comparisons, due to differences in data sources across countries applying the NIS assessment methodology and the absence of an international review board tasked with ensuring comparability of scores.

## Consultative approach and validation of findings

The assessment process in St. Maarten had a consultative component, seeking to involve the key anti-corruption actors in government, civil society and other relevant sectors. This approach had two

<sup>4</sup> <http://www.transparency.org/whatwedo/nis>.

aims: to generate information and to engage a wide range of stakeholders with a view to building momentum, political will and civic demand for reform initiatives.

The consultative approach meant consultation from a high-level advisory group and an interactive workshop in which recommendations were discussed among stakeholders in the country. Several draft pillars were reviewed by the representatives of the institutions representing that pillar. Each draft pillar was reviewed by the Transparency International secretariat and the members of the advisory group. Preliminary scores assigned by the lead researcher and the Transparency International secretariat were, if justified, adjusted. Final discretion over scores remained with Transparency International in deliberation with the lead researcher. Again, the full report was reviewed by the Transparency International secretariat. The members of the advisory group discussed draft content with the lead researcher.

## LIMITATIONS

The NIS methodology is designed to produce a comprehensive study, although adaptations for every country's specific situation, due to scale, time and budget limitations, can be made.

The St. Maarten assessment faced additional limitations due to the small scale of its society. Among the main consequences of this small scale are the limited availability of written and oral sources, and the reluctance of some respondents who felt it was difficult to freely express their opinions on corruption issues as analysed in the report.

Because of radical constitutional change in 2010 and the ongoing process since then regarding the country's development, there has been limited availability of official documents, like statistics, policy papers and sometimes regulations. Also, due to the fact that country studies and academic research regarding St. Maarten are still rare, limited use could be made of secondary sources.

For the purpose of this report, the forming of a new state of St. Maarten in 2010 was used as a starting point for this NIS assessment, so in general no historical comparisons are made with events before 2010.

In most countries Transparency International, in conducting the assessment, makes use of local organisations or national chapters. In St. Maarten a chapter does not exist and therefore the assessment could not benefit from the support of such an in-country organisation.

Despite these limitations, this report is seen as an important contribution to positive change in the transition process St. Maarten is undergoing.

# III. EXECUTIVE SUMMARY

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The National Integrity System (NIS) assessment for St. Maarten covers 12 pillars. The report explores the pillars' weaknesses and strengths with regard to integrity and good governance and seeks a broad assessment of these pillars across a wide number of indicators in order to gain an overview of the overall St. Maarten system. This assessment should serve as a basis for key stakeholders in St. Maarten to advocate for sustainable and effective reform.

## THE NIS CONTEXT IN ST. MAARTEN

The NIS is deeply embedded in the country's overall social, political, economic and cultural context. St. Maarten's society is small scale (37,224 inhabitants), with a variety of ethnic groups and a relatively large group of – mostly unskilled – immigrants. It is a country with high mobility. Within a period of three–five years, one-third of the population moves to one of the bigger industrialised countries in North America or Europe, using St. Maarten as a stepping stone.

Despite its relatively high – compared to most other Caribbean countries – income per capita, income is unevenly distributed (about 60 per cent of the workforce, mostly immigrants, work for a minimum wage). The large number of immigrants compared to the local population, the large number of professionals in all sectors who are employed on short-term contracts, and the strong division between elites and the poor cause a lack of collective mindedness and a sense of “what's in it for me”. Overall this constitutes a social environment with a limited collective awareness of good governance.

The political system is to a great extent based on personal relations and parties lack strong and well-founded ideologies, causing party members to “jump” from one party to another. This gives rise to an unstable political environment, in which members of the legislature have also taken part.

Because of close (family and friendship) relationships between the members of St. Maarten society, relationships between members of different pillars and citizens can on many occasions be informal, causing weak criticism from within society.

The (open) economy is mostly dependent on tourism and therefore vulnerable to external economic developments.

The current status of St. Maarten as an autonomous country within the Kingdom of the Netherlands means that it is partially sovereign and partially bound to the legal framework of the Kingdom. For instance, the Charter of the Kingdom stipulates that good governance is a responsibility of the Kingdom – influencing the integrity system of St. Maarten.

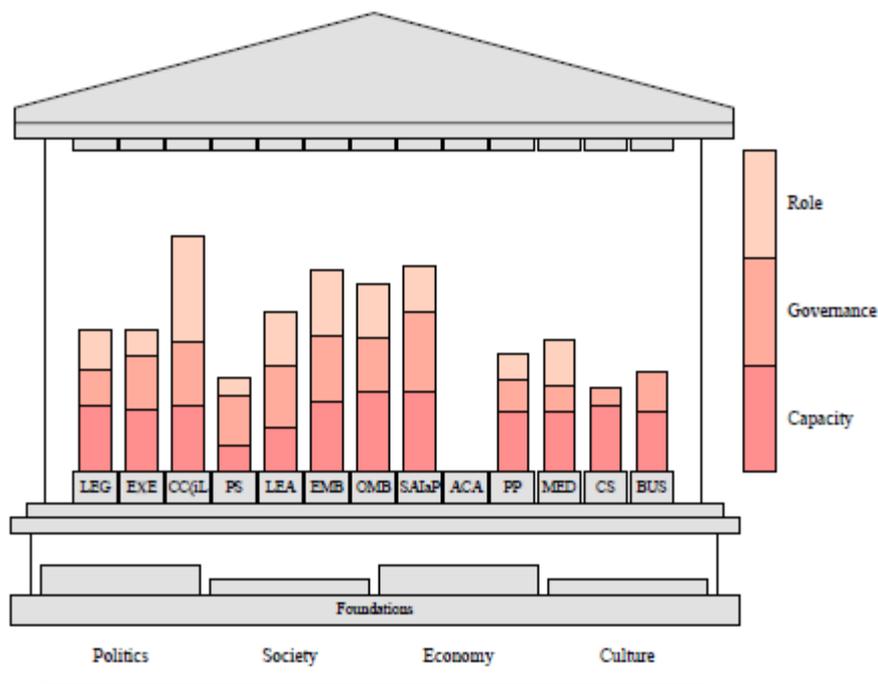
# OVERALL INTEGRITY ASSESSMENT IN ST. MAARTEN

St. Maarten's NIS is characterised by three relatively strong pillars: the Electoral Management Bodies, the ombudsman and the supreme audit institution. Meanwhile, the public sector and the civil society sector are relatively weak. Weak performance in one sector can be a systemic problem within the sector itself, or the result of negative influences by other pillars in practice (see the section Interconnections between Pillars).

Looking at the different dimensions as a whole (capacity, internal governance and role), the internal governance dimension, consisting of transparency, accountability and integrity, is the weakest dimension in the overall NIS of St. Maarten.

The following diagram illustrates the overall scores for the different pillars, allocated to the three dimensions: capacity, governance and role. The political-institutional, socio-political, socio-economic and socio-cultural foundations represent St. Maarten's country profile.

## National Integrity System: St Maarten



- |  |  |
|--|--|
| LEG. Legislature                         | SAlnP. Supreme Audit Institution and Public Supervisory Institutions |
| EVE. Executive                           | ACA. Anti Corruption Agencies  |
| CCqL. Constitutional Court (only in Law) | PP. Political Parties  |
| PS. Public Sector                        | MED. Media   |
| LEA. Law Enforcement Agencies            | CS. Civil Society  |
| EMB. Electoral Management Body           | BUS. Business  |
| OMB. Ombudsman                           |  |

## THE PILLARS IN THE ST. MAARTEN NIS, GENERAL OVERVIEW

This section provides a general overview of the pillars in St. Maarten's National Integrity System; please see the individual chapters for further details on each pillar.

The [legislature](#) is a key actor in a national integrity system of a country due to its role in overseeing the activities of the executive. However, the St. Maarten legislature is, according to the findings in this assessment, inadequate in effectively using its oversight powers. This is mainly due to a lack of experience in the interactions with the members of the executive and because of a certain unwillingness to act and sanction. Regarding transparency activities, improvements can be made, especially considering that the legislature's transparency is to a large extent at the discretion of the Parliament itself. On the other hand, the legislature has adopted legal reform to promote good governance.

Since 2010 the structure and organisation of the [executive](#) in St. Maarten have changed considerably. As a result, for instance, the executive's accountability is not ensured adequately in practice. St. Maarten has enacted new legal provisions on integrity, but lacks functioning mechanisms for their implementation. For example, although a law on the integrity of the members of the executive is in place, it was not acted upon by the previous prime minister for two of the cabinets.

The [Constitutional Court](#) of St. Maarten is a unique institution within the Kingdom of the Netherlands and has a number of legal provisions to ensure its independence. According to the findings in this assessment, no undue interference from other actors was reported. The Constitutional Court's sound level of independence has also led to its ability to exercise oversight vis-a-vis the executive.

Due to budget cuts over the past years the amount of resources in [the public sector](#) in general are limited. The independence of public sector employees is not secured by law and not protected in practice. Legal provisions concerning transparency are limited and therefore transparency is not guaranteed in practice. While provisions to ensure accountability in the public sector are to a large extent in place, they are insufficiently used or largely ineffective. Presently the public sector does not engage in significant efforts towards educating the general public on corruption, neither does it collaborate actively with civil society or the private sector on the subject of corruption. The legal framework for public procurement is limited, and because information on public procurement is not made public its effectiveness in practice is difficult to assess. The Corporate Governance Council is to no extent effective, giving leeway to the public-owned companies in their performance.

In the course of the new developments since 2010, the [law enforcement agencies](#) in St. Maarten have not been able to fully strengthen their institutions and financial means. Human resources are also limited. Higher positions within these agencies have been filled by foreign professionals on short-term contracts with little experience with St. Maarten's society. There is a lack of career development to prepare talent to take over top management positions. Challenges in terms of independence exist due to the financial relationship with the government. Regarding the effectiveness of control mechanisms and transparency of these agencies, improvements can be made. Anti-corruption activities have not led to significant impact as regards bribery cases so far.

The [electoral management bodies](#) (EMBs) in their present structure were operational for the first time in the 2014 elections. These are important new institutions in St. Maarten's administrative system as oversight bodies in the election process. In general, the legal framework is in place as presented in the respective indicators. Currently the EMBs are not yet fully resourced according to

law. Although in general they operate in a transparent manner, no information on the finances of political parties was made publicly available at the time this assessment was concluded, which also limited the assessment of in-practice indicators.

The [ombudsman](#) of St. Maarten is independent both in law and in practice. Transparency of individual investigations into public activities can be improved. The ombudsman has adequate resources to effectively accomplish its tasks in practice.

St. Maarten's [supreme audit institution](#), the General Audit Chamber,<sup>5</sup> is responsible for auditing, reviewing and investigating the country's revenues and expenditures. This assessment finds that, taking into account the short existence of the audit chamber, its overall performance in the past four years is sound. The legal framework regarding the activities of the audit chamber is in place. However, in practice the chamber is affected to a certain extent in performing its main tasks by the relative ineffectiveness of the administrative bodies with which it needs to cooperate. Considering its overall importance to the NIS in St. Maarten, the chamber faces challenges and requires support to continue with its efforts.

St. Maarten's legal framework provides for the free establishment and operation of [political parties](#) and safeguards against unwarranted state interference in their activities. Effective political competition is limited due to opacity and unequal access to political party funding, which was regulated in practice for the first time for the 2014 elections. Political parties lack transparency in their accounting and internal procedures and are limited in their ability to represent social interests.

St. Maarten has enabling laws on the establishment and operation of [media entities](#). In practice the media does not seem to operate in a transparent way and their independence, although different for broadcast and written media, is not safeguarded to a large extent. Human resources in written media mostly depend on foreign workers, who are dependent on local officials for their resident permits. St. Maarten media in general does not carry out investigative journalism, although some do expose cases of (alleged) corruption and contribute to making people aware of corruption in St. Maarten society. As a whole the media provides the public with general information, with some media entities also being critical.

The existing legal framework enables the registration and operation of [civil society](#) organisations (CSOs) in St. Maarten; in practice, however most CSOs lack professional staff. The CSOs – with the exception of the service organisations and the unions – at present rely entirely on local government funding. Civil society in St. Maarten is weak, partly due to a decrease in financial means and partly because of changes in the funding environment and lack of information available to CSOs. Mechanisms for ensuring transparency in practice are almost non-existent. The accountability could not be assessed because of lack of information. The ability to hold the government accountable and to influence its policy is practically non-existent.

In general the legal framework for doing business is favourable in St. Maarten. In practice, however, lengthy procedures might hamper the establishment of new businesses. Although the independence of private businesses is to a large extent ensured by law, instances of undue interference have occurred and are investigated. While rules on integrity within certain branches exist, in practice the integrity in the [business sector](#) is insufficiently present. Currently the business sector in St. Maarten is not involved in anti-corruption policies and there are no relationships with civil society in fighting corruption.

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<sup>5</sup> Although this pillar also consists of the supervisory institutions, the Stichting Overheids Accountants Bureau (SOAB) and the Board of Financial Supervision (College Financieel Toezicht – Cft), the emphasis in this pillar is on the General Audit Chamber.

## INTERCONNECTIONS BETWEEN PILLARS

Weaknesses in institutions affect the abilities of other institutions to perform their roles in the NIS and vice versa.

As noted in the introduction of this report, the constitutional change in 2010 meant the establishment of several new institutions and in addition an extensive expansion of the overall legal framework. The development of this legal framework is still in progress and one of the main challenges is to create possibilities to make sure these new (and already existing) laws and regulations are being implemented and actually monitored and enforced.

As mentioned above, the relatively strong pillars in the St. Maarten NIS are the EMBs, the ombudsman, and the supreme audit and public supervisory institutions. Although they are independent institutions, being part of the system means their performance is influenced by the weaknesses in other pillars, such as whether political parties follow up on transparency requirements with the Electoral Council. Likewise, the performance in practice of the General Audit Chamber may be influenced by a lack of follow-up on recommendations by the legislature. Reliance on the government budget of these institutions may put their independence at risk.

In the NIS of St. Maarten, the public sector and the civil society sector are relatively weak. The performance of the public sector is negatively influenced by the weak accountability of the executive in practice, for instance as a result of unclear responsibilities in public sector management.

In general, the St. Maarten NIS lacks a substantial cooperation between several institutions within the pillars, weakening their performances. Interaction between the legislature and the executive, for instance, is not based on the required “dualistic” principle, in which there is a clear division in ruling tasks of the executive and the monitoring task of the legislature, undermining the accountability of both.

Limited or lack of transparency in practice is a concern for almost all pillars. While for most pillars the legal framework on transparency is adequate, the gap between law and practice can lead to a weakness of accounting/monitoring mechanisms. For instance, there is a risk that weaknesses in transparency and accountability in the executive and legislature pillars influence accountability in the supreme audit pillar.

The weakness of political parties in terms of a lack of focus on specific ideologies and programmes, and therefore their ability to represent social interests, undermines a stable political environment. This affects Parliament’s independence and keeps the executive from being sufficiently accountable in practice. In addition, the currently private political party funding creates unfair competition in the electoral process, due to its lack of transparency and the resulting dependency on the business sector, also influencing the independence of the executive.

Although there is an overall lack of social cohesion and society is fragmented, at the same time there is close interaction among individual citizens, the administrative bodies and the business sector, creating indistinct boundaries in personal and professional interests and potentially hampering integrity mechanisms. For example, it is considered normal to directly call a minister if a citizen has a request relating to that minister’s responsibility.

In general, the small scale of St. Maarten’s society, in relation to the mandatory framework of being an autonomous democratic country, entails a challenge in an organisational sense. Moreover, due to an insufficient number of professionally trained officials in St. Maarten and the resulting

overlapping functions of a few well-trained professionals, conflicts of interest seem difficult to elude, with the risk of potential integrity problems.

## POLICY RECOMMENDATIONS

The assessment in St. Maarten has resulted in a number of recommendations to strengthen the NIS in the country. Detailed recommendations can be found at the end of this report. In general, we identify four key areas that, if tackled as a priority, will increase the trust that is essential for any serious attempt at improving the integrity system in the country. These are putting the government at the centre of integrity and leading by doing, making sure that politics work for citizens and not for specific interests, and making integrity a state policy which is seen as going beyond the tasks of a few institutions. We recommend:

- The government of St Maarten should initiate a multi-stakeholder dialogue with civil society and the private sector to raise awareness of the impacts and costs of corruption on society. At the same time, members of the legislature and executive and senior public sector managers should receive regular training on existing integrity regulations in public office.
- The government of St. Maarten must ensure that the public sector abides by existing transparency and accountability regulations, as well as international best practice, to strengthen local standards. This includes disclosure of public procurement decisions and contracts and publication of annual reports and accounts of public companies and foundations.
- Political parties must disclose accurate and timely information on their income and expenditure, including the dates of donations, precise amounts and the names of the donors. Ensuring transparency of political party finance is crucial to ensure that oversight institutions and citizens can find out whether politicians are acting in the interests of the public or those of corporations and select individuals.
- CSOs need to be promoted and supported in order to become more active in holding the government and private sector accountable for their actions.

# IV. COUNTRY PROFILE: FOUNDATIONS FOR THE NIS

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## BACKGROUND OF ST. MAARTEN

St. Maarten is situated in the Caribbean Sea, in the centre of the West Indian arch, 240 kilometres east of Puerto Rico. First inhabited by the Arawak Indians, St. Maarten was discovered by the Spanish explorer Columbus in 1493. Since then the island has changed hands 16 times, as the Spanish, the French, the English and the Dutch fought for control in the Caribbean.

When in Dutch hands, St. Maarten was governed by the Dutch West India Company (exploiting the island for its salt) and by several Dutch provinces, before it became the responsibility of the Dutch central government. From 1648 (the Treaty of Concordia), St. Maarten has been divided into a French part (Collectivite de Saint-Martin) and a Dutch part (St. Maarten). Slavery was abolished in 1863 in the Dutch part of St. Maarten.<sup>6</sup>

In 1954 St. Maarten became part of a Dutch island federation, the Netherlands Antilles.<sup>7</sup> After voting in 2005 to preserve the St. Maarten's constitutional relation with the Netherlands but no longer be part of the federation, St. Maarten became a constituent country within the Kingdom of the Netherlands (comprised of the Netherlands, Bonaire, St. Eustatius, Saba, Aruba,<sup>8</sup> Curaçao and St. Maarten) in October 2010.<sup>9</sup> This new status was meant to confer a high degree of internal autonomy, with the exclusion of matters like defence of the Kingdom, foreign affairs, regulations on Dutch nationality and maintenance of independence.<sup>10</sup> In addition, four Kingdom Acts came into force in 2010, on the Joint Court of Justice, the public prosecutor, the Police and the Law Enforcement Council. Also, the Kingdom was granted an increasing oversight role over finances through the Financial Supervisory Council (Cft).

Nowadays St. Maarten's society consists of 91 nationalities, with only a third of the population born in St. Maarten. People with Dutch nationality make up the largest population group (63 per cent), including migrants from Aruba, Bonaire, Curaçao, Saba and Statia (former islands of the Netherlands Antilles) and the Netherlands. Also, a (large) part of the Dutch nationals in St. Maarten acquired the Dutch nationality via naturalisation. Immigrants come from the neighbouring Caribbean islands like Haiti, the Dominican Republic and Jamaica, as well as from Guyana and India.<sup>11</sup> A significant proportion of the population comprises illegal immigrants; although no documented exact figures are available, some reports put the number of illegal immigrants at 15,000.<sup>12</sup> St. Maarten's migrant population is highly mobile; 30 per cent of the population migrates to the US and Western Europe within a five-year span.

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<sup>6</sup> Fabian Badego, "Sint Maarten: the Dutch half in future perspective". In *The Dutch Caribbean: Prospects for Democracy*, Betty Sedoc Dahlberg (ed.) (New York: Gordon and Breach), pg. 119–122.

<sup>7</sup> State Gazette of the Kingdom of the Netherlands, 1954, No. 503.

<sup>8</sup> Aruba gained its "status aparte" before 2010.

<sup>9</sup> The Kingdom comprises the Netherlands, Curacao, St. Maarten and Aruba.

<sup>10</sup> Charter for the Kingdom of the Netherlands.

<sup>11</sup> Department of Statistics, census 2011.

<sup>12</sup> UN Development Programme (UNDP), *Sint Maarten, Country Report*, (UNDP, 2011).

St. Maarten has an area of 34 square miles with a population of 37,224.<sup>13</sup> The official languages are Dutch and English.

## FOUNDATIONS OF THE NIS IN ST. MAARTEN

The NIS is deeply embedded in the country's overall social, political, economic and cultural context. Therefore a brief analysis of this context is presented to comprehend how these contexts relate to one another and how they influence the country's overall integrity system. Four different interrelated contexts, here called "foundations", will be discussed: political-institutional foundations, socio-political foundations, socio-economic foundations and socio-cultural foundations.

### Political-institutional foundations

TO WHAT EXTENT ARE THE POLITICAL INSTITUTIONS IN THE COUNTRY SUPPORTIVE OF AN EFFECTIVE NIS?

**Score: 50**

**St. Maarten's legal framework guarantees fundamental democratic processes, but in practice not all of these provisions are applied effectively.**

St. Maarten's political system is a parliamentary monarchy, in which powers rest with the king (represented by the governor), the ministers and Parliament. The constitution and other national laws ensure that democratic principles are the basis for political processes.

Free elections have been held since 1948 and resulted in a coalition for the first time in 1991. From 2010 St. Maarten has voted twice (in 2010 and 2014) and has had four different coalitions (see Chapter VII.2, on the executive). In 2014 eight political parties were registered, of which four are currently active.<sup>14</sup>

In practice, political parties do not follow a defined ideology or programme and in recent years candidates for Parliament, after being elected, often leave their political party to become an independent member of Parliament and work along with other political parties. This has led several times to a coalition losing its majority in Parliament and a new coalition needing to be formed, causing political instability and a "short-term" political culture. The latest example followed the formation of the new coalition after the 2014 elections, when an elected member of Parliament decided to "jump".<sup>15</sup> For the past five years there has been practically no strong opposition, giving the governing parties a free hand.

Due to the small scale of the country, where family ties and professional roles are very much interrelated, voting behaviour is also more personal and based on the principle "what's in it for me" than ideological.

<sup>13</sup> Department of Statistics, census 2011.

<sup>14</sup> [www.sintmaartengov.org/special-campaign/Parliamentary-Elections-2014/Electoral-Council](http://www.sintmaartengov.org/special-campaign/Parliamentary-Elections-2014/Electoral-Council).

<sup>15</sup> *St. Martin News Network*, 24 September 2014.

The legal framework provides for free competition for government offices. In practice, financial resources, in terms of funding of political parties, are not regulated. This causes unfair competition and jeopardises democratic principles, as it fosters a patronage system (see the section on Socio-political Foundations). Starting with the 2014 elections – the first elections after the implementation of a new regulation on political party funding – the EMBs regulate campaign money.

Decisions on matters that affect the people of St. Maarten are made by the elected government. In this decision-making process the role of Parliament, in its ability to apply the principles of democracy, is not as strong as that of the executive, due to a lack of experience with the new political institutions and a lack of will to sanction a party-appointed member of the executive.

The St. Maarten Constitution provides civil rights for every citizen in St. Maarten<sup>16</sup> and the right to seek redress in case of violation of their rights<sup>17</sup> with an independent judicial institution. In practice these procedures are often time consuming and expensive.

In general, there is a divergence between laws/regulations and political practice (see the chapters on the specific pillars). Although some segments in society express discontent, there is no strong opposition to democratic institutions.

## Socio-political foundations

TO WHAT EXTENT ARE THE RELATIONSHIPS AMONG SOCIAL GROUPS AND BETWEEN SOCIAL GROUPS AND THE POLITICAL SYSTEM IN THE COUNTRY SUPPORTIVE OF AN EFFECTIVE NIS?

**Score: 25**

**The link between St. Maarten society and the political system is based on personal relations, jeopardising critical advocacy from within society.**

St. Maarten's society is ethnically fragmented as a result of a large immigrant population. Political groups are not organised along ethnic lines, but more formed on the basis of personal relations.

Critics argue that the patronage system is still active in St. Maarten and that elections are based on party leaders' promises of favours to the poor. This is a symbiotic system that according to experts is difficult to fight.<sup>18</sup>

Because of the small-scale and close relationships between members of society, politicians communicate with citizens face to face and in an informal manner. In doing so they do not encourage citizens to become members of a civil society group.

As CSOs in St. Maarten are not very active and citizen activism is not present, the ability from within society to influence government policies and decisions is lacking. This causes a weak link between society and the political system.

## Socio-economic foundations

<sup>16</sup> Constitution of Sint Maarten, (2010). Chapter 2.

<sup>17</sup> Constitution, 2010. Article 26.

<sup>18</sup> Interviews with anonymous interviewees, conducted by the authors, St. Maarten, 2014.

**Score: 50**

**The socio-economic situation faces challenges in terms of the levelling of national income, education, the formulation of new economic policies and infrastructural investments.**

The economy of St. Maarten is mostly dependent on tourism (82.5 per cent), with strong links to other sectors, such as construction, transportation and retail trade.<sup>19</sup> St. Maarten has strong economic ties with the US, the (Dutch) Caribbean and the Netherlands. According to figures of the Central Bank and the Cft, the country's gross domestic product (GDP) amounted in 2014 to ANG1.8 billion and its GDP per capita is US\$22,000.<sup>20</sup> During the world economic crises the GDP only declined slightly (2011), less compared to most other Caribbean countries. Government expenditures make up 33.4 per cent of GDP and government revenues stand at 27.8 per cent. Public debt to GDP is 27.6 per cent.<sup>21</sup> The deficit on the current account of St. Maarten is about 7 per cent of the GDP.<sup>22</sup> Tax income is 23 per cent of GDP and has not grown along with the GDP growth over the last years, showing a decrease of taxpayer compliance. Estimates are that 60 per cent of taxpayers do not comply by paying their fair share in government revenues. If the government could increase tax revenues to a level comparable in Aruba and Curaçao (27 per cent), it would be able to balance the budget easily and invest in, for instance, education.

Despite its relatively high income per capita St. Maarten has an uneven distribution of income – 22 per cent of the population is without income – and its standard of living is high.<sup>23</sup> The latest Census survey 2011 results show that 75 per cent of all households have less than ANG4,000/US\$2,222 in gross income per month. 67.5 per cent have less than ANG3,000/US\$1,667.<sup>24</sup> Using the Nibud norm for St. Maarten, this would mean that more than 75 per cent of the St. Maarten households live under the poverty line.<sup>25</sup>

St. Maarten faces an unemployment rate of 11 per cent and 42.9 per cent is without a secondary school education. The undocumented children in the country comprise 10-15 per cent of the school-going population.<sup>26</sup>

In the context of the constitutional change, the Netherlands acquitted the debt of the former Netherlands Antilles (€1.7 billion), allowing St. Maarten to start with a manageable debt position.<sup>27</sup> To maintain a sustainable debt position – and as the Constitution of St. Maarten requires a balanced annual and long-term budget (Art. 100) – a financial supervisory institution (Cft<sup>28</sup>) was established.

<sup>19</sup> Central Bank and Cft reports.

<sup>20</sup> UNDP, 2011.

<sup>21</sup> UNDP, 2011.

<sup>22</sup> Department of Economic Affairs, Transportation and Telecommunication, *Economic Outlook Sint Maarten 2012–2013*, (Philipsburg: Department of Economic Affairs, Transportation and Telecommunication, no date).

<sup>23</sup> UNDP 2011.

<sup>24</sup> The Nibud Survey 2014 Bonaire shows that for a four-person household the poverty line is US\$2,800 of disposable income.

<sup>25</sup> According to the Nibud norm Bonaire.

<sup>26</sup> Governments of Curaçao and Sint Maarten, with UNDP, *First Millennium Development Goals Report: Curaçao and St. Maarten 2011*, (Willemstad: Governments of Curaçao and Sint Maarten, UNDP, 2011).

<sup>27</sup> Cft, *Curacao en St. Maarten: Annual Report 2011*.

<sup>28</sup> Cft, *Curacao en St. Maarten*, 2011.

On the other hand, with the countries' new status, subsidies from the Netherlands for economic and social development projects have been terminated.

There is an influence of drug trafficking on the socio-economic situation in St. Maarten. More people have become involved in drug trafficking from St. Maarten to the Netherlands, in an effort to raise their income.

Although no exact figures are available, there is a perception of a relatively large informal sector in the country. With a substantial number of people working in the tourism (and related) sectors, there is a tendency of a continuous interim type of economy, with people being economically active in the tourist season, then leaving and coming back for the next tourist season. This seems to be the case especially in the retail sector. Due to this phenomenon the state loses tax income.<sup>29</sup>

St. Maarten is a small and open island economy and its economy is vulnerable to a large extent to worldwide economic developments. Stagnation of the European and US economy influence the tourist arrivals and spending. New public investments in the economic and social infrastructure need to be implemented to secure future economic growth.<sup>30</sup>

A poverty line is not yet defined for St. Maarten and a poverty reduction policy is still to be developed.<sup>31</sup>

## Socio-cultural foundations

TO WHAT EXTENT ARE THE PREVAILING ETHICS, NORMS AND VALUES IN SOCIETY SUPPORTIVE OF AN EFFECTIVE NIS?

**Score: 25**

**In general there is a lack of collective awareness that hampers good governance.**

St. Maarten has a fragmented society in which norms and values are diverse. However, the country is shaped to a certain extent by the principles of a patronage system. In general, these principles of unequal power relationships, combined with strong divisions between the elites and the poor, and between the local population and migrants, cause a lack of collective mindedness and a sense of "what's in it for me?"<sup>32</sup>

This non-collective orientation in society influences the development of good governance, in the sense that people in general are not aware that what is good for society as a whole will in the end benefit the individual too. This will in turn hamper the motivation to change aspects in society that jeopardise good governance. It also leads to "short termism", in which instant benefits are more important than long-term developments.<sup>33</sup>

<sup>29</sup> Several interviews conducted by the authors, St. Maarten, 2014.

<sup>30</sup> Department of Economic Affairs, Transportation and Telecommunication, no date.

<sup>31</sup> Governments of Curaçao and Sint Maarten, with UNDP, 2011.

<sup>32</sup> *Evaluatie SBO programma Nederlandse Antillen, 2002–2006* (Evaluation Co-operative Program Administrative Development Netherlands Antilles, 2002–2006), (Rotterdam: ECORYS Nederland BV, 2007)

<sup>33</sup> Several interviews conducted by the authors, St. Maarten, 2014.

# V. CORRUPTION PROFILE

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The first comprehensive report on criminal activities in St. Maarten is the Wetenschappelijk Onderzoek en Documentatiecentrum report of 2003 that identified the sectors in which criminal activities developed. Before this St. Maarten was regularly mentioned in US State Department reports on Human Trafficking and Drug Trafficking. The Caribbean Financial Action Task Force (CFATF) signalled money laundering as a major concern for St. Maarten in its St. Maarten assessment report.<sup>34</sup>

However, recently conducted research on corruption practices and other breaches of integrity with regard to its types and levels in St. Maarten is limited and the subject had for a considerable time not been covered in official publications. Recently corruption has been given more attention in St. Maarten. In 2011 the St. Maarten police force, one of the law enforcement agencies in the country, launched a report on criminal activities, including fraud, money laundering and illegal markets, covering the years 2008-2010.<sup>35</sup> Although the report covers various aspects of criminal activities, no evidence-based statistics could be found as, due to a lack of resources in supervisory bodies and inspection services, limited information is available. With regard to fraud and other breaches of integrity, the report concludes that several instances of corruption by public officials and suspicions of abuse of power for personal gain are suspected, but cannot be substantiated.<sup>36</sup>

In September 2012 the Social Economic Council published a report on the need for community-based crime prevention programmes. The report focuses on how to reduce the costs of petty and violent crime in St. Maarten; however, no new facts and figures on fraud cases were included. Also, other related studies have been conducted for the Netherlands Antilles, like the Security Plan Netherlands Antilles. This was launched in 2007 with the objective, among others, to strengthen the law enforcement agencies and supervisory bodies in St. Maarten.<sup>37</sup> However, the study does not show specific quantitative data for St. Maarten on corruption.

An overall profile on corruption is not yet available for St. Maarten. There is discussion of corruption in local society, but in the absence of further substantiated data this will be speculative.

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<sup>34</sup> [www.cfatf.org](http://www.cfatf.org).

<sup>35</sup> Korps landelijke politiediensten (KLPD), *Criminaliteitsbeeldanalyse Sint Maarten*, (Philipsburg: KLPD, 2011).

<sup>36</sup> KLPD, 2011: 255.

<sup>37</sup> USONA, *Plan Veiligheid Nederlandse Antillen* (Willemstad: USONA, 2005), p. 8.

# VI. ANTI-CORRUPTION ACTIVITIES

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St. Maarten has had a new status as a country for over four years. During the new constitutional transition from being part of the islands association (the Netherlands Antilles) to an autonomous country within the Kingdom of the Netherlands, several programmes have been implemented to strengthen and develop law enforcement agencies and to develop administrative capacity. In these last four years of operating under its own autonomous rules and regulations, laws have been adapted and new laws established for St. Maarten to be able to act as a democracy.

## ANTI-CORRUPTION MEASURES AND REFORMS

2002 saw the implementation of the Co-operative Program for Administrative Development,<sup>38</sup> whose main goal was the improvement of the public administration of the Netherlands Antilles. Activities within the program for St. Maarten mainly focussed on the development of the civil service and its new status within the constitution. One of the conclusions noted in the programme evaluation stated that St. Maarten's administration has a very clear vision on how to develop good governance, although it has insufficiently acted upon activities with regard to integrity.<sup>39</sup> After termination and on the basis of the Samenwerkingsprogramma Bestuurlijke Ontwikkeling evaluation, the programme was followed by another project to reinforce the quality of the public administration, the Project Institutional Reinforcement Administration. The Samenwerkingsprogramma Institutionele Versterking Bestuurskracht (IVB) programme for St. Maarten has three strategic strands, aiming for economic growth, a compassionate society with a safety net, and a decisive country in terms of the collaborative involvement of public, private and society groups in the development of St. Maarten.<sup>40</sup> The programme is based on the principles of good governance as stipulated in the constitution.<sup>41</sup> including the fight against corruption. The IVB programme included the development and implementation of an integrity policy, through which the training of civil servants on the subject of integrity has taken place. In collaboration with the Integrity Bureau Amsterdam, an integrity scan for several positions and institutional processes will be developed to promote transparency and internal inspection.<sup>42</sup>

A third programme, the Social Economic Initiative (SEI),<sup>43</sup> aimed at sustainable improvement of the socio-economic situation of the people of St. Maarten, for instance by ensuring a steady state budget and investment initiatives.

All mentioned programmes had a total budget of US\$103 million and were funded by the Netherlands Antilles Development Foundation (Stichting Ontwikkeling Nederlandse Antillen – SONA).<sup>44</sup> In 2014 almost all projects formulated within the three programmes were implemented. Measurement of all projects' progress and results has not taken place yet, although currently SONA is executing an evaluation.

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<sup>38</sup> Samenwerkingsprogramma Bestuurlijke Ontwikkeling (SBO) 2002–2007.

<sup>39</sup> Evaluation SBO: 54.

<sup>40</sup> Samenwerkingsprogramma Institutionele Versterking Bestuurskracht, IVB 2008-2012.

<sup>41</sup> Constitution, 2010. Article 43.

<sup>42</sup> Samenwerkingsprogramma Institutionele Versterking Bestuurskracht: 10.

<sup>43</sup> Sociaal Economisch Initiatief, SEI.

<sup>44</sup> SONA, Stichting Ontwikkelingsfondsen Nederlandse Antillen.

## Legal framework

Over the last four years St. Maarten's legal framework has been adapted to its new country status. These legislative changes also contain important improvements to strengthen good governance and the country's anti-corruption framework. A national ordinance on corporate governance was enacted in 2009 and a Corporate Governance Council was established later in the process. Also, a new law on registration and financing of political parties was adopted in 2010 to regulate the funding of political parties, and adaptations were made in the existing legislation related to the integrity of the executive.

With regard to anti-corruption, the new Penal Code<sup>45</sup> includes criminal offences such as fraud, bribery and abuse of authorities. The code also stipulates regulations on crimes and offences committed by judges, ministers, members of Parliament and civil servants.

On a Kingdom level several international conventions against corruption have been signed. The Civil Law Convention on Corruption (Strasbourg, 1999) has been ratified for St. Maarten, whereas the Criminal Law Convention on Corruption (Strasbourg, 1999) and the UN Convention against Corruption (New York, 2003) are not yet ratified for St. Maarten.<sup>46</sup>

Legislation concerning the different sectors in St. Maarten society and whether or to what extent this (new) legislation is applied in practice will be discussed in the following chapter on the NIS.

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<sup>45</sup> The new Penal Code has not come into force yet. At the current time the Penal Code of the Netherlands Antilles is used.

<sup>46</sup> UN, United Nations Convention Against Corruption, (New York: UN, 2004). Ratified by the Kingdom of the Netherlands 30 November 2006. Tractatenblad 2006, No. 266 and 2011, No 32.

# VII. NATIONAL INTEGRITY SYSTEM

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## 1 LEGISLATURE

### Summary

Although the legislature is a key actor in the NIS of a country due to its role in overseeing the activities of the executive, the St. Maarten's legislature is, according to the findings in this assessment, inadequate in effectively using its oversight powers, mainly because of a lack of experience in interactions with the members of the executive. Regarding transparency activities improvements can be made, especially taking into account that the legislature's transparency is to a large extent at the discretion of the Parliament itself. On the other hand the legislature has adopted legal reform to promote good governance.

### Structure and Organisation

St. Maarten is part of the Kingdom of the Netherlands, whose system is defined as a parliamentary monarchy, based on the democratic principles laid down in the constitution. With the constitutional change in October 2010, St. Maarten went from an island council (Staten) – governed by the Island regulation of the Netherlands Antilles, with representatives in Parliament of the country the Netherlands Antilles – to a country within the Kingdom governed by its own constitution<sup>47</sup> and having its own Parliament. The main tasks of the St. Maarten Parliament are realising legislation, approving the state budget and exerting control over government policy.<sup>48</sup>

Besides the general rules as mentioned in the constitution, more specific rules for Parliament's work are set out in the Rules of Order of Parliament.<sup>49</sup>

The Parliament of St. Maarten has eight permanent standing committees to check and report on different areas of government. One ad hoc committee is revising the Rules of Order of Parliament.<sup>50</sup>

The present legislature is a 15-seat single-chamber body elected every four years through a system of direct elections. The number of seats are dependent on the number of inhabitants of St. Maarten (estimated at around 40,000). The government is formed with a majority of eight seats, belonging to one party or multiple parties when reached by agreement. Parliament at the time of this assessment consists of three factions (National Alliance, Democratic Party and United People) and four independent members.<sup>51</sup>

At the end of August 2014 elections were held in St. Maarten and in October of that year the new Parliament was sworn in.

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<sup>47</sup> Constitution, 2010.

<sup>48</sup> Constitution, 2010. Chapter 4.

<sup>49</sup> [www.sxmparliament.org](http://www.sxmparliament.org)

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

## Assessment

### **Capacity**

#### **Resources (law)**

**Score: 75**

TO WHAT EXTENT ARE PROVISIONS IN PLACE THAT PROVIDE THE LEGISLATURE WITH ADEQUATE FINANCIAL, HUMAN AND INFRASTRUCTURAL RESOURCES TO EFFECTIVELY CARRY OUT ITS DUTIES?

**The legal framework contains adequate provisions to ensure that Parliament has adequate resources; however, financial provisions for members of Parliament are not in place.**

Members of Parliament have the support of a secretariat (the “griffie”), headed by a secretary general (the “griffier”), providing them with procedural advice, technical legal advice and administrative support services. Parliament has a president to preside over the sittings of the house and to enforce the rules as set out in the Rules of Order of Parliament. The president is a member of Parliament and appointed by the members of Parliament itself. The secretary general (the “clerk”) cannot be a member of Parliament and is also appointed and dismissed by Parliament.<sup>52</sup> Salaries, pensions and other remuneration of members of Parliament are to be regulated by country ordinance.<sup>53</sup> However, to date no such regulation has been enacted. As for the secretary general and the staff of the secretariat, the same regulations apply as for civil servants.<sup>54</sup>

According to the regular budgetary process, Parliament (the Presidium) each year prepares the estimate of the expenditure required for Parliament in the following year, which is sent to the minister of finance. Subsequently, Parliament will present a draft parliamentary budget, together with the findings of the minister of finance and the recommendations of the Council of Advice, to Parliament for approval.<sup>55</sup> Hence, in approving its own budget Parliament plays a dominant role.

#### **Resources (practice)**

**Score: 75**

TO WHAT EXTENT DOES THE LEGISLATURE HAVE ADEQUATE RESOURCES TO CARRY OUT ITS DUTIES IN PRACTICE?

**The existing financial and human resources for the legislature appear to be adequate; however, certain human resource gaps seem to lead to some ineffectiveness in carrying out its duties.**

According to respondents, available resources are adequate for the members of Parliament to be productive.<sup>56</sup> The secretariat has a staff of 11 full-time employees, which is considered small but sufficient. With regard to salaries, governance scales are used for members of Parliament as well as

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<sup>52</sup> Constitution, 2010. Article 57.

<sup>53</sup> Constitution, 2010. Article 58.

<sup>54</sup> Country Ordinance Secretary-General Parliament, Article 8, and Country Ordinance Staff Secretariat Parliament, Article 2.

<sup>55</sup> Country Ordinance Governments Accounts 2010, Article 38.

<sup>56</sup> Several anonymous interviews conducted by the authors with interviewees involved in the legislature, St. Maarten, 2014.

for staff. In the review process of determining Parliament's budget, faction leaders are involved in the discussion by the president to make sure everyone can bring forward their financial needs.

In 2010 the entire infrastructure, building and staff of Parliament had to be set up. A large number of "old" bills were still pending in 2010 when the new Parliament was established. In total, during these last four years some 159 bills have been passed, including the ones still pending from before 2010.<sup>57</sup>

With respondents external to the legislature there is a tendency to be negative about the amount of work – both proactive and reactive – done by members of Parliament. The productivity of Parliament in other aspects than bills passed could not be assessed at this point, as a substantial amount of relevant material is in a digital library at the Department of Information (DIV)<sup>58</sup> and not available to the public. Besides the quantitative resources available, there is a concern about whether the capabilities and skills of the members of Parliament are compatible with the new working environment, which is different in terms of responsibilities to the former constitutional system when they were members of the island council.<sup>59</sup>

### **Independence (law)**

**Score: 75**

TO WHAT EXTENT IS THE LEGISLATURE INDEPENDENT AND FREE FROM SUBORDINATION TO EXTERNAL ACTORS BY LAW?

**The legislature is independent and free from subordination to external actors by law; however, in the case of a political dispute the government can dissolve Parliament.**

The constitution safeguards the legislature's independence through a number of provisions. According to the constitution, members of Parliament have a free mandate when casting their votes,<sup>60</sup> implying the impossibility of a constitutionally binding mandate for a member of Parliament.

The constitution prohibits certain secondary positions for a member of the legislature, e.g. being a governor, minister, member of one of the High Councils of State or civil servant.<sup>61</sup> Nor can there be a blood relation (first and second degree) between members of Parliament or spouses who are members at the same time. Also, members are not allowed to debate and vote on issues that personally concern them or their spouses.<sup>62</sup>

Members of Parliament enjoy immunity of speech, as far as debates in Parliament or any committee of Parliament are concerned. This means that they cannot face charges for anything they say or any documents they present in the sessions mentioned.<sup>63</sup>

As noted earlier, Parliament elects a president and a deputy president from among its members.<sup>64</sup> The president is responsible for assigning the members to the standing committees for the investigation of certain subjects and to the committee for petitions. Members of the special committees are also appointed by the president. Parliament is also responsible for appointment,

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<sup>57</sup> Register van afkondigingsbladen 2011, 2012, 2013 en 2014.

<sup>58</sup> Departement Informatie voorziening.

<sup>59</sup> Several interviews conducted by the authors with interviewees involved in the legislature, St. Maarten, 2014.

<sup>60</sup> Constitution, 2010. Articles 61 and 56.

<sup>61</sup> Constitution, 2010. Article 51.

<sup>62</sup> Constitution, 2010. Article 52 and 53.

<sup>63</sup> Constitution, 2010. Article 51.

<sup>64</sup> Constitution, 2010. Article 57.

suspension and dismissal of its clerk, who cannot serve as a member of Parliament simultaneously.<sup>65</sup>

The president of Parliament determines the agenda of the meetings.<sup>66</sup> The president can convene meetings as often as he/she deems necessary, or when at least three members have requested this in writing, stating the reasons for their request. A meeting is convened in writing at least four working days before it is held.<sup>67</sup> In a case of urgency, the legislature can request an urgent debate if at least three members are in support of this. In such cases, the president will set the time and date of the urgent meeting.<sup>68</sup>

Parliament can be dismissed by government (national decree). Although specific circumstances for dismissal are not mentioned in the law, this is mostly the case if Parliament loses its confidence in the executive. An order for dissolution shall also require new elections to be held within three months.<sup>69</sup> A member of Parliament can be dismissed if s/he is convicted of a criminal offence.<sup>70</sup>

### **Independence (practice)**

**Score: 25**

TO WHAT EXTENT IS THE LEGISLATURE FREE FROM SUBORDINATION TO EXTERNAL ACTORS IN PRACTICE?

**While members of Parliament act independently at first sight, this is negated by the inconsistency in the composition of Parliament.**

The main decisions regarding Parliament's operations are made internally. In the process of new legislation, bills will not pass without discussion between the minister and Parliament.<sup>71</sup> Out of the 130 bills that were passed in the last four years, a large number concerned bills still pending from before 2010, and new bills needed to be enacted to be able for the country to be "operational".<sup>72</sup> This might have influenced the limited number of motions and of initiative legislative proposals of Parliament in the last four years. In 2013 Parliament adopted a motion from the executive against new Dutch immigration regulations for people of Curaçao, St Maarten and Aruba, known as the Bosmanwet.<sup>73</sup>

In the last four years St. Maarten has had three cabinets (see also Chapter VII.2 on the executive). The Democratic Party was in the executive all three times, while the other two parties (United People's party and National Alliance) changed from being part of the executive to being in the opposition twice. In addition, St. Maarten's society is characterised by not only social but also political relations being very much intertwined. According to respondents, because of an informal way of communicating between members of the legislature and members of the executive, issues are solved before the public knows about them. In this process it is difficult to determine the boundaries between lobbying and interference.<sup>74</sup>

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<sup>65</sup> Rules of Order for the Parliament of Sint Maarten, Article 18.

<sup>66</sup> Rules of Order. Article 27.

<sup>67</sup> Rules of Order. Article 27.

<sup>68</sup> Rules of Order. Article 35.

<sup>69</sup> Constitution, 2010. Article 59.

<sup>70</sup> Constitution, 2010. Article 50.

<sup>71</sup> Interviews conducted by the authors with interviewees involved in the legislature, St. Maarten, 2014.

<sup>72</sup> Ibid.

<sup>73</sup> A proposal by a member of the Dutch Parliament, Mr. Bosman, to limit the legal possibilities for people from Curaçao, St. Maarten and Aruba who want to migrate to the Netherlands to obtain residence permits.

<sup>74</sup> Interviews conducted by the authors with interviewees involved in the legislature, St. Maarten, 2014.

## **Governance**

### **Transparency (law)**

**Score: 25**

TO WHAT EXTENT ARE PROVISIONS IN PLACE TO ENSURE THAT THE PUBLIC CAN OBTAIN RELEVANT INFORMATION ON THE ACTIVITIES AND DECISION-MAKING PROCESSES OF THE LEGISLATURE?

**The law contains some provisions to enable public access to the legislature's activities and decisions; however, no provisions are in place to ensure publication of parliamentary documents.**

According to the constitution, plenary meetings of Parliament are to be open to the public, except if the president of Parliament considers it to be necessary or if at least four members of Parliament request meetings to be held behind closed doors.<sup>75</sup> If this is the case, confidentiality requirements may be imposed regarding the topics discussed.<sup>76</sup> No special requirements could be found in the law on the discussion of draft bills.

In general the committees' meetings are also open to the public, although Parliament may also decide which meetings are closed to the public. The law does not stipulate on what basis this decisions can be made. Likewise, a committee may decide that procedural meetings and meetings regarding the proposal of a committee member or a minister will be closed to the public.<sup>77</sup>

The president of Parliament sets the date and time of public meetings. These meetings are convened by written notices sent to all members at least four working days prior to the scheduled meeting. The notice states the agenda and will be immediately followed by a public notice of the date, time and agenda for the meeting,<sup>78</sup> in this way informing the public of Parliament's activities.

Under the Parliamentary Rules of Order, minutes are to be taken of each public session of Parliament, including the persons present and absent and a statement of the outcome of the voting, as well as the names of the members who declared themselves in favour of and against the subject discussed.<sup>79</sup>

Minutes are to be taken to Parliament by the clerk and will be printed and sent to the members and the government for approval.<sup>80</sup> Nothing could be found in the law to require verbatim records of meetings to be recorded. The Parliamentary Rules of Order are required to be made public.<sup>81</sup>

Parliamentary sessions are allowed to be broadcast by radio and television. TV companies are not required to pay any charges when broadcasting parliamentary sessions; nor are journalists reporting on Parliament and on the activities of its members restricted in any sense by the law. However, no requirements could be found for Parliament to make any non-confidential documents or draft bills (including adopted legislative documents) public in any way.

### **Transparency (practice)**

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<sup>75</sup> Constitution, 2010. Article 60.

<sup>76</sup> Rules of Order. Articles 71 and 72.

<sup>77</sup> Rules of Order. Article 27.

<sup>78</sup> Rules of Order. Articles 27 and 32.

<sup>79</sup> Rules of Order. Article 32.

<sup>80</sup> Rules of Order. Articles 32 and 33.

<sup>81</sup> Constitution, 2010. Article 66.

**Score: 25**

TO WHAT EXTENT CAN THE PUBLIC OBTAIN RELEVANT AND TIMELY INFORMATION ON THE ACTIVITIES AND DECISION-MAKING PROCESSES OF THE LEGISLATURE IN PRACTICE?

**The public has access to the plenary meetings of Parliament and can obtain general information from its website and through the press, although there is no consistent publication of documents sent to Parliament. It is difficult for the public to obtain information on the decision-making process.**

In general, the public has direct access to the plenary sessions of Parliament and also through radio and television broadcasting, if not closed to the public. When entering the Parliament building, plenary sessions held at the time are seen directly through a (sound-proof) glass wall and at the same time can be seen and listened to on a big screen in the waiting hall. The website – which is modern and up to date – also has a link to live broadcasts.<sup>82</sup>

The website also contains information on the organisation, the members of Parliament per party, committee meetings and documents like annual reports, rules of order, draft ordinances and official publications.

However, it is difficult to find any information on motions, adopted or not, and information with regard to the voting. As noted before, the “digital library” is housed at the information department and not open to the public. Information on the agenda of the committees shows limited data and has not been updated since April 2014.<sup>83</sup>

According to several interviewees, the president of Parliament has regular press conferences and sends press releases on a regular basis to the media. Besides the news briefs, no official press releases can be found on the website.

**Accountability (law)**

**Score: 75**

TO WHAT EXTENT ARE PROVISIONS IN PLACE TO ENSURE THAT THE LEGISLATURE HAS TO REPORT ON AND BE ANSWERABLE FOR ITS ACTIONS?

**Specific provisions are in place on a Kingdom and a country level to ensure constitutional review; for instance, a Constitutional Court exists and members of Parliament are subject to prosecution. However, no provisions exist that require members of the legislature to consult with or report to the public.**

As St. Maarten is part of the Kingdom of the Netherlands, its legislation has to be compatible with higher-order law, such as the Kingdom Charter, Kingdom Acts and orders, and international regulations. Changes of constitutional legislation, e.g. with regard to the authorities of St. Maarten’s Parliament, according to the Kingdom Charter, have to be signed by the government of the Kingdom.<sup>84</sup>

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<sup>82</sup> [www.sxmparliament.org](http://www.sxmparliament.org)

<sup>83</sup> Ibid.

<sup>84</sup> Kingdom Charter, Articles 42 to 44.

At a country level in the draft legislation process Parliament is required to request the advice of the Council of Advice as one of the High Councils of State, before it can approve legislation. The council's advice, however, is non-binding.

In addition St. Maarten is the only country within the Kingdom to have its own Constitutional Court. The Constitutional Court has the authority to subvert and adopt legislation that has not yet come into force. Any action by the Constitutional Court may only be commenced after a written petition of the ombudsman based on (assumed) incompatibility with the constitution,<sup>85</sup> after which she will examine the case and make her decision known to all parties involved.<sup>86</sup>

There is no legal internal complaints procedure handling complaints against decisions or activities of individual members of Parliament. As noted earlier, the regular judicial system provides for accountability in criminal and civil procedures,<sup>87</sup> although members of the legislature who are participating in the meetings cannot be prosecuted or addressed regarding the issues that were discussed or the opinions that they expressed during these meetings.<sup>88</sup>

No legal provisions are laid down in the law for the public to be consulted on legislation issues, except for the overall right of petition.<sup>89</sup>

### **Accountability (practice)**

**Score: 25**

TO WHAT EXTENT DO THE LEGISLATURE AND ITS MEMBERS' REPORT AND ANSWER FOR THEIR ACTIONS IN PRACTICE?

**Although provisions are in place, the legislature seldom answers for its actions.**

In compliance with the Kingdom legislation, no national legislation was annulled during the last four years by the Kingdom Council of Ministers. A request for a constitutional review of compatibility with national legislation has been laid down with the Constitutional Court of St. Maarten only once, in 2011. This concerned the new Penal Code of St. Maarten, which was adopted.<sup>90</sup>

Under the new legislation, the decision to prosecute members of Parliament has occurred several times. In the Bada Bing case, an independent member of Parliament was prosecuted for allegedly taking bribes in exchange for business benefits. A closed hearing of the Joint Court of Justice was needed to determine that the case was legal (because of political immunity while being in office) and approve of the prosecution.<sup>91</sup> The court in the first instance held a pro forma hearing in 2014 and will continue hearings in 2015. A second case, the Masbangu case concerning allegations of vote buying by a member of Parliament (and political leader), was dismissed by the court in first instance and is undergoing appeals at the time of writing. In January 2015, a member of Parliament charged with tax evasion, in connection with non-payment of income tax and turnover tax, was convicted by the court in the first instance to 24 months of imprisonment, 18 of which have been suspended<sup>92</sup>.

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<sup>85</sup> National Ordinance Constitutional Court, Articles 16 and 17.

<sup>86</sup> National Ordinance Constitutional Court, Articles 22 to 36.

<sup>87</sup> National Ordinance Prosecution of Political Authorities, Article 2.

<sup>88</sup> Constitution, 2010. Article 65.

<sup>89</sup> Constitution, 2010. Article 24.

<sup>90</sup> Interview conducted by the authors with the Public Prosecutors Office, St. Maarten, 2014.

<sup>91</sup> *The Daily Herald*, 13 October 2014.

<sup>92</sup> *The Daily Herald*, 8 January 2015.

Although Parliament, according to the constitution, is to be accountable for its actions to the people of St. Maarten, members of Parliament are not very active in public consultation, other than when opportune in times of election.<sup>93</sup> The principle of practical accountability being regulated by means of elections is therefore in this case to be questioned.

In addition, because of delays or lack of information from the legislature, it is difficult for the General Audit Chamber to perform its tasks to assess the efficiency and effectiveness of the operations of public institutions (see also Chapter VII.8 on the supreme audit institution). Experts have noted that in the last three years Parliament has not given any follow-up on reports that were presented by the General Audit Chamber.<sup>94</sup>

### **Integrity mechanisms (law)**

**Score: 25**

TO WHAT EXTENT ARE MECHANISMS IN PLACE TO ENSURE THE INTEGRITY OF THE MEMBERS OF THE LEGISLATURE?

**While legislation contains important provisions to promote the integrity of members of Parliament, like voting limitations and penal provisions, other relevant regulations on commercial activities when in Parliament and lobbying activities are not in place.**

Besides the Rules of Order focussed on how to perform during parliamentary meetings, Parliament does not have an explicit code of conduct. However, the constitution does require members of Parliament before taking office, to swear an oath or solemnly declare in the presence of the governor “not to have given or promised anything related to their election and will not do so and will not be bought”. Abiding by the Constitution of St. Maarten and promoting the welfare (of the people) of St. Maarten to the best of one’s ability are also part of this oath.<sup>95</sup>

In addition, the constitution mentions several guidelines for members of the legislature to counteract conflicts of interest, like prohibiting certain secondary positions as a member of one of the High Councils of State or a member of the court and not being allowed to debate and vote on issues that personally concern them or their spouses.<sup>96</sup>

Prospective members of Parliament cannot be sworn in or lose their right to vote, if convicted of certain criminal acts.<sup>97</sup>

Several issues concerning the integrity of members of Parliament are not ensured by law. For instance, there are no legal provisions to prohibit engagement in commercial activities for members of Parliament or post-employment restrictions. Also, other than what is contained in the oath (mentioned above), there is nothing in the law on the acceptance of gifts and hospitality. Furthermore legislators are not required by law to publicise their assets or to record and disclose contact with lobbyists.

### **Integrity mechanisms (practice)**

**Score: 25**

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<sup>93</sup> Several anonymous interviews conducted by the NIS assessment team, St. Maarten, 2014.

<sup>94</sup> Interview conducted by the authors with the General Audit Chamber, St. Maarten, 2014.

<sup>95</sup> Constitution, 2010. Article 56.

<sup>96</sup> Constitution, 2010. Articles 51 to 53.

<sup>97</sup> Constitution, 2010. Article 50.

TO WHAT EXTENT IS THE INTEGRITY OF THE LEGISLATURE ENSURED IN PRACTICE?

**To date, there have been limited actions to ensure the integrity of the legislature.**

There are no independent bodies required to deal with the legislature's ethics and there are no requirements in the law concerning certain integrity aspects, like disclosure of assets and contacts with lobbyists, rules on gifts and hospitality, or post-employment restrictions. In practice, no declaration of additional functions and economic interests of members of the legislature are published and there are no public declarations of acquired government long-lease land, permits and other benefits. At the same time there is no code of conduct related to gifts, assets, additional functions and representations of lobbying companies, so no information on these issues is made public in any way.

According to one expert interviewed, parliamentary culture does not promote the subject of integrity yet. Referring to a case in which a member of Parliament is being prosecuted, although the case is not concluded and no conviction has taken place as yet, this member has not stepped down and is still present in Parliament at the time of writing as allowed by law.

A training proposal for members of Parliament is being reviewed.<sup>98</sup> The content of this training is not known to Transparency International.

## **Role**

### **Executive oversight (law and practice)**

**Score: 25**

TO WHAT EXTENT DOES THE LEGISLATURE PROVIDE EFFECTIVE OVERSIGHT OF THE EXECUTIVE?

**Although there are sufficient powers to provide effective oversight of the executive, the legislature is inactive in exercising these.**

The constitution sets out important powers for the legislature to carry out its executive oversight.<sup>99</sup> Members of the executive are accountable to the legislature.<sup>100</sup> Although the legislature does not have the legal power to scrutinise appointments to executive posts, it does have the power to express "no confidence" in a member of the executive, after which a minister is required to step down.<sup>101</sup>

Every member of Parliament has the right to obtain information from the executive that he/she deems relevant. A minister is obliged to answer questions within a reasonable amount of time, as long as doing so does not pose any conflict for St. Maarten.<sup>102</sup> In addition, Parliament has the right to summon individual members of the executive to its sessions if Parliament feels the need for discussion. Legislature also has the right of inquiry<sup>103</sup> and the right to decide on which special committees will be established. In a case of alleged executive misbehaviour, witnesses and experts shall be questioned by the president of the committee and its members during the investigation. If the committee suspects a witness of having deliberately made a false statement under oath, a

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<sup>98</sup> Interviews conducted by the authors with members of the legislature, St. Maarten, 2014.

<sup>99</sup> Constitution, 2010. Chapter 4.

<sup>100</sup> Constitution, 2010. Article 32.

<sup>101</sup> Constitution, 2010. Article 33.

<sup>102</sup> Constitution, 2010. Article 62.

<sup>103</sup> Constitution, 2010. Article 64.

separate procès-verbal of this shall be drawn up and a copy will be sent to the department of public prosecutions.<sup>104</sup>

Parliament has the right to amend national budget accounting for income and expenditures offered yearly by the executive to Parliament. Only after approval of Parliament can this budget be used (Constitution, Art. 100).

Parliament does not have specific legal control mechanisms with regard to public tendering by the government. A public decree has to be sent to Parliament immediately only when a minister deviates by national decree from the financial limits set.<sup>105</sup>

In practice, Parliament is considered to make insufficient use of its powers. To some experts this is due to a lack of experience of members of the legislative, whose role in the political scenery changed after 2010 – resulting in unprofessional behaviour towards the members of the executive. In addition, according to several respondents, members of Parliament generally lack awareness that they, as representatives of the people, should take responsibility for people's welfare and therefore should make use of the mechanisms the law provides.<sup>106</sup> One example given in this respect is the fact that Parliament has never used its right of enquiry.<sup>107</sup>

## Legal reforms

### Score: 50

TO WHAT EXTENT DOES THE LEGISLATURE PRIORITISE ANTI-CORRUPTION AND GOOD GOVERNANCE AS A CONCERN IN THE COUNTRY?

**Parliament has enacted several legal reforms to promote good governance, but it does not engage in anti-corruption activities.**

In recent years St. Maarten's Parliament has not initiated or adopted legislation with a specific focus on anti-corruption.<sup>108</sup> However, in the process of the constitutional change, as of 2010 new legislation on the promotion of integrity and good governance has been initiated. Several national ordinances, e.g. on the promoting of integrity of the executive<sup>109</sup> and on the suspension of persons holding political authority, have been adopted. Also, a national ordinance (besides the already existing Penal Code for the Netherlands Antilles that is still being used until St. Maarten's own Penal Code is finalised) on the prosecution of persons holding political authority was enacted in 2010.<sup>110</sup> With regard to promoting corporate governance in government-owned companies and foundations, a country ordinance was also enacted.

In addition, already existing legislation for the Netherlands Antilles was amended for St. Maarten and some paragraphs referring to integrity aspects added, for instance not allowing members of Parliament to vote or debate on issues that personally concern them or their spouses.<sup>111</sup> A new law on the registering and financing of political parties was also enacted for political parties to provide transparency of their finances in order to rule out any undue political conflict of interest. Maybe the

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<sup>104</sup> Rules of Order. Articles 79 to 80.

<sup>105</sup> National Ordinance Government Accounting, Article 47.

<sup>106</sup> Several anonymous interviews conducted by the NIS assessment team, St. Maarten, 2014.

<sup>107</sup> Several interviews conducted by the authors with members of the legislature, St. Maarten, 2014. No information regarding enquiries is available on the website of the legislature or on the website of the executive.

<sup>108</sup> [www.sintmaartengov.org/laws](http://www.sintmaartengov.org/laws).

<sup>109</sup> National Ordinance Promotion of the Integrity of Ministers, available at [www.sintmaartengov.org](http://www.sintmaartengov.org).

<sup>110</sup> National Ordinance Prosecution of Political Authorities.

<sup>111</sup> Constitution, 2010. Articles 51 to 53.

most notable, and first, initiative legislation by Parliament concerned the introduction of the ombudsman and the role of this institution regarding the Constitutional Court.

As noted earlier, in the past four years Parliament has passed some 130 bills in total, including new legislation. As a result of the fact that St. Maarten had to rebuild its legal framework after the constitutional change in 2010, Parliament prioritised the enactment of these bills.

To be able to operate as a democracy all checks and balances need to be in place; however, there are still provisions that have not yet been put into practice. Due to limited human resources in relation to many new laws and regulations, the monitoring on the implementation of legislation is likely to be a slow process.

## 2 EXECUTIVE

### Summary

Since 2010 the structure and organisation of the executive in St. Maarten have changed considerably. As a result of this, for instance, the executive's accountability is not ensured adequately in practice. St. Maarten has enacted new legal provisions on integrity, but lacks functioning mechanisms for their implementation.

### Structure and Organisation

As noted before, with the constitutional change in October 2010 the island territory of St. Maarten and its government underwent some new developments. Becoming a country within the Kingdom meant a new constitution for the country and a different constellation of the executive branch. As of 2010 the St. Maarten government comprises the king and ministers. The king – as head of government – is represented by the governor.<sup>112</sup>

The ministers – seven in total – together make up the Council of Ministers, of which the prime minister is the chair. The Council of Ministers is supported by a secretariat.<sup>113</sup> The Council of Ministers deliberates and decides on the overall government policy to promote the coherence of that policy.<sup>114</sup> Issues of overall policy include draft legislation on general government policy, proposals with budgetary consequences, and appointment and dismissal of several top-level government officials and members of government-related agencies.<sup>115</sup> In cooperation with the legislature the executive determines country ordinances.<sup>116</sup>

St. Maarten is represented on a ministerial level in the Kingdom Council of Ministers by the minister plenipotentiary. Decisions of the Council are made on a majority basis. With the Netherlands (the biggest country) having the highest number of votes, it leaves the other countries like St. Maarten and Curaçao, having only one representative each, with no real leverage in the decision-making process. When present in St. Maarten, the minister plenipotentiary is allowed to join deliberations regarding his/her matters in the Council of Ministers of St. Maarten, having an advisory vote.<sup>117</sup>

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<sup>112</sup> Charter for the Kingdom of the Netherlands, 2010, Article 2; and Constitution, 2010, Article 32.

<sup>113</sup> Rules of Procedures Council of Ministers, 6 June, 2011, Article 2 and 3.

<sup>114</sup> Constitution, 2010, Article 39.

<sup>115</sup> Rules of Procedures Council of Ministers, 2011, Article 6.

<sup>116</sup> Constitution, 2010, Article 82.

<sup>117</sup> Constitution, 2010, Article 43.

That the constitutional change led to some turbulent times can be seen from the inconsistency in governing as from 2010. In the first four years of its existence the country had three different cabinets. Although all were represented by the same prime minister, Wescott-Williams, the constellation of parties within these cabinets changed every time.

In the four months after the 2014 parliamentary elections, a coalition was formed but fell apart before naming any minister. The second coalition under Gumbs had issues with integrity when two suggested ministers did not pass a screening. The Gumbs cabinet in place at the time of writing was sworn in in December 2015, with the cabinet short of two ministers and five ministers holding seven ministries (two ministers serving ad interim for a second ministry).

Due to the fact that in the end the ministers are politically responsible, this chapter will deal mainly with the Council of Ministers or with the position of individual ministers when concerned.

## Assessment

### Capacity

#### **Resources (practice)**

**Score: 50**

TO WHAT EXTENT DOES THE EXECUTIVE HAVE ADEQUATE RESOURCES TO EFFECTIVELY CARRY OUT ITS DUTIES?

**The executive seems to have adequate financial resources. Gaps in appropriate human resources, however, lead to a certain degree of ineffectiveness.**

Financial resources for Council of Ministers come from the state budget. Salaries, pensions and additional financial resources are regulated by the constitution and several country ordinances.<sup>118</sup> Based on several interviews conducted for this assessment, there is no reason to believe that financial resources are inadequate for the executive to effectively carry out its duties. The effectiveness of the executive, however, does show gaps in the cooperation with several other stakeholders to ensure public interests are met. According to experts, the restructuring of the government and Parliament has not brought about a needed awareness of new roles and ways of cooperation.<sup>119</sup>

In addition, due to the small-scale society and the new situation, a great demand was laid upon the quantity and quality of professionals who are not always available in St. Maarten. For the first time members of the executive are faced with new responsibilities and working methods, which require qualifications and skills not always recognised by their parties or not available within their organisation.<sup>120</sup>

#### **Independence (law)**

**Score: 75**

TO WHAT EXTENT IS THE EXECUTIVE INDEPENDENT BY LAW?

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<sup>118</sup> Constitution, 2010. Article 42; and Country Ordinance, 2010, Articles 7, 8 and 9.

<sup>119</sup> Several interviews conducted by NIS assessment team, St. Maarten, 2014.

<sup>120</sup> Ibid.

**Several provisions to ensure the independence of the executive exist, although not all aspects are covered, such as lobbying activities.**

Both on a Kingdom level and a country level, some regulations exist that restrict the independence of the executive in its decision-making process. For instance, it is stated by law that certain Kingdom affairs, such as national security, foreign relations and issues regarding Dutch nationality, are required to be conducted in cooperation with the other countries in the Kingdom.<sup>121</sup> Thus this restricts the independence in the decision-making processes of the subjects of the individual countries and the ministers involved.

The governor – as the representative of the King – has an intermediate role between the Kingdom and the country level. S/he is appointed - for six years - and dismissed by kingdom decree, and can be reappointed once for another six years.<sup>122</sup> The governor's powers and responsibilities are laid down in several laws at the Kingdom and local levels (Charter for the Kingdom, Kingdom Act Regulations Governor and Constitution). The governor's political role is limited to appointing an "(in)formateur" to form a coalition cabinet that is supported by Parliament.<sup>123</sup> According to the constitution, the governor is required to sign all country ordinances and country decrees, but only when countersigned by one or more ministers do these regulations become formalised.<sup>124</sup> The governor may join a meeting of the Council of Ministers (see below) but will only have an advisory vote.<sup>125</sup> Together these aspects imply that the governor does not have any political responsibilities.

On a country level, the responsibilities of the minister(s) are to be fulfilled in consultation with Parliament regarding decisions to be made.<sup>126</sup> In some cases a minister could be faced with a decision made by the council that is in conflict with his/her responsibility. In such a case the minister(s) involved cannot act against such a decision<sup>127</sup> and as a result a situation of dual dependency is created.

Regarding the position of a member of the executive, some regulations are laid down in the constitution, i.e. rules dealing with conflicts of interest, incompatible functions and the ruling out of blood relations between ministers.<sup>128</sup>

No regulations could be found on the interaction between the executive and Parliament or other government branches, such as lobbying activities.

**Independence (practice)**

**Score: 50**

TO WHAT EXTENT IS THE EXECUTIVE INDEPENDENT IN PRACTICE?

**Although no cases of undue interference by the legislature in the activities of the executive were found, lobbying boundaries are not clear, interfering with the effectiveness of the system. Also, interference from the private sector is a concern.**

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<sup>121</sup> Charter for the Kingdom of the Netherlands, 2010. Article 3.

<sup>122</sup> Kingdom Act Regulations for the Governor of St. Maarten, 7 July 2010, Article 1.

<sup>123</sup> L.J.J. Rogier, *Beginselen van Caribisch Staatsrecht* (Principles of Caribbean Constitutional Law), (Den Haag, Boom Juridische Uitgevers, 2012). p.157.

<sup>124</sup> Constitution, 2010. Article 40.

<sup>125</sup> Constitution, 2010. Article 39.

<sup>126</sup> Constitution, 2010. Article 32.

<sup>127</sup> Rules of Procedures Council of Ministers, 2011. Article 23.

<sup>128</sup> Constitution, 2010. Articles 34 and 37.

The assessment found no clear examples of the legislature's direct interference with the activities and decisions of the executive. According to several respondents, however, political lobbying does occur and is considered "common practice" within St. Maarten society. Due to the new responsibilities of both the executive and legislature and the lack of experience in interaction between these two bodies, and with no clear rules set on the issue, boundaries with regard to interference are not clear.

In addition, with the focus on political figures rather than political parties, together with tight social relations, division of powers is blurred. This results in inactivity on the side of the legislature and the tendency, on the side of the ministers, to act on their own account.<sup>129</sup>

The extent of interference from other actors, such as representatives of the public and of the private sector, is difficult to determine. No information could be obtained during the assessment on the sponsoring of political parties by members of the private sector (see also Chapter VII.6 on the Electoral Management Bodies - EMBs). However, respondents noted that "lobbying for projects" is being done and ministers have decided in favour of certain projects and their execution, without the proper tendering process.<sup>130</sup>

## **Governance**

### **Transparency (law)**

**Score: 50**

TO WHAT EXTENT ARE PROVISIONS IN PLACE TO ENSURE TRANSPARENCY IN RELEVANT ACTIVITIES OF THE EXECUTIVE?

**Legal provisions on the transparency of the state budget and legislation are mainly in place. However, there are no adequate regulations to ensure the transparency of the meetings of the Council of Ministers and the administrative decision-making process. Nor is transparency on disclosure of assets and information on other interests ensured.**

The government is required by law to make accessible to the public all documented information regarding administrative matters, including those of the executive. Exceptions relate to matters of safety, unity of government and private information on businesses.<sup>131</sup>

All meetings of the executive, however, are to be held behind closed doors. In addition, an obligation of secrecy is applicable for all issues discussed, decisions being during these meetings, and the minutes regarding these discussions and decisions. The Council of Ministers or the prime minister is permitted to abolish this obligation.<sup>132</sup>

The minister of general affairs, according to the proclamation ordinance (AB 2010, GT no 21), is required to publicise all legislation acts in the official publication (Afkondigingsblad), the National Gazette St. Maarten (Landscourant), and all draft legislation sent to Parliament.<sup>133</sup> Regarding other documents, besides the mentioned legislation no legal provisions were found that ensure executive transparency by making these accessible to the public. This also applies for administrative decisions

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<sup>129</sup> Several interviews conducted by NIS assessment team, St. Maarten, 2014.

<sup>130</sup> Ibid.

<sup>131</sup> Country Ordinance on Public Access to Government Information, Article. 1.

<sup>132</sup> Rules of Procedure Council of Ministers, 2011. Article 17.

<sup>133</sup> Country Ordinance on Public Access to Government Information, Article 1.

(see the text above) and the related procedures and communication. However, the rules of procedure of the Council of Ministers are to be published according to the constitution.<sup>134</sup>

Transparency provisions regarding the government budget are explicitly mentioned in the constitution and country ordinance on government accounting. The government's budget is made public when the executive offers it to Parliament, by 1 September of every year.<sup>135</sup> Also, any proposals having financial consequences that exceed the authorised amounts in the current budget, or that designate a purpose for funds different to that described in the current budget, are required to be made public by the involved minister after consultation with the minister of finance.<sup>136</sup> According to the national ordinance on open government, the minister of general affairs is to report every year, before 1 June, to Parliament on the ways the executive applied this ordinance in the preceding year.<sup>137</sup>

On its administrative policy, according to the national ordinance on public access to government information, the government is to proactively provide information on a regular basis.<sup>138</sup>

On the requirement of declaration of assets and information of any commercial or other interests and statements of any secondary positions and associated income or benefits, the national ordinance on the promotion of integrity of ministers notes that if a minister fails to submit a signed declaration of his/her assets to the prime minister within 30 days of accepting the appointment as minister, the prime minister shall notify the Parliament in that regard without delay. If the prime minister fails to declare his/her assets, the Council of Advice will inform Parliament of the situation.<sup>139</sup> No legislation on the transparency of these issues, however, could be found.

### **Transparency (practice)**

**Score: 50**

TO WHAT EXTENT IS TRANSPARENCY MET IN RELEVANT ACTIVITIES OF THE EXECUTIVE IN PRACTICE?

**The public can obtain information on the organisation and activities of the executive. On the functioning and decision-making process of the executive little information is provided. Laws are published on the website and the press is addressed on a regular basis.**

The government has a website with information on the structure and organisation of the Council of Ministers. Each minister and his/her department as well as support services are mentioned, with the names of the employees as well as relevant legislation. In addition a separate section can be found on general and specific laws and regulations,<sup>140</sup> sorted by year (2010-2014) of coming into force. Some of these are in both Dutch and in English, although translation is not always of high quality. Moreover, information on news items concerning individual ministers is renewed on a regular basis, as are press releases from the government.<sup>141</sup> The website, however, does not publish any information on the agenda of the Council of Ministers or on the timeframe of the endorsement process for new legislation.

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<sup>134</sup> Constitution, 2010. Article 39.

<sup>135</sup> Constitution, 2010. Article 100.

<sup>136</sup> National Ordinance Government Accounting, Article 9.

<sup>137</sup> National Ordinance Open Government, Article 17.

<sup>138</sup> National Ordinance on Public Access to Government Information, Articles 8 and 9.

<sup>139</sup> National Ordinance on the Promotion of Integrity of Ministers, Article 2.

<sup>140</sup> Official publications and *National Gazette*.

<sup>141</sup> [www.sintmaartengov.org](http://www.sintmaartengov.org).

The state budget is made public on the website of the General Audit Chamber,<sup>142</sup> although accounting is not made public. Nor is information on the disclosure of assets or secondary positions and related benefits of members of the executive made public.

The press is informed once a week every Thursday by the prime minister of current issues and there are regular interviews on the radio. To what extent the information made public covers all important issues is difficult to say. The media in St. Maarten play a rather prominent role in political information transfer (also see Chapter VII.11 on the media). Information on to what extent the information concerned is being spread on the initiative of the executive itself was not available during this assessment.

### **Accountability (law)**

**Score: 100**

TO WHAT EXTENT ARE PROVISIONS IN PLACE TO ENSURE THAT THE MEMBERS OF THE EXECUTIVE HAVE TO REPORT AND BE ANSWERABLE FOR THEIR ACTIONS?

**Comprehensive legal checks and balances are in place, on both the country and Kingdom levels. Members of the executive can be held accountable in criminal proceedings.**

Ministers are accountable to Parliament.<sup>143</sup> Every member of Parliament has the right to question the ministers.<sup>144</sup> Ministers are required by law to answer any question asked by members of Parliament within a reasonable amount of time. An exception is made for those questions whose answers may jeopardise the interests of the country or the Kingdom.<sup>145</sup>

When a minister holds a decision to be in conflict with his/her responsibility, this will be noted but a minister should never act against a decision made by the Council of Ministers.<sup>146</sup> However, since 2010 the system of ministerial responsibility has changed in the sense that ministers are individually responsible to Parliament for their activities. Previously the Council of Ministers as an institution was accountable.<sup>147</sup> On an institutional level each minister is responsible for his/her own department.

At the beginning of each parliamentary year, the Council of Ministers is to inform Parliament on the government's proposed policy and hand in the state budget. St. Maarten's state budget is required to be balanced. The government is also required to account to Parliament for its revenues and expenditures after the year's closing and provide Parliament with an annual account, examined by the General Audit Chamber.<sup>148</sup>

Although in accounting for its budget, members of the executive are also to provide information on the proposed policies and activities if requested by Parliament, there is no specific law that requires members of the executive to give reasons for administrative decisions taken by them. The executive is also required to respond to the High Councils of State when asked for additional information in the process of checks and balances. In the decision-making process by the Council of Ministers, ministers are not required to explain their vote.<sup>149</sup>

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<sup>142</sup> [www.arsxm.org/en](http://www.arsxm.org/en).

<sup>143</sup> Constitution, 2010. Article 32.

<sup>144</sup> Constitution, 2010. Articles 63 and 64.

<sup>145</sup> Constitution, 2010. Article 62.

<sup>146</sup> Rules of Procedures Council of Ministers, 2011. Article 23.

<sup>147</sup> Constitution, 2010. Article 32.

<sup>148</sup> Constitution, 2010. Article 100.

<sup>149</sup> Rules of Procedure Council of Ministers, Article 20.

The national ordinance on open government was developed to secure openness in the performing of the executive duties, increasing its accountability by enhancing reporting requirements.

In addition, as a result of the new constitution, regulations – some of them in principle temporarily – were set on a Kingdom level to monitor the executive’s activities, like the Board of Financial Supervision (Cft). Neglecting its advice can lead to an “instruction” from the Kingdom Council of Ministers to adjust the budget.<sup>150</sup> And if this is not followed by the country, ultimately the Kingdom Council can suspend or annul country legislation.<sup>151</sup>

Members of the executive can be held accountable for wrongdoing. A minister who no longer has the confidence of Parliament is to step down from office.<sup>152</sup> In the case of a criminal offence the procurator general is authorised to prosecute a member of the executive.<sup>153</sup>

### **Accountability (practice)**

**Score: 25**

**TO WHAT EXTENT IS AN EFFECTIVE OVERSIGHT IN PLACE OF THE EXECUTIVE ACTIVITIES IN PRACTICE?**

**Accountability in practice at the local level is not very effective, mostly because members of Parliament lack experience regarding their responsibilities.**

Most respondents in this assessment agree on the fact that when it comes to government stakeholders, ministers and members of Parliament (also see Chapter VII.1 on the legislature) still must develop an understanding of the new roles they have and how “to play the game” in communication with each other and towards new legislative principles on the relationship between ministers and members of Parliament. In addition, there seems to be a lack of “unity of policy”, resulting in ministers doing their own thing.<sup>154</sup>

In the past four years of government under new rules and regulations, the mechanisms of accountability have yet to be internalised and put into practice. Although the executive provides Parliament with information, answers to questions are not always provided within the required time. Budgets and annual accounts are handed in with delays most of the time and annual accounts have not been audited.<sup>155</sup>

The Council of Ministers of the Kingdom has not issued an instruction to the executive in St. Maarten since it obtained its country status.<sup>156</sup> The Board of Financial Supervision (Cft) advised the Kingdom Council of Ministers three times over the last four years to issue a procedural instruction (there are two types of instructions: a procedural instruction and an instruction on content). However, because of the delayed presentation of the budget of St. Maarten, the council did not follow this advice. Instructions were not executed and, following hearings, the budget was approved. In 2013, however, the Council of Ministers of the Kingdom issued an instruction to the governor to

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<sup>150</sup> Kingdom Act Supervision Curaçao and Sint Maarten, Article 13.

<sup>151</sup> Kingdom Charter, Articles 43 and 50.

<sup>152</sup> Constitution, 2010. Article 33.

<sup>153</sup> Constitution, 2010. Article 126; and National Ordinance Prosecution of Political Authorities, Article 2.

<sup>154</sup> Several interviews conducted by NIS assessment team, St. Maarten, 2014).

<sup>155</sup> Interview conducted by the authors with the General Audit Chamber, St. Maarten, 2014.

<sup>156</sup> Interview conducted by the authors with Cft, St. Maarten, 2014.

perform an independent inquiry regarding integrity in St. Maarten. Cft also recently advised the St. Maarten government to start investigations into Bureau Telecommunications and Post (BTP).<sup>157</sup>

As for criminal or civil proceedings, no rulings were found with regard to members of the executive in the last four years. In 2013 the minister of justice at the time was questioned by the chief public prosecutor and the Special Police Force regarding allegations of bribery involving a parliamentarian. This was the Bada Bing case (also see Chapter VII.1 on legislature).<sup>158</sup>

According to several respondents there are no clear examples of the executive consulting the community on important issues. However, the government did stimulate the establishment of community centres; the effectiveness of this new communication structure is to be measured in the coming years.

The executive is to provide information to the General Audit Chamber in order for the chamber to be able to review the annual account of government. According to the General Audit Chamber this information is insufficient for it to be able to perform this duty (see Chapter VII.8 on the supreme audit institution).<sup>159</sup>

### **Integrity (law)**

**Score: 50**

TO WHAT EXTENT ARE MECHANISMS IN PLACE TO ENSURE THE INTEGRITY OF THE MEMBERS OF THE EXECUTIVE?

**There are provisions in place to ensure the integrity of the members of the executive, although compliance is insufficient and whistleblower protection does not exist.**

Ministers are required to take an oath before officially taking office. The oath covers rules on not giving or promising anything to obtain one's office, abiding by the constitution and promoting the welfare of the country.<sup>160</sup>

In addition – focussing on the period in office – the constitution mentions several guidelines to counteract conflicts of interest, like prohibiting certain secondary positions as a member of one of the High Councils of State and not being allowed to debate and vote on issues that personally concern them or their spouses. Also, the constitution prohibits a minister's holding of any position with which any remuneration or benefits charged to the state budget are associated, or participating in any way in a business registered or operating in St. Maarten.<sup>161</sup> New legislation established in 2012 to improve matters of transparency and independence also positively affect integrity matters.<sup>162</sup> Overall, sufficient procedures are in place to prevent conflict of interest from arising among ministers.<sup>163</sup>

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<sup>157</sup> Cft, *Annual Report*.

<sup>158</sup> PwC, *Integrity Inquiry into the functioning of the Government of Sint Maarten*, (PwC, 2014). p.43.

<sup>159</sup> Interview conducted by the authors with the General Audit Chamber, St. Maarten, 2014.

<sup>160</sup> Constitution, 2010. Article 41.

<sup>161</sup> Constitution, 2010. Article 35.

<sup>162</sup> Country Ordinance Integrity Ministers, October 2012.

<sup>163</sup> PwC, 2014: 213.

The national ordinance on legal and material rights and obligations of civil servants, containing general integrity rules, does not apply to members of the executive. Moreover, comprehensive rules on the screening of ministers are lacking.<sup>164</sup>

Although some regulations are in place with regard to the integrity of the members of the executive, rules are divided over several ordinances and overlapping in content. Furthermore, no regulations have been laid down to ensure the compliance with the rules. With the exception of the provision concerning a minister's commercial interest without approval – in which case the prime minister will inform Parliament<sup>165</sup> – no general regulations exist to provide Parliament with information concerning the above mentioned matters in order to be able to question others. If Parliament one way or another is provided with relevant information about a minister's wrongdoing, the only "sanction" possible is to terminate trust in the minister, in which case s/he has to step down from office.<sup>166</sup> The constitution does mention an annual accountability review regarding the rules of integrity of governance laid down in a country ordinance,<sup>167</sup> but does not set conditions.

Members of the executive can be prosecuted by the procurator general (see the section on accountability law), for example for abuses of office, bribery and breaches of confidentiality. Although ministers through the Code of Criminal Procedure have the responsibility to report abuses of office and related crimes – bounded by the principle of conflict of interest – there are no provisions in the law to protect whistleblowers.

### **Integrity (practice)**

#### **Score: 25**

TO WHAT EXTENT IS THE INTEGRITY OF THE MEMBERS OF THE EXECUTIVE ENSURED IN PRACTICE?

**Although it has happened that ministers were denied office for not meeting legal integrity requirements, other members of the executive who did not meet these requirements were left unsanctioned.**

In practice, in the last four years some ministers were denied office for not meeting legal integrity requirements. For example, in 2013 the candidate minister of tourism, economic affairs, traffic and telecommunication did not pass the security screening because of accusations of threatening a member of Parliament and of displaying a weapon in a threatening manner.<sup>168</sup> Other examples of not meeting integrity requirements are related to the lifting of moratoriums on economic licences by former ministers in 2012 and 2013, respectively on taxi licences and bus permits, and in 2014 by the minister of tourism and economic affairs on bars, restaurants, car rentals and casinos to specific individuals.<sup>169</sup> However – maybe due to the rapid changes of governments – security screening of ministers has not always been done or done on time, in terms of ministers not giving clearance on the required information on their assets and additional businesses.

When forming a new cabinet after the 2014 elections, issues with the integrity and security screening of four of the total of six ministers to be appointed were addressed. In order to still be able

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<sup>164</sup> According to page 17 of the report *Doing the Right Things Right*, a national ordinance on other activities and transparency regarding assets is very limited.

<sup>165</sup> National Ordinance on the Promotion of the Integrity of Ministers, Article 4.

<sup>166</sup> Constitution, 2010. Article 41.

<sup>167</sup> Constitution, 2010 Article 101.

<sup>168</sup> *The Daily Herald*, 10 June 2013.

<sup>169</sup> <http://tomschalken.nl/opinie-201414>; and <http://caribischnetwerk.ntr.nl/2014/10/05/afscheidbeleid-blijft-populair-op-sint-maarten>.

to form a new cabinet and also not reach the deadline of three months after the establishment of a new Parliament,<sup>170</sup> two ministers were left in charge of two ministries each. The prime minister covering general affairs and housing, spatial planning, environment and infrastructure as well; and the minister of justice also covered public health, social development and labour.

An expert noted that during the last three governments (before the 2014 elections), the prime minister did not execute the legally prescribed procedure in the integrity ordinance with regard to the declaration of assets, including that of her own, which led to a conflict between the prime minister and the Security Service.<sup>171</sup>

As a result of the fact that transparency is not formalised in the provisions concerned, in this assessment it is difficult to state whether and to what extent rules and regulations regarding integrity are being applied in practice and what the effectiveness of these provisions is.

## **Role**

### **Public Sector Management (law and practice)**

#### **Score: 25**

TO WHAT EXTENT IS THE EXECUTIVE COMMITTED TO AND ENGAGED IN DEVELOPING A WELL-GOVERNED PUBLIC SECTOR?

**Although legislation is in place, no qualitative reorganisation of public sector staff has taken place and the executive is ineffective in encouraging the public sector to conduct its activities in a transparent and accountable way.**

In 2010, with the new country status of St. Maarten, new legislation on the organisation of the executive was set up. Ministers obtained responsibility for their ministry and for the general management of their staff, who are to politically support and advise the minister. The overall management of the ministry's staff rests with a secretary general, who has the support of a bureau to manage (financial) control and determine policy and those responsible for output.<sup>172</sup> However, in practice the secretary generals are not given enough of a mandate to carry out their managerial responsibilities in a responsible way, and interference of individual ministers in the daily affairs of a ministry is hampering the secretary general's execution of responsibilities. For instance, in the field of correcting or sanctioning personnel when necessary, the chief of police lacks the authority to discipline or sanction infractions or deficiencies of the police officers, or even remove them temporarily from their duties and access to their department to carry out an investigation following a complaint. By this centralising of authority (Bevoegd gezag) with the minister, the execution of the Substantive Law for Civil Servants (LMA) risks becoming politicised and protecting perpetrators.<sup>173</sup>

With the new ordinance coming into effect in April 2014 and the resulting new positions and new responsibilities for members of the public sector, a planned core tasks analysis was not completed and no qualitative reorganisation on the staff level was executed or training given. To some respondents this is a result of no executive interest in establishing a well-structured and transparent public sector.

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<sup>170</sup> According to the Constitution being a minister and a member of parliament during a transition phase is only allowed for three months.

<sup>171</sup> Interview conducted by the NIS assessment team, St. Maarten, 2014.

<sup>172</sup> National Ordinance Structure and Organisation National Government, Articles 1 to 3.

<sup>173</sup> Several interviews conducted by the authors with interviewees in the public sector and executive, St. Maarten, 2014.

In practice, mostly under the new secretary generals, rules on authorisation and enactment are not clear. Depending on the subject, the minister or the secretary general is directly involved in these processes. The practice of making use of social and family relations (like calling the minister directly) interferes not only with the formal procedures of authorisation and responsibilities, but also with transparency and accountability, leaving room for leverage and hampering the effectiveness of the system.<sup>174</sup>

On the other hand, in 2011 St. Maarten's government set up a special project to develop an integrity institution (Bureau Integriteit) under the responsibility of the Ministry of General Affairs in 2014. The programme aims at bringing a higher level of commitment towards improving the level of integrity throughout public service and pushing the St. Maarten government to operate according to the principles of good governance.<sup>175</sup> The project, which was funded by Stichting Ontwikkeling Nederlandse Antillen (SONA), was set up to execute a variety of activities such as research, integrity training and workshops, communication and the mentioned establishment of a bureau. The project published newsletters in 2011 and 2012 and has organised integrity training for civil servants. A policy paper was drawn up on the basis of research on integrity issues.<sup>176</sup>

## Legal system

### Score: 25

TO WHAT EXTENT DOES THE EXECUTIVE PRIORITISE PUBLIC ACCOUNTABILITY AND THE FIGHT AGAINST CORRUPTION AS A CONCERN IN THE COUNTRY?

**The Executive has acted upon a number of new regulations on integrity, but not many are achieving their goals.**

Since the constitutional change, the executive has given attention to strengthening the legal framework with regard to good governance. Several national ordinances (also see the section on integrity law) on promoting the integrity of ministers have been drafted and approved by Parliament. In addition, a project on integrity was set up within the Ministry of General Affairs, an integrity bureau (Bureau Integriteit)<sup>177</sup> is being activated and several assessments on integrity were conducted, two of them on the initiative of the executive.

Although attention is given to the subject, as stated in the previous section, compliance is not always (legally) in place and the existing legislation still contains loopholes.

The effectiveness of strengthening the legal framework for the executive's good governance is to be questioned, if set against the fact that members of the executive themselves do not always meet requirements with regard to good governance (also see the section on integrity practice). As a result they do not, in practice, increase confidence in the proper functioning of government.<sup>178</sup>

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<sup>174</sup> Ibid.

<sup>175</sup> [www.sintmaartengov.org](http://www.sintmaartengov.org)

<sup>176</sup> [www.usona.an](http://www.usona.an)

<sup>177</sup> [www.sintmaarten.gov.org](http://www.sintmaarten.gov.org)

<sup>178</sup> PwC, 2014: 53; and several interviews conducted by the NIS assessment team, St. Maarten, 2014.

## 3 THE CONSTITUTIONAL COURT

### Summary

St. Maarten has a number of legal provisions to ensure the independence of the Constitutional Court, and according to the findings in this assessment no undue interference from other actors was reported. The Constitutional Court's adequate level of independence has also led to its ability to exercise oversight vis-a-vis the executive. In practice, resources in terms of professionals and financial means are adequate.

For this institution scores are only set with regard to the legal framework of dimensions, as in practice only one case has been addressed so far.

For findings and scores on the Joint Court of Justice reference is made to the report on the Curaçao NIS.<sup>179</sup>

### Structure and Organisation

St. Maarten has, in addition to its main institutions of the judiciary – the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba (Gemeenschappelijk Hof van Justitie) and the Public Prosecutor's Office<sup>180</sup> – a Constitutional Court. The Constitutional Court St. Maarten is to comply with enacted, but not yet effective, legal regulations on the constitution itself.<sup>181</sup> Request for constitutional compliance can only be made by the ombudsman on the basis of incompatibility with the constitution.<sup>182</sup>

The Constitutional Court of St. Maarten was established on the initiative of St. Maarten's government itself and is a unique institution within the Kingdom. Regarding this specific legal compliance St. Maarten is far ahead of the other countries within the Kingdom. The Constitutional Court consists of three members, including a president and a vice president, and three deputy members.<sup>183</sup> Out of the six members and deputy members of the Constitutional Court, two members are also appointed judges from the Council of Advice of the Kingdom (Raad van State), two are also appointed judges from the Joint Court of Justice and two are legal professionals from outside these judicial institutions.

Although, according to the constitution, the Constitutional Court is not part of the judiciary, this chapter will deal with this specific court because of its judicial relation with the office of the ombudsman. In addition, it is an important institution in the process of the establishment of new legislation as a result of the constitutional change.

As the NIS assessment on Curaçao has reported on the Joint Court of Justice extensively, reference is made to that report for the subject of the Joint Court of Justice.<sup>184</sup>

The Public Prosecutor's Office, operating independently of the Joint Court of Justice – charged with the detection and prosecution of punishable acts, and responsible for the judicial police<sup>185</sup> – will be discussed in Chapter VII.5 on the law enforcement agencies.

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<sup>179</sup> Transparency International, *National Integrity System: Curaçao 2013*, (Transparency International, 2013).

<sup>180</sup> Constitution, 2010. Article 114.

<sup>181</sup> Constitution, 2010. Article 127.

<sup>182</sup> Constitution, 2010. Article 127.

<sup>183</sup> National Ordinance Constitutional Court. Article 4.

<sup>184</sup> Transparency International, 2013: 72–83.

## Assessment

### **Capacity**

#### **Resources (law)**

**Score: 25**

TO WHAT EXTENT DO PROVISIONS EXIST TO ENSURE APPROPRIATE SALARIES AND WORKING CONDITIONS FOR THE CONSTITUTIONAL COURT?

**No comprehensive laws concerning appropriate judicial salaries are in place yet.**

The law states that financial provisions of the members and deputy members of the Constitutional Court will be regulated by national decree.<sup>186</sup> However, no such decree has been found. Nor could we find provisions in the law against income reduction for members and deputy members or any information on the determination of salaries for members and deputy members of the Constitutional Court.

No information was found in the law on the apportioning of the budget for the Constitutional Court, a prescribed minimum percentage of the general budget to be apportioned to the Constitutional Court, or whether members of the Constitutional Court are entitled to participate in the budgeting process.

#### **Resources (practice)**

TO WHAT EXTENT DOES THE CONSTITUTIONAL COURT HAVE ADEQUATE RESOURCES TO ACHIEVE ITS GOALS IN PRACTICE?

**The Constitutional Court has an adequate resource base to effectively carry out its duties.**

In practice, members and deputy members of the Constitutional Court are appointed. All (deputy) members are judges or professionals experienced in legal compliance. The (deputy) members of the Constitutional Court, however, are not receiving any salary or reimbursement. The country decree to regulate these financial provisions is to be drawn up in the near future.<sup>187</sup>

For the execution of its tasks, for now the Constitutional Court makes use of the infrastructure of the Court of Justice and has the same “griffier”.

The Constitutional Court's budget in the state budget is part of the budget of the Ministry of Justice and hence apportioned by the minister of justice. The total allocated budget is ANG 150,000 (US\$83,333). Exact total expenditures are not known, but according to members of the Constitutional Court these are very limited as there have not been overhead costs (office, personnel, salaries' members) so far.

#### **Independence (law)**

**Score: 100**

TO WHAT EXTENT IS THE CONSTITUTIONAL COURT INDEPENDENT BY LAW?

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<sup>185</sup> Constitution, 2010. Article 122.

<sup>186</sup> National Ordinance Constitutional Court, Article 14.

<sup>187</sup> Interviews conducted by the authors with interviewees from the Constitutional Court, St. Maarten, 2014.

## **The legal framework is comprehensive in seeking to ensure the independence of the Constitutional Court.**

The Constitutional Court is anchored in the constitution<sup>188</sup> and several measures are included in the constitution that support the independence of this court. These measures apply to additional functions as well as family relationships.<sup>189</sup>

In general, alterations of the constitution may be made by national ordinance after approval by the legislature. However, any alterations concerning the administration of justice shall be subjected to the government of the Kingdom. They will take effect only after the government of the Kingdom has expressed its consent.<sup>190</sup>

The appointment of the six members of the Constitutional Court is stipulated by both the constitution and the national ordinance: one member and one deputy member shall be appointed on the nomination of the council of state of the Kingdom, from among its members. One member and one deputy member shall be appointed on the nomination of the Joint Court of Justice of Aruba, Curaçao, Sint Maarten, and of Bonaire, Sint Eustatius and Saba, from among its members. One member and one deputy member shall be appointed, having heard the Constitutional Court. The members of the Joint Court of Justice of Aruba, Curaçao, Sint Maarten, and of Bonaire, Sint Eustatius and Saba have the authority to nominate two persons each for the positions of member and deputy member of the Constitutional Court. Nominations are made from their midst.<sup>191</sup>

Members and deputy members of the Constitutional Court are required by law to hold a Bachelor's or Master's degree in law and be of Dutch nationality.<sup>192</sup> The members and deputy members of the Constitutional Court are appointed for a period of ten years, with the possibility of renewal only once.<sup>193</sup>

No evidence was found in the law that an independent body exists for the appointment and removal of members of the Constitutional Court.

Specific circumstances that dictate dismissal from the position are identified by law, such as when it is of a member's own accord, on reaching the age of 70, in case s/he accepts a position that has been identified by law as being incompatible with the position; members of Parliament, minister and minister plenipotentiary,<sup>194</sup> after losing Dutch nationality, and when proven unsuitable for the position by reasons other than sickness or other shortcomings.<sup>195</sup> No information was found on the incompatibility of membership of political parties. Dismissal of a member or a deputy member of the Constitutional Court may take place by national decree, by the Joint Court of Justice of Aruba, Curaçao and Sint Maarten and of Bonaire, Sint Eustatius and Saba, and by operation of law.<sup>196</sup>

No provision was found in the law that restricts members of the Constitutional Court in forming professional associations.

Certain restrictions in the national ordinance support the independence of the members of the Constitutional Court. For example, members or deputy members may not take part in any special

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<sup>188</sup> Constitution, 2010. Article 127.

<sup>189</sup> National Ordinance Constitutional Court, Article 4.

<sup>190</sup> Constitution, 2010. Article 129.

<sup>191</sup> Constitution, 2010. Article 128. And National Ordinance Constitutional Court, Article 1.

<sup>192</sup> National Ordinance Constitutional Court, Article. 2.

<sup>193</sup> Constitution, 2010. Article 128.

<sup>194</sup> National Ordinance Constitutional Court, Article 4.

<sup>195</sup> National Ordinance Constitutional Court, Articles 5 to 8.

<sup>196</sup> National Ordinance Constitutional Court, Articles 5 to 8.

consultations with parties to any case pending before the Constitutional Court, its authorised representatives or its counsels. Also, a member that holds a position that could damage his/her impartiality in a particular case may not assist in the decision on that case.<sup>197</sup>

No provision has been found in the law that supports participation of civil society in the appointment of members and deputy members of the Constitutional Court.

### **Independence (practice)**

TO WHAT EXTENT IS THE CONSTITUTIONAL COURT INDEPENDENT IN PRACTICE?

**The independence of the Constitutional Court is adequately safeguarded in practice.**

In 2010 all members of the Constitutional Court were appointed on the basis of clear professional criteria, as stipulated by law. As mentioned before, all (deputy) members are experienced judges or professionals in legal compliance.

In 2010 two judges had to be replaced; one replacement is still needed. This was not due to the content of their decisions but because of reaching the age of retirement.

The independence of the (deputy) members of the Constitutional Court in practice in a way is secured by the legal framework regulating the appointment and dismissal of all members. In its four years of existence the Constitutional Court has had one case.<sup>198</sup> As far as is known, regulations to protect Constitutional Court judges from undue interferences have been effectively enforced and the members have not experienced any form of undue external interference in these judicial proceedings.<sup>199</sup>

### **Governance**

#### **Transparency (law)**

**Score: 75**

TO WHAT EXTENT ARE PROVISIONS IN PLACE TO ENSURE THAT THE PUBLIC CAN OBTAIN RELEVANT INFORMATION ON THE ACTIVITIES AND DECISION-MAKING PROCESSES OF THE CONSTITUTIONAL COURT?

**While there are a number of laws/provisions that allow the public to obtain information on the organisation and functioning of the judiciary, not all aspects related to transparency are in place.**

No information was found in the law that members and deputy members of the Constitutional Court are required to disclose their assets before taking office. Nor was any information found that prescribes publication of information on laws, statistics, membership of relevant organisations and other activities of the Constitutional Court to the public.

Decisions of the Constitutional Court are handed down at public hearings, whereby the decision is required to specify the grounds on which it is based as well as which members of the Constitutional

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<sup>197</sup> National Ordinance Constitutional Court, Article 12.

<sup>198</sup> The New Penal Code of St. Maarten.

<sup>199</sup> Several interviews conducted by the authors with interviewees from the Constitutional Court, St. Maarten, 2014.

Court were present at the time the decision was made. In addition, this court may instruct government bodies to announce its decision in official publications.<sup>200</sup>

In general, after preliminary investigations have been concluded a public hearing of the case will be held. However, for specific reasons, which will be included in the record, the Constitutional Court may decide that the handling of the case will take place behind closed doors.<sup>201</sup>

No information was found in the law that appointing, suspension and dismissal of members of the Constitutional Court is required to be made public.

### **Transparency (practice)**

TO WHAT EXTENT IS TRANSPARENCY MET IN THE ACTIVITIES AND DECISION-MAKING PROCESSES OF THE CONSTITUTIONAL COURT IN PRACTICE?

**The public is able to readily obtain relevant information on the judicial proceedings and decisions that concern them, but not yet on matters concerning the Constitutional Court.**

In practice – to date only one case has been in a judicial proceeding as yet – a hearing of the Constitutional Court is made public, live-broadcast and held in English (a clear choice of the court as most of the public speaks English). By using the English language the Constitutional Court is also seeking to play a role in educating the public on judicial matters.<sup>202</sup>

The Constitutional Court has does not yet have its own website; information regarding its decisions is published on the website of the ombudsman. It is the intention of the Constitutional Court to have its own website and to use this site for publishing judgements and reports.<sup>203</sup>

To date no information could be found on the court's activities, spending and governance.

### **Accountability (law)**

**Score: 50**

TO WHAT EXTENT ARE PROVISIONS IN PLACE TO ENSURE THAT THE CONSTITUTIONAL COURT HAS TO REPORT AND BE ANSWERABLE FOR ITS ACTIONS?

**Members of the Constitutional Court are required by law to give reasons for their decisions; however, the legal framework does not contain any provisions regarding complaints and disciplinary sanctions.**

Decisions of the Constitutional Court are handed down at public hearings, whereby the decision is required to specify the grounds on which it is based as well as which members of the court were present at the time the decision was made.<sup>204</sup> No evidence of any consequences was found in the law in case the court does not explain its decision.

No internal complaints procedure is laid down by law, nor was any evidence found in the law that an independent body exists that investigates complaints against members of the Constitutional Court.

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<sup>200</sup> National Ordinance Constitutional Court, Article 36.

<sup>201</sup> National Ordinance Constitutional Court, Articles 22 and 30.

<sup>202</sup> Several interviews conducted by the authors with interviewees from the Constitutional Court, St. Maarten, 2014.

<sup>203</sup> Several interviews conducted by the authors with interviewees from the Constitutional Court, 2014

<sup>204</sup> National Ordinance Constitutional Court, Article 36.

Immunity for members and deputy members of the Constitutional Court applies only in regard to what they specified in writing during the consultations and public hearings of the court.<sup>205</sup>

No evidence was found in the law that a member of the Constitutional Court can be publicly reprimanded, fined, suspended or removed.

### **Accountability (practice)**

TO WHAT EXTENT DOES THE CONSTITUTIONAL COURT REPORT AND IS ANSWERABLE FOR ITS ACTIONS IN PRACTICE?

**While members of the Constitutional Court do report on their decisions, it is not clear if this also applies to the decision-making process itself.**

In the case heard to date – as also mentioned in the section on transparency – a public hearing was held, in which the decision concerning the case was publicly discussed in English. It was the intention of the members of the Constitutional Court to make the judicial proceedings and judgement as clear as possible to a broader public.<sup>206</sup> We could not assess to what extent this also applied to the grounds on which the judgement was made.

### **Integrity mechanisms (law)**

**Score: 50**

TO WHAT EXTENT ARE PROVISIONS IN PLACE TO ENSURE THE INTEGRITY OF THE CONSTITUTIONAL COURT?

**While a number of legal provisions exist, they do not cover all aspects related to the integrity of members of the Constitutional Court.**

The law does not require that the Constitutional Court have a specific code of conduct. The receiving of gifts and hospitality by members of the Constitutional Court is explicitly barred in the oath required to be taken by all members and deputy members before taking office.<sup>207</sup> Members and deputy members of the Constitutional Court are not required by law to disclose their assets before taking office.

No information was found in the law that specifically governs the receiving of compensation and honoraria in connection with privately sponsored trips for members of the Constitutional Court. As far as they are seen as gifts, the regulation as part of the oath applies.<sup>208</sup>

Members or deputy members may not take part in any special consultations with parties to any case pending before the Constitutional Court, its authorised representatives or its counsels. Also, a member who holds a position that could damage his/her impartiality in a particular case may not assist in the decision on that case.<sup>209</sup> In addition, several positions have been identified as being incompatible with membership of the Constitutional Court (also see the section on accountability).

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<sup>205</sup> National Ordinance Constitutional Court, Article 13.

<sup>206</sup> Several interviews conducted by the authors with interviewees from the Constitutional Court, 2014.

<sup>207</sup> National Ordinance Constitutional Court, Article 3.

<sup>208</sup> National Ordinance Constitutional Court, Article 3.

<sup>209</sup> National Ordinance Constitutional Court, Article 12.

No evidence was found in the law that citizens can challenge the impartiality of a member of the Constitutional Court. Nor did we find any restrictions on members and deputy members of the Constitutional Court entering the public or the private sector after dismissal from the court.<sup>210</sup>

### **Integrity mechanisms (practice)**

TO WHAT EXTENT IS THE INTEGRITY OF THE CONSTITUTIONAL COURT ENSURED IN PRACTICE?

**There is no comprehensive approach to ensure the integrity of the members of the Constitutional Court in practice. However, as most members have additional functions in other judicial institutions their integrity seems to be sufficiently safeguarded in practice.**

In practice no specific code of conduct exists for the members of the Constitutional Court and judges do not disclose their assets. As mentioned by an expert, overall St. Maarten is too small a country for the disclosure of assets of judicial professionals to the public, for this can lead to undue interference. Therefore – if applicable – the disclosure of assets would only be done to a supervisory institution, like the General Audit Chamber.<sup>211</sup>

Most members of the Constitutional Court are also members of other judicial institutions, like the Joint Court of Justice and the Council of Advice of the Kingdom, and are considered to be professional and ethically aware.<sup>212</sup>

### **Role**

#### **Executive oversight**

**Score: 100**

TO WHAT EXTENT DOES THE CONSTITUTIONAL COURT PROVIDE OVERSIGHT OF THE EXECUTIVE?

**The Constitutional Court has considerable legal powers to oversee the activities of the Executive, and to date its actions – though limited – have been effective.**

The Constitutional Court has the authority by law to overturn an adopted legal regulation that has not yet come into effect (with the exception of uniform national ordinances and of the Constitution). The decision of the Constitutional Court is binding and not open to appeal.<sup>213</sup>

Any action by the Constitutional Court may only be commenced after a written petition of the ombudsman on the grounds of incompatibility with the Constitution. The petition must state the reasons and contains the grounds for the constitutional incompatibility. In addition the petition must state whether the ombudsman requests full or partial overturning of the legal regulation.<sup>214</sup>

In this way the Constitutional Court serves as an extra check on the activities, both on a procedural level and on content, of the executive. As mentioned before, St. Maarten is the only country in the Kingdom to have gone so far in the possibility of overseeing the activities of the executive.

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<sup>210</sup> Overall, as regards those members of the Constitutional Court appointed from other judicial institutions, like the Council of Advice of the Kingdom and the Joint Court of Justice, in regards to integrity issues no reference is made in the law to the legal regulations applying to those institutions.

<sup>211</sup> Several interviews conducted by the authors with interviewees from the Constitutional Court, 2014.

<sup>212</sup> Transparency International, 2013: 80.

<sup>213</sup> National Ordinance Constitutional Court, Article 35.

<sup>214</sup> National Ordinance Constitutional Court, Article 17.

Regarding its effectiveness, in the one case<sup>215</sup> – in the four years of the existence of the Constitutional Court – to overturn adopted legislation, the decision of the Constitutional Court was actually implemented.

## 4 PUBLIC SECTOR

### Summary

Due to budget cuts in recent years, the resources in general are limited. The independence of public sector employees is not secured by law and not protected in practice. At the same time, limited legal provisions concerning transparency are in place and therefore transparency is not guaranteed in practice. While provisions to ensure accountability in the public sector are to a large extent in place, they are insufficiently used or largely ineffective. Presently the public sector does not engage in significant efforts towards educating the general public on corruption; nor does it collaborate actively with civil society or the private sector on the subject of corruption. The legal framework for public procurement is limited, and because information on public procurement is not made public its effectiveness is difficult to assess in practice. The Corporate Governance Council is to no extent effective, giving leeway to the public-owned companies in their performances.

### Structure and Organisation

For the purposes of this assessment, St. Maarten's public sector consists of ministries. After the change in its overall institutional structure the sector went from four ministries to seven,<sup>216</sup> each minister being responsible for one or more ministries. Each ministry has its own "cabinet" to provide the minister with political advice, a staff bureau for policy development and controlling executing entities, and supporting services for the supervision of rules and regulations.<sup>217</sup> Several supporting services, like finance, personnel and documentation, are still (as under the island territory legislation) centralised and are a part of the Ministry of General Affairs.

The secretary general is responsible for the management of the staff bureau and is to provide the minister with the annual (policy) plan (Country Ordinance on Organisation of National Government, Art. 21). In principle the secretaries general are to have a meeting every two months, in which the prime minister is to participate every six months. Each minister can request a meeting of the secretaries general, regarding issues falling under his/her responsibility (Country Ordinance on Organisation of National Government, Art. 23).

This assessment will focus on the ministries and, if relevant, public-owned companies and foundations (often referred to as "semi-public" organisations). Other semi-government organisations like the legislature and the political parties are discussed in separate chapters, as is the executive.

### Assessment

#### **Capacity**

#### **Resources (practice)**

<sup>215</sup> Concerning the provision in the new Penal Code with regard to the death penalty.

<sup>216</sup> The Ministry of General Affairs; Ministry of Finance; Ministry of Justice; Ministry of Education, Youth and Sports; Ministry of Public Health, Social Development and Labour; Ministry of Tourism, Economic Affairs, Traffic and Telecommunication; and Ministry of Public Housing, Spatial Planning, Environment and Infrastructure.

<sup>217</sup> Country Ordinance Organisation National Government, Articles 2 to 7.

**Score: 50**

TO WHAT EXTENT DOES THE PUBLIC SECTOR HAVE ADEQUATE RESOURCES TO EFFECTIVELY CARRY OUT ITS DUTIES?

**Financial resources in general are limited and personnel costs are of great concern. Attracting qualified personnel for top-level and specialised positions in the public sector is difficult.**

A “social charter” was made applicable for all civil servants under government contracts before December 2010 and came into practice two months before the first civil servants were placed under the new institutional structure.<sup>218</sup> In this process most civil servants kept the positions they had before, although the sector directors became secretaries general. Their new legal position is still not always clear in terms of responsibilities or to what extent the law on civil servants (LMA)<sup>219</sup> applies to them.<sup>220</sup>

Whereas the overall structure of the government organisation changed, no qualitative human resources reorganisation took place in practice. According to the formation plan mentioned in the 2014 state budget, at present there are around 1,250 full-time equivalents (FTEs) for all ministries. Personnel costs for the government amount to about 40 per cent of its total budget.<sup>221</sup> Measures like a “vacancy stop”, elimination of periodic salary increases and the end of the payments of cost of living adjustments have been proposed by the Board of Financial Supervision (Cft). Cft considers it worrisome that the ministries are currently not abiding by the imposed vacancy stop.<sup>222</sup>

Due to a decrease in budget over the last year, salaries for civil servants in general are considered by some respondents to be just sufficient and by others not. St. Maarten is faced with a serious problem in attracting qualified personnel for top-level positions and specialised functions because wages are too low for people to be hired – mostly from abroad – in relation to the high costs of living.<sup>223</sup> Whereas in the past the St. Maarten government could benefit from subsidies granted by SONA to help build a new, strong public sector, in 2014 this funding ceased and will likely have to come from the government’s own budget. Budget limitations are likely to create a tension in the further building of a public sector of high quality that can effectively carry out its duties.

### **Independence (law)**

**Score: 25**

TO WHAT EXTENT IS THE INDEPENDENCE OF THE PUBLIC SECTOR SAFEGUARDED BY LAW?

**There are some provisions to ensure the independence of the public sector, but they contain severe gaps in the prevention of political interference.**

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<sup>218</sup> Country Ordinance Social Charter Implementation Country Sint Maarten, Articles 2 and 5.

<sup>219</sup> National Ordinance Legal and Material Rights and Obligations of Civil Servants/ *Landsverordening Materieel Ambtenarenrecht*.

<sup>220</sup> Several interviews conducted by the authors with interviewees from the public sector, St. Maarten, 2014.

<sup>221</sup> *State Budget Sint Maarten*, 2014.

<sup>222</sup> “Drastic measures in St. Maarten’s draft budget 2014”, *Today Newspaper* (web), 5 January 2014, accessed 18 September 2014.

<sup>223</sup> Governments of Curaçao and Sint Maarten, with UNDP, 2011.

The constitution stipulates that all persons of Dutch nationality have equal rights to be appointed in public service.<sup>224</sup> In addition, the law prescribes certain (general) conditions for appointing public sector employees, such as being of good standing.<sup>225</sup> Employees are appointed by national decree. No selection criteria for appointments and promotions of public sector employees were found in the law. It is not required by law to publicly advertise vacancies in order to ensure fair and open competition.

Regarding arbitrary dismissal the law is limited. Employees are somewhat protected against arbitrary dismissal in the sense that they may only be dismissed by the same authority that is responsible for their appointment (Country Ordinance on Legal and Material Rights and Obligations of Civil Servants, Art. 95). Regarding the impartiality of public sector employees, several regulations are included in the law. All employees are required to take an oath upon accepting their position; however, there are no mechanisms for monitoring whether such an oath is adhered to. Also, there are rules regarding the acceptance of gifts, additional positions and discretion (Country Ordinance on Legal and Material Rights and Obligations of Civil Servants, Art. 43, 52, 58 and 61).

The law does not prohibit political activity of public sector employees.

Although the law does not establish a specific institution to protect public sector employees from arbitrary dismissals, all civil servants may turn to the ombudsman for advice and support if they feel they have been treated unfairly by their employer, or in a way that is not in line with the law.<sup>226</sup>

Regarding parliamentary lobbying in public procurement cases, no regulations were found in the law. In general, the execution of works and the purchasing of goods or services by the government are contracted by means of public tenders. However, certain financial limits are specified in which no public tendering is required. The minister of finance has the authority to deviate from these rules by national decree, in case of disasters and tenders where the public interest is opposed to any further delay. Such public decrees will be sent to Parliament immediately.<sup>227</sup>

Regulations for the appointment and dismissal of public company managers by or through a minister are part of a corporate governance code.<sup>228</sup> A Corporate Governance Council was set up to oversee whether procedures are being followed.<sup>229</sup>

### **Independence (practice)**

**Score: 0**

**TO WHAT EXTENT IS THE PUBLIC SECTOR FREE FROM EXTERNAL INTERFERENCE IN ITS ACTIVITIES?**

**External actors interfere with the activities of the public sector. This interference can have significant consequences, as in the case of the Corporate Governance Council.**

In practice, certain procedures – not necessarily required by law – regarding appointments and dismissals of civil servants are followed. Function profiles are set up and in some cases selection committees prepare for decisions on appointments. However, there seems to be an inconsistent

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<sup>224</sup> Constitution, 2010. Article 17.

<sup>225</sup> National Ordinance Legal and Material Rights and Obligations of Civil Servants, Article 6.

<sup>226</sup> National Ordinance Ombudsman, Article 15.

<sup>227</sup> National Ordinance Government Accounting, Article 47.

<sup>228</sup> Country Ordinance Corporate Governance, Articles 8 and 9.

<sup>229</sup> Country Ordinance Corporate Governance, Article 1.

recruitment and appointment process across the public sector,<sup>230</sup> and the ministers may in the end decide differently to the advice of a selection committee or appoint someone outside the selection procedure.<sup>231</sup> It was remarked by respondents that decisions to get the best people to do the job are often “political” or based on the network applicants are part of.<sup>232</sup> Besides, also according to respondents, selection procedures take too long, sometimes because several departments are involved, resulting in professionals not wanting to accept a position in the end.

On dismissals, respondents were clear that political interference or at least the threat of political interference does exist. For instance, appointments for certain new positions were not made formal in order for a minister “to keep leverage”.<sup>233</sup> Also, during the assessment some respondents told us that they held back their opinions in discussion with the minister to “guarantee their job security”.<sup>234</sup>

Civil servants can be politically active, and indeed some of the respondents in this assessment were candidates for the 2014 elections. According to those respondents, the government also allows time off to be able to participate in campaigning.

According to respondents the Corporate Governance Council is not active in practice, because the minister does not supply the council with the financial and infrastructural resources stipulated by law.<sup>235</sup>

## **Governance**

### **Transparency (law)**

#### **Score: 25**

TO WHAT EXTENT ARE PROVISIONS IN PLACE TO ENSURE TRANSPARENCY IN FINANCIAL, HUMAN RESOURCES AND INFORMATION MANAGEMENT OF THE PUBLIC SECTOR?

**While several legal provisions concerning transparency in public management are in place, provisions regarding the decision-making process in government and the availability of annual reports and accounts in public procurement are not.**

The government is required by law to make accessible to the public its budget, annual accounts and an overview of its finances.<sup>236</sup>

Regarding the management and publishing of their records, administrative bodies need to exert openness in the performance of their duties and to provide information for that purpose,<sup>237</sup> as anyone may request information recorded in documents on administrative matters from the public sector.<sup>238</sup> In addition, the ordinance stipulates that the government is to provide information regularly on its policy and administrative matters. Reports of the Council of Advice and the Social Economic

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<sup>230</sup> PwC, 2014: 137.

<sup>231</sup> PwC, 2014: 140; several interviews conducted by the authors with interviewees from the public sector, 2014.

<sup>232</sup> Several interviews conducted by the authors with interviewees from the public sector, 2014.

<sup>233</sup> Ibid.

<sup>234</sup> Ibid.

<sup>235</sup> Several interviews conducted by the authors with interviewees from the Corporate Governance Council, 2014; several interviews conducted by the authors with interviewees from the public sector, 2014.

<sup>236</sup> National Ordinance Government Accounts, 2010.

<sup>237</sup> Country Ordinance Open Government, Article 2.

<sup>238</sup> Country Ordinance Open Government, Article 3.

Council are to be published by the minister of general affairs, with the exception of specified confidential information and cases concerning the unity and security of the government.<sup>239</sup>

The government is also responsible for regularly issuing new editions of the National Gazette and official publications. Kingdom Acts, country ordinances and country decrees are to be published as official publications (Afkondigingsblad), all other official publications and announcements to be communicated to the public will be recorded in the National Gazette.<sup>240</sup>

No specific regulations regarding the management of records pertaining to public procurement were found. The Corporate Governance Code does not explicitly mention the publishing of reports of public-owned companies or foundations. However, the minister is responsible for all documentation that has been drawn up as part of the tasks for all organisations falling under his/her ministry.<sup>241</sup>

There are no regulations requiring public sector employees to declare personal assets to the public.

### **Transparency (practice)**

**Score: 25**

TO WHAT EXTENT ARE PROVISIONS ON TRANSPARENCY IN FINANCIAL, HUMAN RESOURCES AND INFORMATION MANAGEMENT IN THE PUBLIC SECTOR EFFECTIVELY IMPLEMENTED?

**Although the public can obtain information on the organisation and functioning of the public sector, and vacancies are publicly advertised, transparency in decision-making processes and public procurement is insufficient.**

The St. Maarten government website contains information on the structure and organisation of all ministries, budgets per ministry and the annual state budget.<sup>242</sup> In addition, some other institutions, such as the General Audit Chamber, make specific information on public management related to their expertise available to the public.<sup>243</sup> Although overall information on the activities of ministers is available on the government website, no information on the activities of public sector entities can be found.

Although not required by law, most vacancies are publicly advertised in order to ensure a fair and open competition.<sup>244</sup>

Disclosure of personal assets and financial interests of public sector employees does not occur in practice.

Although public tenders are advertised in local newspapers, information on what time frames are followed could not be found. Nor is information on the decision-making process in public tendering publicly available, increasing the existing tendency for misinterpretation and gossip and creating a feeling of “unfair play”.<sup>245</sup> The lack of transparency in compliance was mentioned by one expert to be a threat to the future of St. Maarten.<sup>246</sup>

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<sup>239</sup> Country Ordinance Open Government, Articles. 8, 10 and 11.

<sup>240</sup> Country Ordinance Publication and Coming into Force, Articles 3 and 4.

<sup>241</sup> Country Ordinance Archive, Article 5.

<sup>242</sup> [www.sintmaartengov.org](http://www.sintmaartengov.org)

<sup>243</sup> [www.arsxm.org](http://www.arsxm.org)

<sup>244</sup> Several advertisements in local newspapers; the website of the Government of Sint Maarten.

<sup>245</sup> Several interviews conducted by the authors with interviewees from the public sector, 2014

<sup>246</sup> Several interviews conducted by members of the NIS assessment team, 2014.

Overall there is no constant flow of information towards the larger public in all main languages, for instance – apart from English and Dutch – Spanish. Several respondents noted that the awareness of the importance of transparency in public sector activities and decision making is just starting to develop, not only among civil servants but in society overall.<sup>247</sup>

### **Accountability (law)**

**Score: 75**

TO WHAT EXTENT ARE PROVISIONS IN PLACE TO ENSURE THAT PUBLIC SECTOR EMPLOYEES HAVE TO REPORT AND BE ANSWERABLE FOR THEIR ACTIONS?

**Various mechanisms to ensure accountability for the public sector are in place; however, no law exists with concrete protective measures on whistleblowing for civil servants.**

Several provisions on whistleblowing exist in the legal framework. All civil servants are bound to the rules and regulations as set in the national ordinance on legal and material rights of civil servants.<sup>248</sup> Public sector employees are required by law to report to their manager any evidence-based suspicions of integrity breaches that they have. An official account is to be sent by the manager to the minister, who is to announce a decision within eight weeks. Reporting will not affect the position of the civil servant in any way, as long as he/she has not done this to advance personal interests. Newly introduced in the country ordinance is the insertion of “integrity confidants”, in which civil servants can confide on matters of integrity.<sup>249</sup>

However, no provisions to protect whistleblowing activities of civil servants are stipulated by law.

Disciplinary sanctions have been defined for cases where civil servants do not follow the rules and regulations, or in case they do not perform the tasks for which they were appointed. Sanctions depend on the violation and may vary from withholding of pay, a fine and suspension to dismissal.<sup>250</sup> In addition the Criminal Code ensures punishment of civil servants for crimes and offences, including bribery, corruption and the abuse of privileged state information.

An overall complaint mechanism is set by law by the establishment of the national ombudsman institution. All civil servants as all citizens have the right to file a complaint about misconduct of civil servants to the ombudsman. The ombudsman shall ascertain whether the complainant has notified the respective institution/body or person concerned and if the adversarial principle was met.<sup>251</sup>

According to the country ordinance on government accounts, other oversight mechanisms regarding the supervision of financial, personnel and overall administration of ministries are also in place. The General Audit Chamber has the authority to audit public sector agencies and to conduct inquiries into the administrative integrity of officials in the performance of their duties.<sup>252</sup>

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<sup>247</sup> Several interviews conducted by the authors with interviewees from the public sector, 2014.

<sup>248</sup> Country Ordinance Legal and Material Rights and Obligations of Civil Servants, Article 86.

<sup>249</sup> Country Ordinance Legal and Material Rights and Obligations of Civil Servants, Articles 84 and 85.

<sup>250</sup> Country Ordinance Legal and Material Rights and Obligations of Civil Servants, Article 87.

<sup>251</sup> Constitution, 2010. Article 78; and National Ordinance Ombudsman, Article 15.

<sup>252</sup> National Ordinance General Audit Chamber, Articles 20 and 40.

Public sector companies function under the Corporate Governance Code and are required to submit an annual report regarding their operations every year.<sup>253</sup> As their employees are civil servants, the same requirements and sanctioning regarding misconduct apply to them.<sup>254</sup>

### **Accountability (practice)**

**Score: 25**

TO WHAT EXTENT DO PUBLIC SECTOR EMPLOYEES REPORT AND ANSWER FOR THEIR ACTIONS IN PRACTICE?

**While provisions to ensure accountability in the public sector are to a large extent in place, they are insufficiently used or largely ineffective.**

In practice, whistleblowing by employees in the public sector is not taking place, according to respondents, mostly because no protection measures have been laid down by law and because this is “something we are not used to in our society”.<sup>255</sup> The government has not taken any steps to raise awareness on whistleblowing provisions among civil servants. In addition, several respondents noted that disciplinary actions against civil servants do not take place very often and if so it is only in very blatant situations and in a reactive way.<sup>256</sup>

According to the Public Prosecutor’s Office there have been no offences committed by public servants under their investigation, other than the bribery case concerning police officials<sup>257</sup> (also see Chapter VII.5 on law enforcement agencies), in the last four years. Nor has the General Audit Chamber conducted inquiries into the integrity of public sector officials or audited public sector agencies yet.<sup>258</sup>

From the interviews conducted in this assessment, we learned that complaints, including those within the public sector and by public sector employees, are placed with the office of the ombudsman. The ombudsman is considered by respondents to be active in filing and investigating complaints about (alleged) misconduct, although these complaints focus more on whether procedures are observed or not (see also Chapter VII.7 on the ombudsman).<sup>259</sup>

### **Integrity mechanisms (law)**

**Score: 75**

TO WHAT EXTENT ARE PROVISIONS IN PLACE TO ENSURE THE INTEGRITY OF PUBLIC SECTOR EMPLOYEES?

**Comprehensive provisions to ensure the integrity of civil servants are in place, although not all integrity aspects regarding public procurement are covered.**

The national ordinance on legal and material rights and obligations of civil servants, applying to all persons working in the public service, contains various regulations to mitigate conflict of interest, rules on accepting gifts and hospitality, secrecy, the use of service clothing, travel and

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<sup>253</sup> Country Ordinance Corporate Governance, Articles 8, 9 and 3.

<sup>254</sup> Country Ordinance Legal and Material Rights and Obligations of Civil Servants

<sup>255</sup> Several interviews conducted by the authors with interviewees from the public sector, 2014.

<sup>256</sup> Ibid.

<sup>257</sup> “The ‘Masbangu case’, the buying of votes”, *Antilliaans Dagblad*, 26 August 2014.

<sup>258</sup> Interviews conducted by the authors with interviewees from the General Audit Chamber, 2014.

<sup>259</sup> Several interviews conducted by members of the NIS assessment team, 2014.

accommodation costs, the prohibition of private use of government property and restrictions on additional positions. In addition, it contains regulations that deal with presumed breaches of integrity and a chapter on disciplinary sanctions in case the prescribed rules and regulations are not adhered to.<sup>260</sup> This ordinance also requires people entering public service to take an oath of office prior to appointment and to present a certificate of good conduct upon entering the service.<sup>261</sup> Screening of public service officials will occur in case someone is to be appointed to a senior-level position that is considered a “confidence position”, as defined in the country ordinance on confidence functions and screening.<sup>262</sup>

In addition, to ensure integrity, a code of conduct has been developed for all civil servants in St. Maarten. Bribery of and by public sector employees is considered an offence by law that will be sanctioned by a fine or imprisonment for a maximum of four years.<sup>263</sup>

The Corporate Governance Code does not contain information on the requirement for contract documents to record special anti-corruption clauses, although it does contain certain provisions to safeguard the integrity of the directors of public-owned companies and public foundations.

### **Integrity mechanisms (practice)**

**Score: 50**

TO WHAT EXTENT IS THE INTEGRITY OF PUBLIC SECTOR EMPLOYEES ENSURED IN PRACTICE?

**There is a proactive approach in promoting the integrity of public sector employees, yet enforcement of existing rules is lacking.**

St. Maarten’s government set up a special project on integrity in 2011 to develop an integrity institution, the Bureau Integriteit (see also Chapter VII.2 on the executive), under the responsibility of the Ministry of General Affairs in 2014. The programme aims at bringing a higher level of commitment towards improving the level of integrity throughout public service and pushing St. Maarten government to operate according to the principles of good governance.<sup>264</sup> The project, which was funded by SONA, was set up to execute a variety of activities such as research, integrity training and workshops, communication and the mentioned institution of a bureau. The project published newsletters in 2011 and 2012 and has organised integrity training for civil servants. A policy paper was drawn up on the basis of research on integrity issues.

According to the many interviews held throughout the course of this assessment, employees in the civil service but also the people who work with them from outside government are not always aware of integrity rules and regulations that apply to civil servants. The General Audit Chamber notes, in its baseline study on the institutional integrity management, that the code of conduct, which has been distributed amongst the participants of the integrity trainings organised by government, is not known by almost 50 per cent of the civil servants.<sup>265</sup>

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<sup>260</sup> Country Ordinance Legal and Material Rights and Obligations of Civil Servants, Chapter VIII.

<sup>261</sup> Country Ordinance Legal and Material Rights and Obligations of Civil Servants, Articles 6, 43, 46, 51, 54, 55, 57, 58, 61, 63, 72, 84, and 85, and Chapter VIII.

<sup>262</sup> Country Ordinance Confidence Functions and Screening, Article 6.

<sup>263</sup> Penal Code, Article 2:350.

<sup>264</sup> [www.sintmaartengov.org/integrity](http://www.sintmaartengov.org/integrity)

<sup>265</sup> General Audit Chamber, *Baseline Study Sint Maarten: State of Affairs Institutional Integrity Management* (Philipsburg: General Audit Chamber, 2014). Paragraph 2.4.1.3.

Communication on core values in government is not addressed enough according to several respondents throughout this assessment and is rather used for campaigning purposes. The management does not mention these values in communication with its staff. The Corporate Governance Council has not been able to supervise public-owned companies due to lack of infrastructure and of financial resources.<sup>266</sup>

## **Role**

### **Public education**

**Score: 0**

TO WHAT EXTENT DOES THE PUBLIC SECTOR INFORM AND EDUCATE THE PUBLIC OF ITS ROLE IN FIGHTING CORRUPTION?

The public sector does not engage in educational activities on anti-corruption for the public.

The public sector does not actively engage in any awareness raising or educational activities in the field of anti-corruption for the public.<sup>267</sup> However, the public is very much aware of the complaint facilities of the ombudsman,<sup>268</sup> due to actions taken by the institution itself through a comprehensive campaign programme (see also Chapter VII.7 on the ombudsman) at the start in 2010.

### **Cooperation with public institutions, CSOs and private agencies in preventing or addressing corruption**

**Score: 25**

TO WHAT EXTENT DOES THE PUBLIC SECTOR WORK WITH PUBLIC WATCHDOG AGENCIES, BUSINESS AND CIVIL SOCIETY ON ANTI-CORRUPTION INITIATIVES?

**The public sector does not cooperate with local stakeholders on anti-corruption initiatives, although it is working on integrity within the international framework of the CFATF.**

Although the ruling coalition before the elections in 2014 promoted good governance as one of its main issues, with the implementation of an integrity programme and the instruction for several integrity assessments, anti-corruption activities were not part of its administration. Anti-corruption agencies, defined as institutions with a specific mission to fight corruption, or other watchdog agencies do not exist in St. Maarten (also see Chapter VII.9 on anti-corruption agencies). Nor is there currently active cooperation with the community sector organisations in addressing corruption.<sup>269</sup>

On an international level, St. Maarten is a member of the CFATF, an intergovernmental organisation to combat money laundering, terrorist financing and other related threats to the integrity of the international financial system.<sup>270</sup> In May 2014 the third follow-up report with actions undertaken by the St. Maarten government on earlier recommendations was published. The report notes that St. Maarten has followed up, for instance, on the amendment of the Penal Code and the establishment

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<sup>266</sup> Interviews conducted by the authors with interviewees from the Corporate Governance Council, 2014.

<sup>267</sup> Several interviews conducted by the NIS assessment team, 2014.

<sup>268</sup> Country Ordinance Ombudsman, Article 15.

<sup>269</sup> Several interviews conducted by the NIS assessment team, 2014.

<sup>270</sup> <https://wwwcfatf-gafic.org/>

of an institution regarding unusual (financial) transactions, whereas on the other hand a Gaming Control Board has not yet been put in place.<sup>271</sup>

### **Reduction of corruption risks by safeguarding integrity in public procurement.**

#### **Score: 25**

TO WHAT EXTENT IS AN EFFECTIVE FRAMEWORK IN PLACE TO SAFEGUARD INTEGRITY IN PUBLIC PROCUREMENT PROCEDURES, INCLUDING MEANINGFUL SANCTIONS FOR IMPROPER CONDUCT BY BOTH SUPPLIERS AND PUBLIC OFFICIALS, AS WELL AS REVIEW AND COMPLAINT MECHANISMS?

#### **The legal framework for public procurement is limited and information on public procurement is not made public, making it difficult to assess its effectiveness in practice.**

The law states that open bidding (tendering) in general is the method for public procurement. According to the ordinance on government accounting, certain financial limits are specified in the public bidding process, below which no public tendering is required (ANG50,000/US\$27,750 for buying of goods and services and ANG150,000/US\$83,300 for execution of public works). The minister of finance has the authority to deviate from these rules by national decree, in the case of disasters and tenders where the public interest is opposed to any further delay.<sup>272</sup>

The Council of Financial Supervision concludes in its third report on St. Maarten that insufficient legislation exists for the public procurement process in St. Maarten.<sup>273</sup> For instance, the law does not require civil or social control mechanisms to monitor the processes of public contracting; nor do rules exist on the separation of roles for staff, elaborating the terms of reference and staff in charge of evaluating the biddings. With regard to the objectivity in the contractor selection process, we could not find any specific qualifications for those involved in public contracting related to their tasks, or any standard bidding documents.

If suppliers feel that the public procurement process was not adhered to, they can file – like any other member of the public – a complaint with the ombudsman.<sup>274</sup> According to the annual reports in the last four years, no complaints involving public procurement processes have been filed.<sup>275</sup>

Although there is no institution to control the activities related to public procurement, St. Maarten has a Corporate Governance Council to advise the minister on the compliance of public companies and foundations with the Corporate Governance Code.<sup>276</sup> As noted before, the Council has not been able to fulfil its tasks because of a lack of infrastructure and financial resources, which respondents have said is a result of non-cooperation of the government.<sup>277</sup>

Procurement processes fall under the scope of the General Audit Chamber. The internal audits (ex-post) are done by SOAB, the internal auditor for the administration, as it is part of the monetary and material administration of government finances and properties. No information on these audits could be found as yet.

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<sup>271</sup> Caribbean Financial Action Task Force (CFATF), *Third Follow Up Report Sint Maarten, May 29th 2014*, (CFATF, 2014).

<sup>272</sup> National Government Accounting Ordinance, Article. 47.

<sup>273</sup> Cft, *Third report of findings on PEFA inventarisation Sint Maarten*, paragraph 3.4, Art. 19.

<sup>274</sup> Country Ordinance Ombudsman, Article 15.

<sup>275</sup> [www.ombudsmansxm.com](http://www.ombudsmansxm.com)

<sup>276</sup> Country Ordinance Corporate Governance, Article 4.

<sup>277</sup> Several interviews conducted by the NIS assessment team, 2014.

St. Maarten does not have a central procurement agency and as it is not required to keep information on public procurement in any sort of register for future reference, no information could be found on the public bidding process in practice. However, it is the perception of the respondents that public bidding procedures are not transparent and it is unclear whether procedures are followed.<sup>278</sup>

## 5 LAW ENFORCEMENT AGENCIES

### Summary

In the course of the new developments in the last four years the law enforcement agencies in St. Maarten have not been able to fully strengthen their institutions on a permanent basis, and financial means and human resources have been limited. Challenges in terms of dependence exist due to the agencies' financial relationship with the government. Regarding the effectiveness of control mechanisms and transparency of these agencies, improvements can be made. Anti-corruption activities have not led to eradication of bribery cases so far.

### Structure and Organisation

The main law enforcement agencies in St. Maarten are the St. Maarten Police Force (KPSM/Korps Politie St. Maarten), the Special Police Force St. Maarten (LSM/Landsrecherche St. Maarten)<sup>279</sup> and the Public Prosecutor's Office St. Maarten. The two police forces in St. Maarten operate under the same law and instructions.<sup>280</sup> In addition a national decree is in place for the Special Police Force.<sup>281</sup> The process of establishing a separate legal position for the Special Police Force in St. Maarten by means of a national ordinance is now in progress.

The task of the Police Force is to provide for the enforcement of the legal order and assistance to those who need it, in subordination to the competent authority and in accordance with the applicable legislation.<sup>282</sup> The Special Police Force is a unit to investigate possible criminal conduct of government officials and public servants.<sup>283</sup>

The Public Prosecutor's Office is a joint organisation (parket) for Curaçao, St. Maarten and the "BES islands" (Bonaire, St. Eustatius and Saba), with every country (and the BES islands) having its own parket in first instance. The Public Prosecutor's Office is headed by a prosecutor general (PG), who is responsible for all business processes, including finances and human resources, and who is accountable to the minister of justice of the *parket's* country.<sup>284</sup>

The Public Prosecutor's Office St. Maarten has the authority over the St. Maarten Police Force and cooperates with the local police forces in its task to detect and prosecute criminal offences. The Public Prosecutor's Office also monitors the enforcement of judgements.<sup>285</sup>

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<sup>278</sup> A frequently mentioned example by respondents concerns the Simpson Bay Causeway.

<sup>279</sup> Before the constitutional change in October 2010, the Special Police Force covered all five island of the Netherlands Antilles.

<sup>280</sup> The Kingdom Act Police.

<sup>281</sup> National Ordinance Organisation, Tasks and Authorization Special Police Force.

<sup>282</sup> Constitution, 2010. Articles 124 and 125.

<sup>283</sup> Kingdom Act Police of Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba.

<sup>284</sup> Ibid.

<sup>285</sup> Constitution, 2010. Article 122.

On a Kingdom level the Law Enforcement Council (RvdR-Raad voor de Rechtshandhaving), responsible for inspecting the effectiveness and quality of the police institutions' performance of duties and management, the Public Prosecutor's Office and the prison were established.<sup>286</sup> To investigate international organised crime (cross-border) and crimes that require special expertise, the Police Investigation Cooperation (RST-Recherche Samenwerkingsteam) was also established in St. Maarten.

The Public Prosecutor's Office St. Maarten is a separate organisation in the judiciary St. Maarten but belongs in a functional sense to the law enforcement agencies.

For the purposes of this assessment, this chapter will discuss the two main police forces – the St. Maarten Police Force and the Special Police Force St. Maarten – as well as the Public Prosecutor's Office St. Maarten.

## Assessment

### Capacity

#### **Resources (law and practice)**

**Score: 50**

TO WHAT EXTENT DO LAW ENFORCEMENT AGENCIES HAVE ADEQUATE LEVELS OF FINANCIAL RESOURCES, STAFFING AND INFRASTRUCTURE TO OPERATE EFFECTIVELY IN PRACTICE?

**The financial and human resources of the local police forces of St. Maarten could be improved, leading to more effectiveness in carrying out their duties. The prosecutor's office of St. Maarten seems to have insufficient human resources.**

Since the restructuring process of the Police Force St. Maarten (established in 1949) and the establishment of the Special Police Force St. Maarten in 2010, growth in both financial and human resources for the local police forces has been mandated by law.<sup>287</sup> The local police forces are funded from the state budget determined by the minister of justice of St. Maarten in accordance with the minister of finance of St. Maarten. Additional funding through a start-up project (Plan Veiligheid Nederlandse Antillen) was made available by SONA (also see Chapter VII.12 on CSOs). St. Maarten police forces primarily used this funding for business processing and information and communications technology (ICT).

The St. Maarten Police Force now has 190 people employed. According to human resources planning it should be 237 people by 2017.<sup>288</sup> The Special Police Force, according to the plan, should have 16 people working in 2014 and now has nine people employed. Police experts noted that this understaffing has led to a lot of overtime work by police officials.<sup>289</sup> In addition, according to experts interviewed, there is a lack of professionals in the police force – additional professional staffing from the Netherlands is temporarily used – and subsequently has taken its toll on the efficiency of police labour.<sup>290</sup> Another problem mentioned is that the language used in official documents is Dutch, while

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<sup>286</sup> Kingdom Act on the Law Enforcement Council, July 2010.

<sup>287</sup> Kingdom Act Police.

<sup>288</sup> Human Resource Planning/Functieboek St. Maarten Police Force, 2010.

<sup>289</sup> Several interviews conducted by the authors with interviewees from the law enforcement agencies, St. Maarten, 2014.

<sup>290</sup> Ibid.

most police employees are English oriented.<sup>291</sup> According to the Council of Law Enforcement, the Police Force St. Maarten is rather weak in its quality of personnel, because of insufficient training in relation to the authority they have and duties they have to carry out.<sup>292</sup> Another issue with regard to institutional strengthening is the fact that the management is hired on a temporary basis (short-term contracts), and knowhow and experience are lost for the organisation in the transfer of duties.

Salaries are determined based on the nature and level of the position, which in turn are determined by position descriptions and position-level characteristics.<sup>293</sup> According to the respondents, salaries of police officials are in general sufficient or “to be improved”, though in general in line with different positions and responsibilities, whereas salaries of the Special Police Force employees could be improved and in addition special provisions like compensation for security costs should be added. As members of the Special Police Force are under the same legal position as members of the police force, this will be difficult to achieve.

The budget for the local prosecution office in St. Maarten is set in accordance with the law.<sup>294</sup> With the input of the advocate general, the procurator general should draft an annual plan on the intended activities, goals and performance agreements for the next year. On the basis of this plan, the ministers of justice of St. Maarten, Curaçao and the Netherlands determine the budget for the procurator general’s office for the next year. In addition, the PG in consultation with the advocate general drafts an annual plan including a budget for the office in first instance.<sup>295</sup> This procedure has not been done yet. In general, budgets are considered by the advocate general to be adequate.<sup>296</sup>

The Public Prosecutor’s Office in St. Maarten has 17 people employed, including five prosecutors.<sup>297</sup> The St. Maarten has its own office in the first instance (parket in eerste aanleg). In the absence of the advocate general, he/she may appoint the chief public prosecutor to replace him/her when necessary.<sup>298</sup>

Salaries are determined by Kingdom decree, based on a salary scale<sup>299</sup> and amended yearly, based on the average development of civil servant salaries during the previous calendar year in that country. In addition to a monthly salary, members of the St. Maarten prosecutor’s office are entitled to certain allowances, like the Windward allowance.<sup>300</sup> Members of the local prosecutor’s office are paid by the local government through a service-level agreement (SLA). According to the respondents, salaries are considered sufficient.<sup>301</sup> Also in this institution, vital functions are submitted to “rapid turnover”, with the risk of lacking ownership of cases.

The law enforcement agencies do seem to have a problem with the way their budgets are allocated. Operations are delayed because they do not conduct their own budget management (this is either the responsibility of the office of the Attorney General in Curaçao or is done by government through an SLA).<sup>302</sup>

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<sup>291</sup> Several interviews conducted by the authors with interviewees from the police forces, St. Maarten, 2014.

<sup>292</sup> Council of Law Enforcement, Report on the KPSM.

<sup>293</sup> Country Ordinance Legal Position Police Corps Sint Maarten, Article 31; and National Decree Organisation, Tasks and Authorization National Detectives, Article 5.

<sup>294</sup> Kingdom Law Public Prosecutor’s offices Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba, Article 29.

<sup>295</sup> Ibid., Articles 29 and 30.

<sup>296</sup> Interviews conducted by the authors with interviewees from the Public Prosecutors Office, 2014.

<sup>297</sup> Human Resources Planning Public Prosecutors Office.

<sup>298</sup> Kingdom Law Public Prosecutor’s Offices Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba, Article 16.

<sup>299</sup> Annex/Kingdom Decree Legal Position of Members of the Public Prosecutor’s Office.

<sup>300</sup> Kingdom Decree Legal Position of Members of the Public Prosecutor’s Office, Articles 10, and 12 to 16.

<sup>301</sup> Interviews conducted by the authors with interviewees from the Public Prosecutors Office, 2014.

<sup>302</sup> Several interviews conducted by the authors with interviewees from the law enforcement agencies, 2014.

Although improvements have been made for the police forces in terms of finances and staffing, according to the respondents, these resources are still considered insufficient in relation to demands due to a lack of state budget. People with a legal background are especially needed.<sup>303</sup> As far as infrastructure in terms of housing is concerned, improvements still have to be made.<sup>304</sup>

The prosecutor's office in St. Maarten seems to have adequate financial but limited human resources in relation to the amount of work that still has to be done.

## **Independence (law)**

**Score: 50**

TO WHAT EXTENT ARE LAW ENFORCEMENT AGENCIES INDEPENDENT BY LAW?

**Although there are a number of provisions to ensure the independence of law enforcement bodies, some of them contain certain loopholes.**

The chief of police, police officials, the head of the Special Police Force and staff are all appointed, suspended and dismissed by country decree. The chief of police and the head of the Special Police Force are appointed by recommendation of the minister of justice of St. Maarten in accordance with the procurator general.<sup>305</sup> The background of the chief of police, before taking office, will be screened because this position is one of high confidentiality.<sup>306</sup>

The advocate general is appointed, suspended and dismissed by kingdom decree. The chief public prosecutor is also appointed by Kingdom decree, at the proposal of the minister of justice of St. Maarten. The other members of the Public Prosecutor's Office are appointed by country decree by the minister of justice of St. Maarten at the proposal of the procurator general.<sup>307</sup> Selection requirements are based on the knowledge and ability to successfully execute their tasks, being of Dutch nationality and having a Bachelor's or Master's degree in the subject of law.<sup>308</sup>

Members of the local prosecutor's office are not permitted to have any additional political functions.<sup>309</sup>

Regarding dismissal, specific circumstances are identified in the law in which members of the prosecutor's office will be removed from their position, such as reaching the age of 65 or proving unsuitable for the position.<sup>310</sup>

In addition, the Legal and Material Rights and Obligations Civil Servants Law<sup>311</sup> applies to all police officers, stipulating rules regarding appointment, suspension or dismissal. Rules on clear professional criteria (like age and educational standards) in the appointment process are applicable

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<sup>303</sup> Ibid.

<sup>304</sup> Several interviews conducted by the authors with interviewees from the police forces, 2014.

<sup>305</sup> Kingdom Act Police, Article 44; and National Ordinance Police, Article 7.

<sup>306</sup> Kingdom Act Police, Article 44.

<sup>307</sup> Kingdom Act Public Prosecutor's Offices Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba, Articles 16 and 17.

<sup>308</sup> Kingdom Act Public Prosecutor's offices Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba, Article 18.

<sup>309</sup> Ibid.

<sup>310</sup> Kingdom Act Public Prosecutor's offices Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba, Article 21.

<sup>311</sup> *Landsverordening Materieel Ambtenarenrecht*.

to all civil servants in an executive function in the police forces.<sup>312</sup> Different ranks within the police forces are clearly defined, and are related objectively to specific positions and salary levels.<sup>313</sup>

No rules or regulations were found to prevent political interference in the activities of law enforcement agencies. Although the attorney general is the only person with the authority to give instructions and directions to the chief of police and head of the Special Police Force in the prevention, tracing and research of criminal acts,<sup>314</sup> the minister of justice may issue certain directives (individual directions excluded, as these are directed by the court) to the office of the PG<sup>315</sup> and has an evident role in the processes of the law enforcement agencies.

### **Independence (practice)**

**Score: 25**

TO WHAT EXTENT ARE LAW ENFORCEMENT AGENCIES INDEPENDENT IN PRACTICE?

**Most law enforcement agencies cannot operate freely from interference, due in part to the financial control of government.**

In this assessment no examples could be found of undue practices concerning the appointment processes of officials of the several law enforcement agencies in St. Maarten. According to the respondents, human resources processes as stipulated by law have been followed.

As a result of the small scale of St. Maarten society and lack of local professionals, many officials in the law enforcement agencies are from Curaçao or the Netherlands. Given the small size of St. Maarten society, the fact that these positions are taken by people from outside the community could imply that in practice this distance might have a positive influence on the degree of external interference. Several law enforcement experts have noted that law enforcement officials go their own way and do not socialise too much within local society. According to others interviewed, however, there is a notion that some officials do not want to take too much risk because of the small scale of the country. This is said to be one of the reasons it takes a long time before cases are brought to court, such as for instance in the Masbangu case mentioned above.<sup>316</sup>

In the past four years, the law enforcement agencies in St. Maarten, according to respondents, have not experienced severe direct undue external interference. But some interference, like requests of parliamentarians to speed up processes in the St. Maarten prosecutor's office, is said to have occurred.<sup>317</sup>

Also, as was noted by respondents, there is some indirect interference through budgeting processes, for which law enforcement officials are highly dependent on the minister of justice and/or finance. The St. Maarten Police Force has offered its budget plan to the minister every year in recent years, but according to police officials the budget has stayed the same since 2010.<sup>318</sup> Another

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<sup>312</sup> Country Ordinance Legal Position Police Corps Sint Maarten, Article 9.

<sup>313</sup> National Decree Organisation, Tasks and Authorization National Detectives, Articles 5 and 6; and Country ordinance Legal Position Police Corps Sint Maarten, Article 3.

<sup>314</sup> Kingdom Act Public Prosecutor's offices Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba, Article 11; and National Decree Organisation, Tasks and Authorization National Detectives, Article 8.

<sup>315</sup> Kingdom Act Public Prosecutor's Offices Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba, Article 13.

<sup>316</sup> Several interviews conducted by the NIS assessment team, 2014.

<sup>317</sup> Several interviews conducted by the authors with interviewees from the law enforcement agencies, 2014.

<sup>318</sup> Ibid.

example concerns the Special Police Force, for which the state reserved funds for institutional development that were never made available.<sup>319</sup>

Given that the law enforcement agencies in St. Maarten have only existed for four years, it is difficult to say to what extent these issues are due to the institutional development process still in progress and what is the result of other factors.

## **Governance**

### **Transparency (law)**

**Score: 25**

TO WHAT EXTENT ARE PROVISIONS IN PLACE TO ENSURE THAT THE PUBLIC CAN OBTAIN RELEVANT INFORMATION ON LAW ENFORCEMENT AGENCIES ACTIVITIES?

**While there are some laws that allow public access to information on the organisation of the law enforcement agencies, transparency on functioning is limited.**

The legal framework requires law enforcement agencies to ensure confidentiality of certain types of data.<sup>320</sup> It does not contain provisions for the law enforcement agencies to directly and proactively inform the public on relevant information such as activities, decision-making processes and statistics. However, the Police Force St. Maarten and the Special Police Force are required to report annually to the minister of justice of St. Maarten; the Special Police Force also reports to the PG on the annual accounts as well as the general management and the effectiveness of activities. It is through the parliamentary process, in which the minister of justice is accountable to the legislature, that this information could be available to the public.

In addition, the police forces are under the supervision of the council for law enforcement. The council is required to publicly disclose all inspection reports within six weeks after the report is sent to the minister of justice.<sup>321</sup>

The procurator general is also required to offer a yearly report to the minister of justice, including the outcome of planned goals and activities as well as the annual accounts, the budget and other financial information.<sup>322</sup> In addition, an overview of the number of recorded complaints against the public prosecution is to be published yearly, including the subject of the complaints.<sup>323</sup>

According to the National Ordinance on Police Data, victims of crimes do not have direct access to their case files – other than during the pre-trial phase – although under special conditions the president of the court can allow, on request, victims as well as defendants access to all documentation regarding their case. However, the president of the court does have the authority to exclude certain files from inspection for reasons of protecting personal privacy, protecting ongoing prosecutorial investigations or other weighty issues of general interest.<sup>324</sup>

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<sup>319</sup> Ibid.

<sup>320</sup> Provisions in the Code of Criminal Procedures Netherlands Antilles are still used as the St. Maarten Penal Code is still being developed.

<sup>321</sup> Kingdom Act on Law Enforcement Council, Article 31.

<sup>322</sup> Kingdom Act Public Prosecutor's Offices Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba, Article 31.

<sup>323</sup> Kingdom Decree Legal Position of Members of the Public Prosecutor's Office, Article 38.

<sup>324</sup> Code of Criminal Procedures Netherlands Antilles.

The code also contains a procedure for victims to be allowed to attend legal proceedings.<sup>325</sup> Police data may be provided to members of the department of public prosecutions in the interest of aiding victims of criminal offences, thus indirectly granting such access.<sup>326</sup>

Nothing could be found in the law requiring law enforcement officials to disclose their assets on a regular basis or making public any information on appointments, suspensions and dismissals.

### **Transparency (practice)**

**Score: 50**

TO WHAT EXTENT IS TRANSPARENCY MET IN THE ACTIVITIES AND DECISION-MAKING PROCESSES OF THE LAW ENFORCEMENT AGENCIES IN PRACTICE?

**The public is able to obtain information on the content of the work of law enforcement agencies, like criminality, but not so much on the organisation, the functioning and the decision-making process. The Public Prosecutor's Office is more transparent in these fields.**

Information about law enforcement agencies available to the general public can be found through social media and websites, although it is not always comprehensive.

The St. Maarten Police Force has a Facebook page; however, this page does not contain information on the organisation and functioning of the police, but does give special attention to the complaints procedure and events. The Special Police Force St. Maarten is mentioned on the website of the Curaçao organisation, as learnt from the respondents. A website with information on the St. Maarten's office organisation and functioning will be launched in the future.

On crime prevention the police force has a special project, the Crime Prevention Environment Design, to communicate to the public advice on prevention of crime in one's own environment.<sup>327</sup>

The annual report of the prosecution office of St. Maarten is available to the public on the website of the Public Prosecutor's Office Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba. The annual reports (since their establishment in 2010) contain information on the organisation and finances of the office in the first instance and on different types of crimes. Information on the organisation at a Kingdom level, as well as business processes, including human resources and finances, can be found in the annual report of the Public Prosecutor's Office Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba, also published on the website.<sup>328</sup> All reports are in Dutch.

The prosecution office of St. Maarten has a press officer communicating with the media directly. Press releases are mostly reactive because of the swiftness of the local press. The police forces and the prosecutor's office have an active collaboration on press communication and publicity.<sup>329</sup> The St. Maarten prosecutor's office recently set up a Facebook page.

In 2012 a report was published on criminality in St. Maarten.<sup>330</sup> This analysis was done on the request of the procurator general and executed by the St. Maarten Police Force (in cooperation with the Dienst IPOL/ KPSM). It contains information on several types of criminal actions and

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<sup>325</sup> Ibid., Book IV, titel 4, Article 374.

<sup>326</sup> National Ordinance Police Data, Article 26.

<sup>327</sup> Several interviews conducted by the authors with interviewees from the police forces, 2014.

<sup>328</sup> [www.openbaarministerie.org](http://www.openbaarministerie.org).

<sup>329</sup> Several interviews conducted by the authors with interviewees from the law enforcement agencies, 2014.

<sup>330</sup> KLPD, 2011: 22.

recommendations to tackle them. The report was presented to the minister of justice of St. Maarten and also published on the internet.

The Council of Law Enforcement also reported, according to interviewees, on an investigation of the detective department of the St. Maarten police organisation in 2013. This report however could not be found on the organisation's website.

## **Accountability (law)**

**Score: 75**

TO WHAT EXTENT ARE PROVISIONS IN PLACE TO ENSURE THAT THE LAW ENFORCEMENT AGENCIES HAVE TO REPORT AND BE ANSWERABLE FOR THEIR ACTIONS?

### **The legal framework contains several provisions for the accountability of the law enforcement agencies.**

Several national decrees for the police forces require these forces to – in addition to the annual report – report to the minister of justice every three months on their progress and this to be discussed in Parliament.<sup>331</sup> For the prosecutor's office, besides reporting to the minister of justice, hearings must be held in public (with some exceptions laid down by national ordinance) and decisions made public. If this is not the case, reasons should be given.<sup>332</sup>

St. Maarten has several laws that require law enforcement agencies to have complaints procedures.<sup>333</sup> In addition, all citizens have the right to submit a complaint about misconduct in police action and the public prosecutor to the ombudsman.<sup>334</sup>

A formal complaints procedure exists for the public prosecution. It stipulates the conditions that a complaint must meet in order to be taken into account. It also states the rights and obligations that a complainant has and the ways in which and by whom a complaint will be handled.<sup>335</sup>

In the event that a criminal offence is not prosecuted (or not within a reasonable period), any stakeholder may present a written complaint to the Joint Court of Justice. After receipt of this complaint, the court will instruct the prosecutor to report on his/her decision to prosecute or not, and to substantiate this decision with relevant documentation. The court will then make a decision and inform the complainant. The court has the authority to not instruct further prosecution, even if the complaint was found to be valid, in the case of weighty issues of general interest.<sup>336</sup>

Complaints against the advocate general can be filed with the procurator general in the case of perceived mistreatment. No complaints can be filed regarding the activities of his/her duties (ambtsverrichtingen). The procurator general is responsible for an appropriate handling. It is not possible to appeal the outcome of a complaint procedure.<sup>337</sup>

With regard to internal complaints procedures, the code of professional standards for the police forces includes internal guidelines to handle misconduct by members of the force. In a case of presumed misconduct (based on the rules in the code of professional standards), any member of

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<sup>331</sup> National Decree Organisation, Tasks and Authorization Special Police Force, Article 7.

<sup>332</sup> Constitution, 2010. Art. 117.

<sup>333</sup> Kingdom Act Police, Article 43; and Kingdom Decree Regulations Public Prosecutor.

<sup>334</sup> National Ordinance Ombudsman, Article 15.

<sup>335</sup> Kingdom Decree Legal Position of Members of the Public Prosecutor's Office, Articles 36 to 46.

<sup>336</sup> Penal Code, Articles 15 and 25.

<sup>337</sup> Kingdom Decree Legal Position of Members of the Public Prosecutor's Office, Article 35.

the police corps is required to confront his/her colleague directly. In a case of criminal conduct they are required to inform the direct supervisor of the person in question. Persons who denounce criminal conduct within the corps have their confidentiality protected in the report, and have the right to a timely response regarding the settlement of the report. Complaints about misconduct in the force to the head of the Special Police Force will be referred by the head to the procurator general to avoid any appearance of a conflict of interest.<sup>338</sup>

Law enforcement officials and public prosecutors do not have any form of immunity for corruption and other criminal offences. Disciplinary sanctions for members of the prosecutor's office<sup>339</sup> and police forces have been formulated that may be dictated after dereliction of duty has taken place. These sanctions also include suspension with or without pay and dismissal.<sup>340</sup>

### **Accountability (practice)**

**Score: 75**

TO WHAT EXTENT DO LAW ENFORCEMENT AGENCIES REPORT AND ARE ANSWERABLE FOR THEIR ACTIONS IN PRACTICE?

**In general, provisions like reporting mechanisms are used effectively in practice.**

The police forces in St. Maarten, according to the respondents, are strongly controlled by the executive and the prosecutor's office by means of regular reporting.<sup>341</sup> There is also reporting on progress the monitoring committee (Voortgangscommissie). The prosecutor's office is accountable to the minister of justice and can be called to account by Parliament. Although this has not happened on a specific case in the four years of its existence, the prosecutor's office in St. Maarten has had – together with the minister of justice – meetings with Parliament on general issues concerning the legal framework.

As a new country ordinance for the St. Maarten's police forces is not in place, the country ordinance on complaints committee police actions applicable to the former Netherlands Antilles (Landsverordening Klachtencommissie Politieel Optreden) is used. Complaints about the police forces, however, are filed with the ombudsman.<sup>342</sup> The annual reports of the ombudsman do not specify how many complaints on the police forces are filed.

A complaint procedure for the organisation of the prosecutor's office is in place.<sup>343</sup> In practice complaints are filed with the court and also with the ombudsman. According to respondents two complaints have been filed in the past year.<sup>344</sup>

### **Integrity mechanisms (law)**

**Score: 75**

TO WHAT EXTENT IS THE INTEGRITY OF LAW ENFORCEMENT AGENCIES ENSURED BY LAW?

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<sup>338</sup> Code of Professional Standards for Members of the Police Corps Sint Maarten, Articles 16 to 18.

<sup>339</sup> Kingdom Decree Regulations Public Prosecutor, Articles 28 to 31.

<sup>340</sup> Country Ordinance Legal Position Police Corps Sint Maarten, Article 87; and Country Ordinance Legal and Material Rights and Obligations of Civil Servants, Chapter 8 and 9.

<sup>341</sup> Several interviews conducted by the authors with interviewees from the law enforcement agencies, 2014.

<sup>342</sup> Several interviews conducted by the authors with interviewees from the police forces, 2014.

<sup>343</sup> <http://www.openbaarministerie.org/nl/st-maarten/publicaties>

<sup>344</sup> Several interviews conducted by the authors with interviewees from the St. Maarten police force, 2014.

**Although there are extensive regulations to ensure the integrity of the members of the law enforcement agencies, they do not cover all aspects.**

According to the law the procurator general has the authority – in collaboration with the Kingdom’s Special Police Force – to investigate violations of integrity and detect official offences in the case of suspected corruption by government officials.<sup>345</sup> In addition, being government officials, members of the law enforcement agencies are also subject to audits into the administrative integrity of political or government officials of the General Audit Chamber.<sup>346</sup>

Both the Kingdom Act on Police and the Kingdom Decree on Regulations Public Prosecutor’s Office<sup>347</sup> require these institutions to define an integrity policy (police forces) and/or draft a code of conduct (police forces and prosecutor’s office). The integrity policy should be directed towards increasing integrity awareness and preventing the abuse of power, conflict of interest and discrimination, as well as being incorporated in human resources processes like job evaluations. The code of conduct should at least include rules on gifts and hospitality, independence, additional functions, confidentiality, financial declarations and the use of public resources. Like all civil servants, members of the police forces and the prosecutor’s office have to abide by the rules of integrity mentioned in the country ordinance on legal and material rights and obligations of civil servants.<sup>348</sup>

In addition, upon appointment the chief, the head, the advocate general and the members of the police forces and the prosecution office are required to take an oath or pledge on gifts, hospitality and confidentiality.<sup>349</sup>

No legal provisions were found for any members of the law enforcement agencies to have to declare their assets and property. Nor were any post-employment restrictions found.

**Integrity mechanisms (practice)**

**Score: 50**

TO WHAT EXTENT IS THE INTEGRITY OF MEMBERS OF THE LAW ENFORCEMENT AGENCIES ENSURED IN PRACTICE?

**To ensure the integrity of the law enforcement agencies, some rules on integrity have been implemented. However, whether these rules are effective in practice is yet to be seen.**

At the time of this assessment one integrity inquiry into members of law enforcement officials has been conducted.<sup>350</sup>

A code of professional standards for members of the St. Maarten police force has been implemented. This code is applicable to all members of the force, including the chief of police. The code mentions explicit rules on conflict of interest and gifts and hospitality. In addition, a code of conduct has been drafted with special attention to reliability.

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<sup>345</sup> Kingdom Act Public Prosecutor's Offices Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba, Article 35.

<sup>346</sup> National Ordinance General Audit Chamber, Article 33.

<sup>347</sup> Articles 45 and 3, respectively.

<sup>348</sup> Paragraph 14.

<sup>349</sup> Kingdom Act Public Prosecutor's Offices Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba, Article 19.

<sup>350</sup> The “Masbangu” case (also see independence practice).

Currently, a code of conduct for the Special Police Force is being developed. This code focuses on good fellowship, reliability, loyalty, respect and accuracy, and is applicable to all members of the Special Police Force.<sup>351</sup>

According to respondents, a code of conduct for the prosecutor's office exists and applies to all members of the office. The code has been introduced to develop awareness on ethics and integrity within the Public Prosecutor's Office. It encompasses the values of collaboration, openness in communication, independence and accuracy. There are no specific rules on conflict of interest in the code of conduct for the prosecutor's office.<sup>352</sup>

Training and workshops on the issue of integrity are run for the police forces. The civil service academy (Bestuursacademie) from the Netherlands will be assisting in raising awareness on the subject among police officials.<sup>353</sup>

Interviewees in this assessment have noted that they have all taken an oath or pledge. It is not known if this is the case for all those employed in the law enforcement agencies.

## **Role**

### **Corruption prosecution (law and practice)**

**Score: 50**

TO WHAT EXTENT DO LAW ENFORCEMENT AGENCIES DETECT AND INVESTIGATE CORRUPTION CASES IN THE COUNTRY?

**Law enforcement agencies do investigate corruption cases, but mostly in a reactive way that is focused on a small number of cases.**

Legislation on corruption in St. Maarten is based on several provisions in the Penal Code. As of 2014 the Penal Code for the former Netherlands Antilles was still used. This will continue until the St. Maarten Penal Code is approved by Parliament, which is expected in coming months.

The procurator general, who for St. Maarten mandated these tasks to the advocate general in St. Maarten, has the power to make his/her own decision on the basis of the available information to investigate or not.<sup>354</sup> He/she is also authorised to instigate an investigation on his/her own initiative.<sup>355</sup>

According to the Kingdom Act Police and the national decree on organisation, tasks and authorisation of the Special Police Force,<sup>356</sup> the procurator general has the authority to instruct the Special Police Force to conduct research into facts or behaviours that can or may implicate the integrity of the government. The Special Police Force and the St. Maarten police force have the authority to use force, including means to restrict personal freedom, access all public and private places, physically search defendants and confiscate official means of identification, as deemed reasonable and moderate.<sup>357</sup>

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<sup>351</sup> Several interviews conducted by the authors with interviewees from the police forces, 2014.

<sup>352</sup> The Code of Conduct/*Gedragscode* was made available to Transparency International.

<sup>353</sup> Several interviews conducted by the authors with officials from the police forces, 2014.

<sup>354</sup> Kingdom Act Police, Article 9

<sup>355</sup> Ibid.

<sup>356</sup> Kingdom Act Police, Article 2.

<sup>357</sup> Kingdom Act Police, Article 13.

The practice of corruption investigation in St. Maarten by local law enforcement agencies is new. The local prosecutor's office and the local Special Police Force became active only in 2010. The Special Police Force is still in the process of development and not at its fullest capacity.

Corruption cases in general are complicated and time consuming to investigate, in particular in a small-scale society like St. Maarten. As noted by some interviewees, other "simpler" crimes have been given priority because of this.<sup>358</sup>

Until now the law enforcement agencies have not played a leading role in fighting corruption in St Maarten. Since 2010 five cases of (alleged) corruption have been under investigation. For two of these (at the end of 2014) the court has come to a conclusion.<sup>359</sup>

Several respondents noted that investigation is "long-term reactive", like in the bribery case against a member of Parliament (the earlier mentioned Bada Bing case), in which prosecution was initiated only after a video of the affair was put on the internet.

The overall feeling of the respondents is that because it has taken a long time for the prosecutor's office to start prosecuting legal infractions of politicians - such as in the Masbangu case mentioned previously - and because when a case was presented in court, it was not well prepared according to interviewees, it is improbable that even in the few cases presented, a corresponding verdict will be pronounced.<sup>360</sup>

Also in the opinion of respondents, investigations are limited. Even in the case of a prosecution, the focus is mostly on irregularities in the sanctioning or logistical processes, causing investigation to either be put on hold or unnecessarily lengthy, leading to non-transparency on the status of events for the public.

The process of criminal investigation does not always seem effective and there has been a conviction in only one case.

To strengthen the prosecutor's office in St. Maarten, the Kingdom government has offered to send prosecutors to work together on cases of white-collar crime. The St. Maarten government has yet to agree to this offer.

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<sup>358</sup> Several interviews conducted by the authors with interviewees from the law enforcement agencies, 2014.

<sup>359</sup> Several interviews conducted by the NIS assessment team, 2014.

<sup>360</sup> Ibid.

## 6 ELECTORAL MANAGEMENT BODIES

### Summary

The EMBs in their present structure were operational for the first time in the 2014 elections. They are important new institutions in St. Maarten's administrative system as bodies overseeing the election process. In general, the legal framework is sufficiently in place as presented in the respective indicators. Currently the EMBs are not yet fully resourced according to law. In general they operate in a transparent manner. However, as the elections of 2014 were held a few months after this assessment was conducted, the effectiveness of some of the indicators in practice could not yet be fully assessed.

### Structure and Organisation

The EMBs in St. Maarten consist of two separate institutions, the Central Electoral Committee and the Electoral Council. The Civil Registry (the Census Office) in the election process supports the Central Voting Bureau by providing the electoral register (personal data from the civil databank) and collecting data. Furthermore, they provide the ballot papers and take care of the voting machines at the polling districts.

The Civil Registry, as part of the Ministry of General Affairs, is the responsibility of the minister of general affairs. Officials performing tasks in the election process as described are in the civil service and have all the associated legal rights and duties.

The Central Electoral Committee, with five members (and two executive members), and the Electoral Council, with three members (and two executive members), are laid down in the law as the institutions to oversee the electoral management.<sup>361</sup> The Electoral Council is independent (of Parliament and government).<sup>362</sup>

The country is divided in voting districts. In general a district consists of no more than 1,500 voters. Every voting district has its own electoral committee, consisting of three members including a chair.<sup>363</sup> The committee is appointed by the minister of general affairs from amongst the eligible voters in that district, in ample time before the election day and with concurrent removal of the former election committee.<sup>364</sup> The minister of general affairs will designate a voting location for every voting district. The head of the Civil Registry is responsible for an adequate layout in terms of guaranteeing the secrecy of voters.<sup>365</sup>

St. Maarten in recent elections has consisted of 20 electoral districts. In the 2014 elections the Central Electoral Committee, in its new form, and the Electoral Council were operational for the first time. In the legal framework EMBs are defined as the Electoral Council and the Central Electoral Committee.<sup>366</sup> Both institutions will be discussed for the purposes of this assessment. The Civil Registry – as part of a ministry – is referred to in Chapter VII.4 on the public sector.

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<sup>361</sup> Election Ordinance, Article 12; and the National Ordinance Registration and Finances of Political Parties, Article 3.

<sup>362</sup> Ibid.

<sup>363</sup> Election Ordinance, Article 42.

<sup>364</sup> Election Ordinance, Articles 41 and 42.

<sup>365</sup> Election Ordinance, Article 51.

<sup>366</sup> National Ordinance Registration and Finances of Political Parties, Article 4; and Election Ordinance, Article 12.

## Assessment

### **Capacity**

#### **Resources (law and practice)**

**Score: 50**

TO WHAT EXTENT DO THE ELECTORAL MANAGEMENT BODIES (EMBS) HAVE ADEQUATE RESOURCES TO ACHIEVE THEIR GOALS IN PRACTICE?

**The EMBS' legal framework is in place and the bodies have some resources in the sense that members are appointed. However, not all operational structures are in place yet and the status of decision-making procedures on resources is somewhat unclear.**

Resources to manage the electoral process for the Central Election Committee is to be provided by the minister of general affairs, who is also required by law to provide a location for the Central Election Committee to hold its meetings.<sup>367</sup> The committee does not consist of permanent (paid) staff, but is a temporary – at the time of elections – institution. Its members are entitled by national decree to financial compensation of ANG400/US\$220, paid out of the state budget.<sup>368</sup> Members of the committee are professionals from the public (government, public companies) and private sectors (advocacy).<sup>369</sup>

As for the Electoral Council, the legislature is responsible for providing it with all necessary resources to fulfil its tasks. These necessary resources will be identified in discussion with both parties. The chair of the Electoral Council will execute its financial management in accordance with the rules as set by the minister of finance.<sup>370</sup> Members are mostly from the private sector (advocacy).<sup>371</sup>

In practice not all operational facilities are in place yet; according to respondents, the members of the committee work from their own offices in managing the electoral process. The Electoral Council does have its own office, supplied with one supporting staff member, working part time (1/2 FTE). Overhead costs (office and human resources) are covered by the Ministry of General Affairs. However, no budget is mentioned for the EMB within the state budget. No arrangements have been set regarding remuneration for the members of the EMBS.<sup>372</sup>

As mentioned, the run-up to the 2014 elections was the first occasion for these EMBS to perform their tasks. At the time of interviewing – about six weeks before the election date – respondents from the Central Electoral Committee noted that not all necessary facilities have been arranged as yet, considering this to be an inadequacy in fulfilling their tasks.<sup>373</sup>

#### **Independence (law)**

**Score: 75**

TO WHAT EXTENT ARE THE EMBS INDEPENDENT BY LAW?

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<sup>367</sup> Election Ordinance, Article 12.

<sup>368</sup> Electoral Decree, Article 20.

<sup>369</sup> Interviews conducted by the authors with members of the Committee, 2014.

<sup>370</sup> National Ordinance Registration and Finances of Political Parties, Article 4.

<sup>371</sup> www.ecsxn.org

<sup>372</sup> Several interviews conducted by the authors with interviewees from electoral management bodies, 2014.

<sup>373</sup> Ibid.

### **The EMBs are independent by law and tasks are legally defined.**

Neither the Electoral Council nor the Central Election Committee is explicitly mentioned in the constitution. However, the national ordinance on registration and finances of political parties and the election ordinance are designed to stipulate their tasks and responsibilities. Both the Electoral Council and the Central Election Committee are defined as bodies independent of the legislature and executive in carrying out their tasks.<sup>374</sup>

Responsibilities in the electoral processes are clearly divided between the independent and government institutions. The government is responsible for determining the electoral districts (the Civil Registry), policymaking and judicial compliance. The minister of general affairs is responsible for the electoral register, and the date of voting shall be enacted by national decree on the proposal of the minister of general affairs, with at least 48 days between the date of the nominations and the day of voting.<sup>375</sup>

The Central Election Committee is in charge of the list of candidates, the counting of the votes and all logistics related to the day of postulation (when the list of candidates is submitted) and the day of election. The Electoral Council is responsible for registration and screening of political parties that wish to participate in the elections.<sup>376</sup>

Members of the Electoral Council and the Central Electoral Committee are appointed by national decree after nomination by an appointment committee. The appointment committee consists of the president of the Joint Court of Justice of Aruba, Curaçao and Sint Maarten, and Bonaire, Sint Eustatius and Saba, the vice chair of the Council of Advice and the chair of the General Audit Chamber. Appointments are based on general criteria such as knowledge and experience, without specific professional non-discriminatory requirements. The national ordinance includes clearly defined factors that warrant removal from the Electoral Council and the Central Electoral Committee, such as reaching the age of 70, being convicted of a criminal offence, or accepting a position defined by law as being incompatible with that of a member of the Electoral Council.<sup>377</sup>

### **Independence (practice)**

**Score: 75**

TO WHAT EXTENT DO THE EMBs FUNCTION INDEPENDENTLY IN PRACTICE?

**The EMBs have not clearly demonstrated any signs of bias in the pre-election activities; no information is available on government actors having interfered in the election activities.**

Although responsibilities and tasks of the EMBs are clearly defined, in practice the Central Electoral Committee and the Electoral Council are dependent in the execution of their work on how the government, i.e. the Ministry of General Affairs, performs its duties. Looking at the pre-election activities in 2014, nothing has been reported by respondents or otherwise on difficulties in this working relationship or on any non-professional or non-partisan manner of operation of the committee or council.<sup>378</sup>

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<sup>374</sup> National Ordinance Registration and Finances of Political Parties, Article 4; and Election Ordinance, Article 12.

<sup>375</sup> Election Ordinance, Article 40.

<sup>376</sup> National Ordinance Registration and Finances of Political Parties, Art. 14; and Election Ordinance, Art. 4 and 5.

<sup>377</sup> National Ordinance Registration and Finances of Political Parties, Articles 5 and 9 to 10; and Election Ordinance, Articles 12 and 17.

<sup>378</sup> Several interviews conducted by the authors with members of the Electoral Management Body, 2014.

Respondents do have expressed their concern about the fact that members of the Central Electoral Committee are working within the government (the Civil Registry) and on the board of a public-owned companies, and that members of the Electoral Council mostly come from private law firms (memberships verified during this assessment). On the other hand it is considered acceptable as St. Maarten does not have enough professionals to fill all these positions of committees and boards.<sup>379</sup>

As for the elections of 2014, at the time of reporting there was no information on undue government interference.

## **Governance**

### **Transparency (law)**

**Score: 100**

TO WHAT EXTENT ARE PROVISIONS IN PLACE TO ENSURE THAT THE PUBLIC CAN OBTAIN RELEVANT INFORMATION ON THE ACTIVITIES AND DECISION-MAKING PROCESSES OF THE EMBs?

**The legal framework contains extensive provisions with regard to transparency on the activities of the EMBs.**

The legal electoral framework contains several paragraphs on what information is to be made public. According to the election ordinance the electoral register will be accessible through electronic means.<sup>380</sup> The list of candidates is to be made public by the Central Electoral Committee, as well as the number of votes per candidate, the totals and the procès-verbal of the meeting in which the final result of the election is established, including any recorded objections.<sup>381</sup> Information pertaining to the election itself, such as date, time, voting district number and required voting location, is included in the voting card distributed by the Civil Registry.<sup>382</sup>

A registered political party is required to send a list of donations before 1 February and an annual report to the Electoral Council every year before the first of April. This report will contain information regarding the party's management structure and activities performed during the previous year, financial statements including specified information on income and expenditure, and an auditor's report confirming this. An overview of donations received should also be included.<sup>383</sup>

The Electoral Council is responsible for making publicly available these annual and financial reports of all registered political parties, as well as the report of the General Audit Chamber regarding the registered finances of political parties. In addition the (anonymous) reports of the General Audit Chamber will be made available to the public for inspection.<sup>384</sup>

Moreover, the Electoral Council is responsible for publishing information regarding its decisions on registration of political parties and the articles of association of political parties at the parties' expense.<sup>385</sup>

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<sup>379</sup> Several interviews conducted by the NIS assessment team, 2014.

<sup>380</sup> Election Ordinance, Article 4.

<sup>381</sup> Electoral Code, Articles 37, 89 and 91.

<sup>382</sup> Electoral Ordinance, Article 43.

<sup>383</sup> National Ordinance Registration and Finances of Political Parties, Articles 27 to 28.

<sup>384</sup> National Ordinance Registration and Finances of Political Parties, Articles 30 and 39.

<sup>385</sup> National Ordinance Registration and Finances of Political Parties, Article 24.

## Transparency (practice)

Score: 50

TO WHAT EXTENT ARE REPORTS AND DECISIONS OF THE EMBs MADE PUBLIC IN PRACTICE?

**The public is able to obtain relevant information on the organisation and functioning of the EMBs. However no information is publicly available yet on the decision-making process itself and on the funding of political parties.**

In the course of the 2014 elections, all meetings of the Central Electoral Committee were publicly announced and open to the public. The Electoral Council held several briefings for politicians and members of the public on the topic of registration requirements for political parties and on donating regulations for political parties in particular. In addition the Electoral Council summoned political parties through the media (television) to register on time.

Information on the registration decisions of political parties was made public by the Electoral Council on its website and in the newspapers, but information on political party funding is not yet made public.

The website of the Electoral Council is still under construction at the moment of this NIS reporting and does not contain any information on the voting process, formal reports or any statistics. According to respondents, in the future all information required to be made public will be published on the website.<sup>386</sup>

The official website of the government mentions the Central Electoral Committee and the Electoral Council, their tasks and structure and the names of their members.

## Accountability (law)

Score: 50

TO WHAT EXTENT ARE PROVISIONS IN PLACE TO ENSURE THAT THE EMBs HAVE TO REPORT AND BE ANSWERABLE FOR THEIR ACTIONS?

**With regard to the election process, the electoral ordinances contain several provisions for the EMBs to account for their actions, including legal redress. However, no provisions are in place to hold the Electoral Council accountable for financial compliance of political parties.**

Provisions are available in the legal framework for voters to express their concerns regarding the process, such as possibilities to appeal decisions of the Electoral Council and/or the Central Electoral Committee on how and when political parties should register for the election and how the public should be informed of decisions.<sup>387</sup> Candidates and voters also have the right to appeal a decision from the Central Election Committee regarding the validity of candidacy lists within two days, in the court of first instance.<sup>388</sup> A decision of the Electoral Council is also open to appeal of any stakeholder, with the court of first instance.<sup>389</sup>

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<sup>386</sup> Interviews conducted by the authors with interviewees from the Electoral Management Board, 2014.

<sup>387</sup> National Ordinance Registration and Finances of Political Parties, Article 4.

<sup>388</sup> Election Ordinance, Articles 33 to 35.

<sup>389</sup> National Ordinance Registration and Finances of Political Parties, Article 25.

The Central Electoral Committee is required by law to report on all its meetings by procès-verbals,<sup>390</sup> for which specific formats have been prescribed by law.<sup>391</sup> If the public should express their concerns in these meetings, these are in some cases required to be recorded.<sup>392</sup> After announcement of the election results in a public meeting, the chair of the Central Electoral Committee will send the procès-verbal to the public registry for inspection by the public. Reports on special meetings, like the meeting in which decisions are made regarding the total votes per candidate and the final election results, are required to be sent to the legislature for publication.<sup>393</sup>

As mentioned above, the committee and the council are both independent institutions by law. The legal electoral framework does not contain any requirements for the council and the committee to account for their actions in general to Parliament or for instance the General Audit Chamber in relation to their financial tasks.

### **Accountability (practice)**

#### **Score -**

TO WHAT EXTENT DO THE EMBs HAVE TO REPORT AND BE ANSWERABLE FOR THEIR ACTIONS IN PRACTICE?

**Members of the EMBs have to report their actions. For the 2014 elections this had not been done by the time of this assessment.**

Although the Central Election Committee is said to formally report on its meetings, for the 2014 elections this could not be determined at the time of the NIS reporting. The Electoral Council is still in the process of collecting compliance information from the candidates on their financial declarations. Finances of political parties were not yet known as these have to be submitted to the Electoral Council at the first of February. Thus these had not yet been reported on by the Electoral Council at the moment of the NIS reporting.

Whereas in the 2010 elections, redress for electoral irregularities was reported concerning the counting process, in which the public did not take into consideration the required distance from the table with the voting ballots,<sup>394</sup> for the 2014 elections no irregularities were reported. As far as could be assessed, election results were not legally redressed. At the time of conducting this assessment report, it had not yet been determined whether existing provisions are enforced.

### **Integrity mechanisms (law)**

#### **Score: 50**

TO WHAT EXTENT ARE MECHANISMS IN PLACE TO ENSURE THE INTEGRITY OF THE EMBs?

**While some general provisions exist for the members of the EMBs, a specific code of conduct has not been established.**

In general, members of the Central Election Committee and the Electoral Council are required to be impartial and independent by regulations provided for by the ordinances, although they do not

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<sup>390</sup> Election Ordinance, Article 38.

<sup>391</sup> Election Ordinance, Articles 7 to 10.

<sup>392</sup> Election Ordinance Articles 36 and 113 to 115.

<sup>393</sup> Election Ordinance, Articles 91 and 103.

<sup>394</sup> Evaluation Central Electoral Committee.

contain specific provisions to ensure the integrity of the members of the Electoral Council and committee(s). Like other high-level officials, members of the Central Election Committee and the Electoral Council are required to take an oath upon appointment, swearing/declaring not to accept any pledge or gift.<sup>395</sup> To prevent conflict of interest it is stipulated by law that certain positions, like that of a minister, member of Parliament or member of one of the High Councils of State, are not compatible with the position of member of the Central Electoral Committee or of the Electoral Council. It is not prohibited by law for a civil servant to be a member of Central Electoral Committee, as it is for the Electoral Council.<sup>396</sup>

In addition, all parties involved in the execution of the national ordinance on financing of political parties are held to an obligation of secrecy regarding all information they obtain in the execution of their tasks. Violations of this secrecy may be prosecuted.<sup>397</sup>

Officials at the Central Registry working on the execution of the election process are subject to the national ordinance on legal and material rights and obligations of civil servants (see Chapter VII.4 on the public sector), which has rules, for instance, on gifts and hospitality.

Although the electoral process is enacted in detail to ensure a standard working frame, no code of conduct has been set and the rules that apply to civil servants do not apply to members of the council and the committee(s) (unless they are civil servants, in which case general integrity rules for civil servants do apply).

### **Integrity mechanisms (practice)**

**Score: 50**

TO WHAT EXTENT IS THE INTEGRITY OF THE EMBs ENSURED IN PRACTICE?

**Existing rules, members of the EMBs and staff of the Civil Registry taking an oath, are enforced.**

Members of the Electoral Council and the Central Election Committee have all taken the oath and respondents consider it part of their job to be aware of the type of work that comes with being a member of the council or committee. In addition, staff within the Civil Registry have signed a declaration of integrity.<sup>398</sup> As it does not exist, no specific code of conduct has been signed by the council and/or committee members.

### **Role**

#### **Campaign regulation**

**Score: 75**

DO THE EMBs EFFECTIVELY REGULATE CANDIDATE AND POLITICAL PARTY FINANCE?

**The ordinance to regulate candidate and political finance is in place and the Electoral Council is performing its regulating tasks.**

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<sup>395</sup> Election Ordinance, Article 15; and National Ordinance Registration and Finances of Political Parties, Article 8.

<sup>396</sup> Election Ordinance, Articles 13 to 14; and National Ordinance Registration and Finances of Political Parties, Articles 6 to 7.

<sup>397</sup> National Ordinance Registration and Finances of Political Parties, Article 55.

<sup>398</sup> Several interviews conducted by the authors with interviewees from electoral management bodies, 2014.

The national ordinance on registration and finances of political parties (December 2010) encompasses extensive guidelines for political parties to register with the Electoral Council before the elections, along with general requirements to which they must adhere. These requirements include submitting annual reports including financial statements.

Regarding funding, maximum amounts for donations to be accepted by a party are included. In addition, political parties are to maintain a permanent record of all donations to the party. Moreover political parties are obligated to keep all financial accounts and supporting documents for at least five years.<sup>399</sup> The Electoral Council has the authority to impose a fine if political parties do not adhere to these regulations.<sup>400</sup>

In practice, 2014 was the first time political parties have registered with the council. For that year's elections eight parties registered, of which five were approved by the council on the basis of requirements. Non-approval was mainly based on lack of general and financial information. According to one of the experts, it is difficult for political parties in St. Maarten to get their accounts officially audited, as it is difficult to find local accountancy bureaus to take up this task because they do not want to take a stand in the matter.

### **Election administration (law and practice)**

**Score: 50**

**DO THE ELECTORAL MANAGEMENT BODIES ENSURE THE INTEGRITY OF THE ELECTORAL PROCESS?**

**Regarding the electoral process, the legal framework is sufficiently in place. In the pre-election activities and the voting process of the 2014 elections, no irregularities have been reported as yet. However, in practice not all facilities have been put into place, jeopardising the integrity of the electoral process.**

With regard to the election process, the Civil Registry and the Central Election Committee work together to ensure that all eligible voters can register to vote, get the information they need and follow the counting procedures. To ensure personal information is registered in the correct way, checks are included in the institutional processes within the Civil Registry. In addition, all members of the public have the opportunity to request their personal information as it is registered in the electoral register, from the minister of general affairs, free from charge.<sup>401</sup> If a voter, for instance, has not received a voting card because of wrong registration, he/she will get one at the polling station to still be able to vote.

The voting process is described by the electoral ordinance and electoral decree in detail.<sup>402</sup> During the voting session the general public is allowed to stay in the polling station, as long as public order is not disturbed. The chair of the Central Election Committee is responsible for maintaining order. Voters may be present during the initial counting of the votes and are also allowed to express concerns, as they are during the public session held by the Central Electoral Committee in which the final election results are determined. Counting procedures and cross-checking of the numbers of ballots are also described in great detail in the law, as are the setup of the polling station and the process required during the polling session.

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<sup>399</sup> National Ordinance Registration and Finances of Political Parties, Articles 15, 26 to 28, 33 to 35, 37, 38, and 40 to 44.

<sup>400</sup> Ibid.

<sup>401</sup> Election Ordinance, Article 8.

<sup>402</sup> Election Ordinance, Articles 71 to 73, 75 to 86 and 87; and Electoral Decree, Articles 1 to 10 and 12 to 19.

The Central Electoral Committee is also responsible for the list of candidates and for compliance with general requirements. Models for candidate lists, voting ballots, procès-verbals and other materials necessary to conduct the electoral process are clearly defined by law.

The Electoral Council is charged with supervision and enforcement of the electoral procedures. According to the national ordinance, the council is authorised to request any information it deems relevant.<sup>403</sup> If a voter does not follow the correct procedures, he/she will not be admitted to the voting and will be forced to return his/her voting ballot. Several actions have been defined in the ordinance that warrant fines or a jail sentence, such as forging of a voting ballot.<sup>404</sup>

In the elections of the past four years, St. Maarten has not made use of international observers.

In the 2010 elections, a leader of one of the political parties was accused of buying votes (see the earlier mentioned Masbangu case). This offence was investigated by the public prosecutor (also see the section on corruption prosecution in Chapter VII.5 on the law enforcement agencies). Practices during the last elections in 2014 with the new EMBs in place have not been evaluated yet. However, as mentioned earlier, the electoral process is jeopardised by the fact that not all necessary facilities are arranged yet.

## 7 OMBUDSMAN

### Summary

The ombudsman of St. Maarten is independent both in law and in practice. Transparency with regard to individual investigations can be improved. The ombudsman has adequate resources to effectively accomplish its tasks in practice.

### Structure and Organisation

The ombudsman in St. Maarten was established as a new institution, one of the High Councils of State, in 2010, when St. Maarten became a country within the Kingdom of the Netherlands.

The initial phase of institution building was partly funded out of Institutionele Versterking Bestuurskracht (IVB) funds made available by SONA. The ombudsman is a one-headed institution and is authorised to investigate upon request or proactively the way governmental organisations behave towards a natural or legal person, as well as to report findings and make recommendations.<sup>405</sup> The first ombudsman of St. Maarten, Dr Rachnilda (Nilda) Arduin, was appointed in 2010. In executing her tasks she is supported by a bureau.

The ombudsman of St. Maarten is the only ombudsman within the Kingdom who is authorised to assess whether regulations are in conflict with the Constitution of St. Maarten through the Constitutional Court.<sup>406</sup>

### Assessment

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<sup>403</sup> National Ordinance Registration and Finances of Political Parties, Article 43.

<sup>404</sup> Election Ordinance, Articles 70 and 123.

<sup>405</sup> Constitution, 2010 (*Staatsregeling van Sint. Maarten*), AB 2010, GT no. 1, Article 78.

<sup>406</sup> Constitution, 2010. Article 127; and the National Ordinance Constitutional Court, AB 2010, no. 29. For details regarding the Constitutional Court, refer to Chapter 3 in this report.

## **Capacity**

### **Resources (practice)**

**Score: 75**

TO WHAT EXTENT DOES THE OMBUDSMAN HAVE ADEQUATE RESOURCES TO ACHIEVE ITS GOALS IN PRACTICE?

**Despite cutbacks from the state's budget over the last four years, the ombudsman has been able to perform her tasks effectively.**

The ombudsman's office has adequate financial resources coming from the state's budget to fulfil its tasks. There were cutbacks in the past years, but those were anticipated, so the office is able to maintain continuity in its actions.<sup>407</sup>

On its establishment, the office of the ombudsman had at its disposal two budgets: one budget to cover expenses related to institution building, financed from the Kingdom IVB Programme,<sup>408</sup> and an operational budget, financed by the government of St. Maarten, in accordance with Art. 12 of the national ordinance on the ombudsman. The operational budget of the ombudsman forms an integral part of the budget of St. Maarten.<sup>409</sup>

From the year 2012 the office has been fully staffed with five employees: the secretary general, a legal adviser, two complaint officers and an administrative consultant. Budgets were sufficient to also hire an external consultant, to advise on processes and law in the start-up period.

During the year 2012 the staff were trained by a senior team leader of the office of the National ombudsman in The Hague.<sup>410</sup> Although according to respondents the quality of staff is adequate, training still remains to be done. Staff is subjected to the LMA,<sup>411</sup> which implies working under the same conditions as civil servants.

Because of the small scale of the office, a Service Level Agreement - SLA - has been signed with the country of St. Maarten (the minister of general affairs and the minister of finance) to outsource execution of decisions made by the ombudsman, concerning the administration of personnel, finance and material.<sup>412</sup>

### **Independence (law)**

**Score: 75**

TO WHAT EXTENT IS THE OMBUDSMAN INDEPENDENT BY LAW?

**Comprehensive laws are laid down to ensure the independence of the ombudsman, except for a regulation concerning legal protection.**

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<sup>407</sup> Interview conducted by the authors with the Ombudsman, St. Maarten, 2014.

<sup>408</sup> USONA, *Programma Institutionele Versterking Bestuurskracht*. According to the *Annual Report 2013* a total sum of ANG1.126.526,50/ US\$625.848 was allotted to the Ombudsman.

<sup>409</sup> The 2013 budget of the Bureau Ombudsman was approved by Parliament in the amount of ANG1,416,623.11/US\$787,012.77. In addition, throughout 2013 various projects were submitted and approved by USONA for funding, at a sum of ANG483,564.18/US\$268,646.76.

<sup>410</sup> *Annual Report Ombudsman*, 2012.

<sup>411</sup> *Landsverordening Materieel Ambtenarenrecht*.

<sup>412</sup> SLA High Councils of State, 26 April 2011.

As a High Council of State, the ombudsman finds its legal foundation in the Constitution of St. Maarten<sup>413</sup> and the country ordinance on the ombudsman.

The ombudsman of St. Maarten is appointed by Parliament for a term of seven years.<sup>414</sup> A recommendation out of two nominees is made by a committee of three (the vice chair of the Council of Advice, the president of the Joint Court of Justice and the chair of the General Audit Chamber). The nomination is binding.<sup>415</sup> Professional criteria in the selection procedure are not determined by law.

The ombudsman can be reappointed once for a second term of seven years.<sup>416</sup> Parliament has the authority to dismiss and suspend the ombudsman; reasons are clearly stated in the ordinance, including criminal conviction.<sup>417</sup>

Upon appointment the ombudsman has to take an oath before the president of Parliament.<sup>418</sup>

The legal position of the ombudsman is regulated in the country ordinance on the ombudsman, which provides legal restrictions on other – professional – activities of the ombudsman, like being a member of the executive or legislature.<sup>419</sup> However, this list does not include any political activities. No legal provisions are laid down to ensure any legal protection for the ombudsman and staff. The ombudsman's salary and remuneration are comparable to those high-level government officials, with an extra allowance for representation costs.<sup>420</sup>

The ombudsman determines the working procedures and organisation of the office. Staff of the ombudsman's office are recruited and removed on recommendation by the ombudsman. The deputy ombudsman is appointed if possible from among the personnel by Parliament on recommendation of the ombudsman. The quantity and quality of personnel are laid down by parliamentary regulation and agreed upon by the ombudsman in observance of the country's regulations concerning legal positions of civil servants.<sup>421</sup>

The ombudsman and staff are not subordinate to any government body with regard to the performance of their duties.<sup>422</sup> The ombudsman is authorised to manage his/her own budget and personnel.<sup>423</sup>

### **Independence (practice)**

**Score: 75**

TO WHAT EXTENT IS THE OMBUDSMAN INDEPENDENT IN PRACTICE?

**The ombudsman operates in a professional and non-partisan manner, without demonstrable interference by other actors.**

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<sup>413</sup> Constitution, 2010, Article 78.

<sup>414</sup> Country Ordinance Ombudsman, Article 2.

<sup>415</sup> Ibid.

<sup>416</sup> Ibid.

<sup>417</sup> Country Ordinance Ombudsman, Articles 5 and 6.

<sup>418</sup> Country Ordinance Ombudsman, Article 4.

<sup>419</sup> Ibid.

<sup>420</sup> Country Ordinance Ombudsman, Article 8.

<sup>421</sup> Country Ordinance Ombudsman, Article 12.

<sup>422</sup> Country Ordinance Ombudsman, Article 13.

<sup>423</sup> SLA, Service Level Agreement and National Accountability Ordinance.

Due to the fact that the ombudsman St. Maarten is a new institution, it is difficult to determine certain trends. However, at this point no examples could be found indicating that the ombudsman or her staff are politically influenced in executing their tasks.

The appointment of the current ombudsman was done on the recommendation of a selection committee (see section on independence), based on formulated professional criteria. Formulated criteria were not very specific, referring mostly to a background, work experience, and knowledge of the social and political environment of St. Maarten. For the first – present – term of the ombudsman of St. Maarten, only one person was nominated.<sup>424</sup>

After her appointment the ombudsman ceased former activities concerning her own firm to not compromise her independence.<sup>425</sup> Although her name and telephone number were still mentioned on the website of this firm until recently, a new website is now under construction.<sup>426</sup>

Staff members charged with the complaint procedure are taken off a case, if this concerns a person they are related to or acquainted with. Over the last four years no staff members have been removed for political reasons.

## **Governance**

### **Transparency (law)**

**Score: 50**

TO WHAT EXTENT ARE PROVISIONS IN PLACE TO ENSURE THAT THE PUBLIC CAN OBTAIN RELEVANT INFORMATION ON THE ACTIVITIES AND DECISION-MAKING PROCESSES OF THE OMBUDSMAN?

**The ombudsman is required by law to make his/her annual reports public and to have a provision to make it possible for the public to obtain complaint reports.**

The country ordinance on the ombudsman requires the ombudsman to report to Parliament annually and make such a report public. The ordinance is not specific on the type of information that should be included in the annual reports or in what way the information should be made public, except that a copy must be held in the office for the public to read.<sup>427</sup> The public is entitled to obtain an anonymised copy of complaint reports upon request.

Before accepting his/her appointment, the ombudsman takes an oath before the president of Parliament. In addition, the ombudsman is subjected to a general regulation concerning confidentiality that is laid down in the ordinance.<sup>428</sup> It is not required by law for the ombudsman to make asset declarations public.

No legal regulations could be found on the involvement of the public in the activities of the ombudsman, like public consultations or a public council or advice committee.

### **Transparency (practice)**

**Score: 50**

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<sup>424</sup> Interview conducted by the authors with the Ombudsman, 2014.

<sup>425</sup> Ibid.

<sup>426</sup> www.burofocus.com.

<sup>427</sup> Country Ordinance Ombudsman, Article 22.

<sup>428</sup> Country Ordinance Ombudsman, Article 24.

## TO WHAT EXTENT IS TRANSPARENCY MET IN THE ACTIVITIES AND DECISION-MAKING PROCESSES OF THE OMBUDSMAN IN PRACTICE?

**Relevant information on the organisation and functioning and activities of the ombudsman can be obtained by the public, but information accessible by the public and on individual investigations could be more transparent.**

All annual reports and information on the structure and organisation of the ombudsman as well as the complaint procedure can be found on the website.<sup>429</sup> Annual reports contain information on activities, tasks, a list of complaints handled, information concerning matters brought to the Constitutional Court and financial reporting. According to respondents, the ombudsman is very cautious in publishing outcomes of individual investigations – two final reports have been published on the website, one regarding taxi permits and one on the land registry (Kadaster).<sup>430</sup> According to the ombudsman a relatively small number of final reports are published, because most of the complaints are solved midway.<sup>431</sup> As mentioned earlier the public can obtain a copy of an anonymised report upon request.

Information on the website regarding the complaint procedure is clear, although maybe not that accessible for those members of society without a certain education. Names and pictures of the complaint officers can also be found on the website.

Over the initial years of the new office, workshops were held for professionals in the civil service; several visits abroad were made by the ombudsman, the staff and the secretary general to learn from the experiences of other ombudsmen; and in 2012 an international conference of ombudsmen (CAROA) was held in St. Maarten to strengthen ties with other ombudsmen in the region.<sup>432</sup> District information sessions were organised in collaboration with community counsels and centres. Sessions with the public were focussed on the role of the ombudsman as a protector and defender of citizens through investigations of propriety.<sup>433</sup>

Contacts with the media as a link to the public was maintained over the years. Press conferences were held on the activities of the ombudsman, i.e. much attention was given to the proceedings in the case filed with the Constitutional Court.<sup>434</sup>

For the year 2014 it is planned to execute a public relations campaign to make the public aware of the institution and its activities.<sup>435</sup>

Several members of St. Maarten society noted that looking at the activities of the ombudsman, information on the tasks of the ombudsman tends to be too “academic”. The public does not make much use of its right to obtain a copy of anonymised reports.<sup>436</sup>

With regard to the personal assets and/or additional functions of the ombudsman, no information is available on the website or in the annual reports.

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<sup>429</sup> [www.ombudsmansxm.com](http://www.ombudsmansxm.com)

<sup>430</sup> Ibid.

<sup>431</sup> Interview conducted by the authors with the Ombudsman, 2014.

<sup>432</sup> *Year Report Ombudsman, 2012.*

<sup>433</sup> *Year Report Ombudsman, 2013.*

<sup>434</sup> Ibid.

<sup>435</sup> Interview conducted by the authors with the Ombudsman, 2014.

<sup>436</sup> Several anonymous interviews conducted by the NIS assessment team, 2014.

The office of the ombudsman is situated in the capital of the country. Despite the fact that this may cause hindrances for people to file a complaint due to the “openness” of the location, this is considered to promote accessibility and transparency.<sup>437</sup>

### **Accountability (law)**

**Score: 50**

TO WHAT EXTENT ARE PROVISIONS IN PLACE TO ENSURE THAT THE OMBUDSMAN HAS TO REPORT AND BE ANSWERABLE FOR ITS ACTIONS?

**In general, there are provisions to ensure that the ombudsman has to report and be answerable for its actions, although the law does not include specifications on the content of the accountability and on the internal complaint procedure.**

According to the country ordinance,<sup>438</sup> the ombudsman is required to make his/her annual report available to Parliament. Also Parliament is authorised to summon the ombudsman to answer questions before Parliament. Nothing is laid down by law on the various aspects of this information, like content and the way it is to be processed by Parliament (debates and time provisions). With regard to financial accountability, the ombudsman is subject to the provisions of the national accountability ordinance.<sup>439</sup>

The ombudsman is also required to make its annual report public and generally available and has to make sure that everyone has access to a copy at the office of the ombudsman.<sup>440</sup>

The ombudsman’s (external) complaint procedure is explained in detail in the country ordinance on the ombudsman.<sup>441</sup> Internal complaint procedures or internal whistleblowing provisions have not been put down in the law.

### **Accountability (practice)**

**Score: 50**

TO WHAT EXTENT DOES THE OMBUDSMAN REPORT AND IS ANSWERABLE FOR ITS ACTIONS IN PRACTICE?

**The ombudsman reports annually, as is required by law. Annual reports and investigation reports have been discussed to a limited extent by Parliament.**

Annual reports have been drawn up from the year 2010, the year in which the institution was established. These reports contain diverse information on the bureau of the ombudsman, cases handled and international visits. The latest annual report (2013) available to date also contains a financial section.<sup>442</sup>

The ombudsman has been invited to Parliament twice, once in 2012 and once in 2013, in both cases to present the annual report. On the last occasion an own-motion investigation was also briefly discussed.

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<sup>437</sup> Interview conducted by the authors with the Ombudsman, 2014.

<sup>438</sup> Country Ordinance Ombudsman, Article 22.

<sup>439</sup> [www.sintmaartengov.org](http://www.sintmaartengov.org).

<sup>440</sup> Country Ordinance Ombudsman, Article 2.

<sup>441</sup> Paragraph 3.

<sup>442</sup> [www.ombudsmansxm.com](http://www.ombudsmansxm.com).

An internal complaint procedure for filing a complaint against the ombudsman has not been implemented so far. Filing a complaint about the ombudsman as the head of office by for instance staff members of the bureau would supposedly be done with the secretary general. What should happen from that point on, as a matter of principle, is subject to discussion among the global ombudsmen community. During the interview with the ombudsman it was suggested that the secretary general would then go to the president of Parliament (Parliament being the body to which the ombudsman is accountable), but that would have serious consequences regarding the independence of the ombudsman.<sup>443</sup>

### **Integrity mechanisms (law)**

**Score: 50**

TO WHAT EXTENT ARE PROVISIONS IN PLACE TO ENSURE THE INTEGRITY OF THE OMBUDSMAN?

**There is no specific code of conduct for the ombudsman or his/her staff, although an oath on ethics is taken upon appointment by staff and the ombudsman.**

The law does not require the ombudsman to have a code of conduct. Staff of the ombudsman are subjected to the LMA and therefore subject to general integrity regulations that apply to all civil servants,<sup>444</sup> includes rules of behaviour, rules on confidentiality and restrictions on side jobs. In addition, internal guidelines have been established by the bureau of the ombudsman,<sup>445</sup> as well as an "integrity declaration", that is to be signed by all staff members upon entering service. The law also prescribes the ombudsman to take an oath on ethics at the time of appointment.<sup>446</sup> The national ordinance on the ombudsman also has a clause on confidentiality.<sup>447</sup>

The ombudsman's staff is the responsibility of the ombudsman only; for any misconduct of a staff member, the ombudsman has the authority to suspend or dismiss that staff member.<sup>448</sup> These rules do not apply by law for the ombudsman in person, as he/she is not subjected to the LMA or seen as a civil servant.

There are no rules on screening the ombudsman upon appointment, but there are rules to prevent conflict of interest by not being allowed to take up certain conflicting activities, without informing Parliament.<sup>449</sup>

The ombudsman is obliged to take an oath or solemnly affirm before the president of Parliament that he/she has not given or promised anything in order to obtain the appointment, has not been and will not be bought, and will abide by the constitution.<sup>450</sup>

### **Integrity mechanisms (practice)**

**Score: 50**

TO WHAT EXTENT IS THE INTEGRITY OF THE OMBUDSMAN ENSURED IN PRACTICE?

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<sup>443</sup> Interview conducted by the authors with the Ombudsman, 2014.

<sup>444</sup> Gedragscode ambtenaren St. Maarten.

<sup>445</sup> Huishoudelijk Reglement Ombudsman.

<sup>446</sup> Country Ordinance Ombudsman, Article 4.

<sup>447</sup> Country Ordinance Ombudsman, Article 24.

<sup>448</sup> Country ordinance Ombudsman, Article 12.

<sup>449</sup> Country Ordinance Ombudsman, Article 4

<sup>450</sup> Ibid.

### **There is some assurance for the ombudsman's office with regard to integrity.**

The ombudsman has not adopted any code of conduct or quality system to ensure integrity in practice. As was pointed out in the interview, activities of the institution (and the ombudsman him/herself) are regulated to a certain extent by law with regard to several different overall integrity items as discussed above. It is the opinion of the ombudsman that it would be very difficult to cross any line concerning integrity taking into account regulations that are in place right now.<sup>451</sup> Should this happen despite all the legal restrictions, there are no provisions in place to sanction misbehaviour of the ombudsman, other than those provided for by the national ordinance on the ombudsman.

Being appointed by Parliament, the most obvious way to sanction misbehaviour would be to bring the complaint to the president of Parliament, which would jeopardise the independence of the ombudsman. The issue of filing complaints against the ombudsman as the head of the institute is – as mentioned before – under discussion on an international level.

As for the staff members of the ombudsman's office, they should know what is in the law, as every civil servant. Staff members are informed of required standards of proper conduct; however, specific training on the issue of integrity has not been executed as yet.

If a staff member violates what is in the law or in any regulations that apply to them, they can be dismissed or removed by the ombudsman.<sup>452</sup> At this point there have been no cases of violation of ethical standards by the ombudsman or her staff.<sup>453</sup>

### **Role**

#### **Investigation**

**Score: 50**

**TO WHAT EXTENT IS THE OMBUDSMAN ACTIVE AND EFFECTIVE IN DEALING WITH COMPLAINTS FROM THE PUBLIC?**

**The ombudsman is active in dealing with complaints, although the effectiveness of these actions cannot be ascertained yet.**

According to the country ordinance,<sup>454</sup> the ombudsman has the legal powers to investigate complaints filed by the public and present proposals to the complainant and the governing body to resolve the problem with them. The ombudsman may also act proactively by initiating investigations of its own volition, if improper conduct is suspected. Exceptions, in which the ombudsman is not authorised to initiate an investigation or investigate a complaint, relate to issues that are part of general government policy, generally binding regulations, and administrative, civil or criminal procedures that are in progress or being decided upon.

To contribute to structural improvements, the ombudsman may make recommendations to governing bodies to take measures. The governing body has to provide a reason for not following up on these recommendations. The law – except for the Penal Code – does not contain sanctions for non-compliance.

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<sup>451</sup> Interview conducted by the authors with the Ombudsman, 2014.

<sup>452</sup> National Ordinance Ombudsman, Article 12.

<sup>453</sup> Interview conducted by the authors with the Ombudsman, 2014.

<sup>454</sup> Paragraph 3.

The ombudsman of St. Maarten may raise cases by means of a written petition before the Constitutional Court pleading the incompatibility of applicable statutory regulations. It is the duty of the court to assess such raised incompatibilities.<sup>455</sup>

To date a total of 108 complaints have been filed. 70 complaints were filed in 2012, of which 20 were closed by the end of 2012. Looking at the total number of complaints filed in 2012 and the number of cases closed, a relatively small number (less than one-third) of cases were solved by the end of 2012. According to the year's report, this was due to the extra time that was put in by the ombudsman to the relations with government/departments on solving issues.

According to the annual report for 2013, 62 new complaints were filed by the ombudsman in that year and 108 complaints files were closed, of which 68 are files from previous years. Forty-nine complaint files were closed after intervention and the solving of the problem. Twenty-one final reports were written, establishing improper behaviour of the government on the basis of investigation.<sup>456</sup>

Although the number of complaints increased, the number of complaints filed and investigated was brought down, because of more efficient work processes and an improved screening procedure for complaints. As a result, there were more referrals and unfounded complaints, enabling the ombudsman's bureau to inform more citizens on certain issues. A total of 174 instances of advice, referrals and/or interventions are registered in the "Bureau's Information Window".<sup>457</sup>

On the ombudsman's own initiative, one investigation was done regarding a government foundation and one procedure containing seven constitutional grievances was executed regarding the role of the ombudsman in relation to the Constitutional Court. One of the grievances was a result of many protests of citizens on a certain issue.

Although the public does seem to know of the services provided by the ombudsman, to inform the public further on the activities of the ombudsman, a proposal for a public relations campaign (training, development of brochures, (social) media, etc.) has been submitted to SONA for funding. According to this proposal this campaign should be realised in the year 2014.<sup>458</sup>

Whether or not recommendations of the ombudsman have actually contributed to structural improvements, it is too soon to say.

### **Promoting good practice**

**Score: 50**

TO WHAT EXTENT IS THE OMBUDSMAN ACTIVE AND EFFECTIVE IN RAISING AWARENESS WITHIN THE GOVERNMENT AND THE PUBLIC ABOUT STANDARDS OF ETHICAL BEHAVIOUR?

**The ombudsman is active in raising awareness; the effectiveness will have to develop within the coming years.**

The ombudsman investigates whether a conduct of a government body or a government entity charged with public authority is in compliance with the established criteria of good governance.<sup>459</sup>

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<sup>455</sup> Constitution, 2010, Chapter 8.

<sup>456</sup> *Annual Report Ombudsman*, 2013.

<sup>457</sup> *Year Report Ombudsman*, 2013.

<sup>458</sup> Interview conducted by the authors with the Ombudsman, 2014.

<sup>459</sup> Constitution, 2010. Article 78.

The legislative, judiciary, government-owned companies and public foundations without public authority are not under the jurisdiction of the ombudsman.

The country ordinance on the ombudsman<sup>460</sup> requires the ombudsman to consult both parties – the public entity and the citizen – involved in investigation. Also, the ombudsman may decide on mediation/direct intervention. As mentioned many conflicts are solved midway as a result of this legal authority.<sup>461</sup>

In practice the ombudsman issues recommendations to the government bodies/entities to restore good government practice. So far public campaigns and campaigns for government officials have mostly been focussing on the tasks and complaint procedure of the ombudsman and to a lesser extent on the conduct of good governance itself or standards of ethical behaviour. Good governance is not specifically mentioned in the campaigning plan for 2014 (see the section above on investigation).

## 8 SUPREME AUDIT INSTITUTION AND PUBLIC SUPERVISORY INSTITUTIONS

### Summary

St. Maarten's supreme audit institution is the General Audit Chamber. It is this body's responsibility to audit, review and investigate the country's revenues and expenditures. This assessment finds that, taking into account the relatively short existence of the General Audit Chamber, its overall performance in the past four years is adequate and its independence and transparency are sound. In general the legal framework regarding the activities of the General Audit Chamber is in place, but the chamber is influenced in a negative way in performing its task to review the financial management of the country due to delays and/or incomplete information of the administrative bodies.

### Structure and Organisation

The General Audit Chamber of St. Maarten (Algemene Rekenkamer St. Maarten – ARSXM) is one of the external<sup>462</sup> supervisory institutions for the St. Maarten administration.

The ARSXM was newly established as a High Council of State in 2010,<sup>463</sup> with the constitutional change. Before 2010 the St. Maarten's administration's auditing was the responsibility of the Court of Audit of the Netherlands Antilles.<sup>464</sup>

The ARSXM is responsible for the review of the financial and material management of the country.<sup>465</sup> It is to perform audits on expenditures and the effectiveness of policies and programmes. In performing its tasks the General Audit Chamber collaborates with Stichting Overheids Accountants Bureau (SOAB), with other supreme audit institutions<sup>466</sup> and with the Cft, which was set

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<sup>460</sup> Country Ordinance Ombudsman, Explanatory Memorandum.

<sup>461</sup> Interview conducted by the authors with the Ombudsman, 2014.

<sup>462</sup> The SOAB is the administration's internal auditor.

<sup>463</sup> Constitution, 2010.

<sup>464</sup> See the website [www.courtofaudit.nl](http://www.courtofaudit.nl).

<sup>465</sup> National Ordinance General Audit Chamber, Article 1.

<sup>466</sup> National Ordinance General Audit Chamber, Article 34.

up in 2008 to prepare the new financial constitution and to perform temporary financial supervision in St. Maarten.<sup>467</sup>

## Assessment

### Capacity

#### **Resources (law and practice)**

**Score: 75**

TO WHAT EXTENT DOES THE AUDIT INSTITUTION HAVE ADEQUATE RESOURCES TO ACHIEVE ITS GOALS IN PRACTICE?

**The ARSXM is responsible for its own budget and personal management and has an adequate resource base to meet its goals in practice, although budgets are at the discretion of Parliament.**

In its first year of existence the ARSXM was additionally funded by SONA through the Institutionele Versterking Bestuurskracht (IVB) programme for its institutional development, such as supplying office equipment, ICT and the website. This funding was also used to conduct its first assessment.<sup>468</sup> Funds were also allocated from the country's budget to cover overhead costs, office lease and utilities, and travel.<sup>469</sup>

The first state budget of St. Maarten was introduced in 2011. The ARSXM, like all High Councils of State, is under the state budget, listed in a separate chapter.<sup>470</sup> However, it does manage its own financial resources once the budget is approved by the legislature.<sup>471</sup>

Within the legal framework for the country, there are no stipulations requiring set increases in financial resources. The audit institution is free to make a budget request in conformity with its plans and activities. To date the institution has requested annual budgets based on its own work program and audit plan,<sup>472</sup> but budgets are at the discretion of the Parliament.

Up to now budgets have been sufficient and stable<sup>473</sup>. In the case of (perceived) insufficient financial resources the ARSXM can apply to the legislature directly. According to the national ordinance on accountability,<sup>474</sup> in drawing up the budget, the minister of finance shall take into account the estimate of the expenditure required in the following year for the General Audit Chamber, as sent to Parliament by the chair.

As far as staff are concerned, from out of the projected total – in accordance with the functional organisational decree – of eight FTE positions, in 2014 five FTE positions were filled. In addition, the General Audit Chamber is authorised to use external experts,<sup>475</sup> on the basis of which two professionals were contracted on an “on demand” basis for audit work.

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<sup>467</sup> Kingdom Act Financial Supervision Curaçao and St. Maarten/Rijkswet financieel toezicht Curaçao en St. Maarten.

<sup>468</sup> Interviews conducted by the authors with interviewees from the supreme audit institution, 2014.

<sup>469</sup> Ibid.

<sup>470</sup> National Ordinance Accountability, Article 11.

<sup>471</sup> National Ordinance General Audit Chamber, Article 49.

<sup>472</sup> Interviews conducted by the authors with interviewees from the supreme audit institution, 2014.

<sup>473</sup> Ibid.

<sup>474</sup> Article 35.

<sup>475</sup> National Ordinance General Audit Chamber, Article 37.

The General Audit Chamber can fill positions at its own discretion and for now a combination of full-time and “on demand”-based expertise is probably the best solution for the institution; it has been very difficult to find audit professionals in St. Maarten or abroad, as local salary scales are not on par with for instance European counterparts.<sup>476</sup> Although human resources are sufficient at the moment, there could be a risk of needing to hire interim expertise regarding the budget.

## **Independence (law)**

**Score: 75**

TO WHAT EXTENT IS A FORMAL OPERATIONAL INDEPENDENCE OF THE AUDIT INSTITUTION IN PLACE?

**The main legal provisions to ensure the independence of the ARSXM are in place. But some regulations, such as on political activities, could be more specific.**

The ARSXM is anchored in the Constitution of St. Maarten.<sup>477</sup> Its independence is supported by several measures in legislation with regard to its structure (appointment of members and regulations regarding staff), tasks and powers.<sup>478</sup>

All three members and deputy members (maximum of three) of the ARSXM are appointed by national decree on a binding recommendation of the legislature. Parliament recommends two candidates for the position of chair and each member vacancy is based on a list of three persons drawn up by the ARSXM by a majority of votes cast. Parliament will nominate two candidates on this list to the governor.<sup>479</sup>

The law does not mention any required professional skills for (deputy) members of the board to be appointed, but the board itself has developed a profile for their board members and a composition for the membership.<sup>480</sup> Tenure of (deputy) members is fixed by law at seven years, but they can be re-elected.<sup>481</sup> There is no mention of a maximum number of periods for re-election, only of a maximum age of 70.<sup>482</sup>

Suspension of (deputy) members is stipulated in the law and done by the Court of Justice. Criteria for dismissal are also set in the law, such as attaining the age of 70, being convicted of an offence, going bankrupt, losing a residency permit or being dismissed on the proposal of members of the ARSXM.<sup>483</sup> The prohibition of being a member of a political party is not – as in all the countries of the Kingdom – stipulated by law.

To safeguard the independence of the (deputy) members, restrictions are drawn up with regard to engaging in other professions. Legal provisions refer to an incompatibility with other public offices associated with fixed remuneration, allowance or attendance fees charged to the country and to being related by blood to mutual members.<sup>484</sup> Restrictions for the (deputy) members regarding political activities are mentioned in the legal framework of the ARSXM, as far as the position of a minister or member of Parliament is concerned, as these are public positions with remuneration

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<sup>476</sup> Interviews conducted by the authors with interviewees from the supreme audit institution, 2014.

<sup>477</sup> Article 74.

<sup>478</sup> National Ordinance General Audit Chamber.

<sup>479</sup> Constitution, 2010. Article 75; National Ordinance General Audit Chamber, Article 2.

<sup>480</sup> *Functieprofiel Voorzitter, leden en plaatsvervangende leden van de Algemene Rekenkamer*, provided to Transparency International but not published.

<sup>481</sup> Constitution, 2010. Article 75.

<sup>482</sup> National Ordinance General Audit Chamber, Article 9.

<sup>483</sup> National Ordinance General Audit Chamber, Articles 6 and 9.

<sup>484</sup> National Ordinance General Audit Chamber, Articles 5 and 6.

charged to the country. In addition, the legal framework of the executive and the legislature refers to incompatibility regarding positions in those entities and the board of the ARSXM.<sup>485</sup>

As head of the office, a secretary general is to be appointed on the proposal of the General Audit Chamber and by national decree.<sup>486</sup>

The ARSXM tasks and type of auditing are stipulated by law, but it can carry out its audits in accordance with a self-determined programme and methods.<sup>487</sup> To execute its investigations the ARSXM is authorised to demand information and all ministries and others subject to auditing are required to give it information, in the manner it indicates.<sup>488</sup> It may undertake investigations, either on its own initiative or on a request from the legislature, into the administrative integrity of political and civil service employees in the exercise of their duties and powers.<sup>489</sup>

The process of consultations with those under review is outlined in the audit protocol of the General Audit Chamber.<sup>490</sup> The first phase is a review to ensure that fact and findings are correct and this is conducted with the operational body of the entity under review (ambtelijk hoor en wederhoor). The second phase is a review of the final draft, which includes opinions and recommendations and is conducted with the administrative or political executive (Bestuurlijk hoor en wederhoor). The latter is an integral part of the final report.

In St. Maarten's legal framework immunity is not granted to appointed positions or civil servants. Hence immunity does not apply to the (deputy) members, or to the secretary general or staff of the General Audit Chamber.

### **Independence (practice)**

**Score: 75**

TO WHAT EXTENT IS THE AUDIT INSTITUTION FREE FROM EXTERNAL INTERFERENCE IN THE PERFORMANCE OF ITS WORK IN PRACTICE?

**The ARSXM operates free from external interference.**

In practice, the ARSXM is an independent institution with its own budget and is authorised to carry out three types of audits. Except for those, mostly regulatory, audits stipulated by law,<sup>491</sup> the institution is free to review topics and entities based on its own programme. In addition, the ARSXM operates in a professional and non-partisan manner and no examples of government or other actors influencing the operation and auditing of the ARSXM have occurred in the past four years.<sup>492</sup>

According to respondents the audit protocol has been followed in all cases to date. In one case, however, the government did not provide a response to the Baseline Integrity Study despite being provided additional time. This was mentioned in the report.<sup>493</sup> As a reason for this, the interviewee mentioned the fact that the process and existence of an active audit institution are new phenomena

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<sup>485</sup> Constitution, 2010. Articles 34 and 51.

<sup>486</sup> Constitution, 2010. Article 4.

<sup>487</sup> Constitution, 2010. Article 23.

<sup>488</sup> Constitution, 2010. Articles 22 and 26.

<sup>489</sup> Constitution, 2010. Article 33.

<sup>490</sup> General Audit Chamber, *Audit protocol*.

<sup>491</sup> For example, the review of financial statements of the country.

<sup>492</sup> Interviews conducted by the authors with interviewees from the supreme audit institution, 2014.

<sup>493</sup> Ibid.

and that such situations are not unusual. Moreover, there is no requirement for the executive to respond.<sup>494</sup>

The first board of the ARSXM was appointed in 2010 for two years. The current board was appointed for seven years (in August 2012). The chair of the first board resigned in order to take up a position in government (minister of finance) prior to the end of the first term of the board. Board members are part-time members; they meet at a minimum of twice a month and receive a nominal stipend for their service as opposed to full salaries, thus freeing funding for the ARSXM's core business.<sup>495</sup>

According to respondents, as yet no member of staff has been removed from their position. Shifts of staff have been the result of staff turnover.<sup>496</sup>

## **Governance**

### **Transparency (law)**

#### **Score: 50**

TO WHAT EXTENT ARE PROVISIONS IN PLACE TO ENSURE THAT THE PUBLIC CAN OBTAIN RELEVANT INFORMATION ON THE ACTIVITIES OF AND DECISIONS MADE BY THE AUDIT INSTITUTION?

**Some legal provisions exist, but not all aspects related to transparency are covered.**

The ARSXM must prepare an annual report of its own organisation. Regarding the contents and level of detail of its annual report there are no legal requirements. According to the national ordinance on the General Audit Chamber,<sup>497</sup> this report must, besides the required contents, also provide information on findings from audits that may be useful to Parliament. Audit reports based on the findings of the chamber's investigations are also required. These investigation reports contain information on government financial management, annual financial reports and administrative integrity, and research carried out upon the request of Parliament.<sup>498</sup> Two types of investigation reports can be distinguished: regulatory and performance audits.

Apart from the annual report, which has a deadline of 1 July each year,<sup>499</sup> there are time limitations for the presentation of the report on the financial statements of the country. Other reports are not subject to legislative term limits, through the ARSXM maintains schedules based on its annual audit plans.

The ARSXM is required to submit all (final) reports to the legislature. These reports are deemed publicly available by the ARSXM the moment they are offered to the legislature.<sup>500</sup> In addition, the ARSXM must inform the legislature in case of an objection regarding the followed financial policy, after the minister has been notified beforehand and proven unable to rectify the objection.<sup>501</sup> However, the law does not require the ARSXM reports to be debated by the legislature, with the exception of the financial statements of the country. In accordance with the national ordinance on

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<sup>494</sup> Interviews conducted by the authors with interviewees from the supreme audit institution, 2014.

<sup>495</sup> Ibid.

<sup>496</sup> Ibid.

<sup>497</sup> Article 38

<sup>498</sup> National Ordinance General Audit Chamber, Articles 23, 32 and 33.

<sup>499</sup> National Ordinance General Audit Chamber, Article 38.

<sup>500</sup> National Ordinance General Audit Chamber, Article 48.

<sup>501</sup> National Ordinance General Audit Chamber, Article 28.

government accounting,<sup>502</sup> Parliament cannot approve these financial statements unless it has been allowed to examine the report of the ARSXM.

As mentioned in the section on independence (practice), the audit protocol notes that the review of the final draft includes opinions and recommendations of and is conducted with the administrative or political executive. The latter is an integral part of the final report to ensure transparency in the audit process.

### **Transparency (practice)**

**Score: 75**

TO WHAT EXTENT IS TRANSPARENCY MET IN THE ACTIVITIES AND DECISIONS OF THE AUDIT INSTITUTION IN PRACTICE?

**All relevant reports and documents can be found on the ARSXM's website, including the ARSXM annual report for 2013.**

Reports by the ARSXM are sent to Parliament and published on the website.<sup>503</sup> No documents sent to the executive could be found on the website. There is no legal requirement to make all documents public. In fact, confidentiality is required for information that is not used for reports.<sup>504</sup>

The ARSXM website<sup>505</sup> is up to date and gives full insight into publications and documents: audit reports, including financial and regulatory compliance, performance audits and an integrity audit, as well as annual reports of the ARSXM, are available on the website in both Dutch and English.

Relevant information on government budgets (something not mentioned on the government's own website) and legislation, and on the ARSXM's own budget, can also be found on the website. Furthermore the website reveals information on the organisation and functioning – except for the auditing method – and activities of the ARSXM.

In addition to the given information on the website, the public can obtain information through the media: press releases (also published on the website) and radio/television.<sup>506</sup>

The ARSXM annual report for 2013 has been published on its website (July 2014) and contains financial and operational information.<sup>507</sup> Some audits contain financial and regulatory compliance elements as well as performance audit elements (i.e. reports on financial statements are not simply financial in nature).<sup>508</sup>

### **Accountability (law)**

**Score: 75**

TO WHAT EXTENT ARE PROVISIONS IN PLACE TO ENSURE THAT THE AUDIT INSTITUTION HAS TO REPORT AND BE ANSWERABLE FOR ITS ACTIONS?

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<sup>502</sup> Article 54.

<sup>503</sup> [www.arsxm.org](http://www.arsxm.org)

<sup>504</sup> National Ordinance General Audit Chamber, Article 47.

<sup>505</sup> [www.arsxm.org](http://www.arsxm.org).

<sup>506</sup> Interviews conducted by the authors with interviewees from the supreme audit institution, 2014.

<sup>507</sup> Annual Accounts, 2012.

<sup>508</sup> Interviews conducted by the authors with interviewees from the supreme audit institution, 2014.

**Several legal provisions are in place to ensure that the ARSXM is answerable for its actions; however, there are no provisions to allow appeal against final opinions of the ARSXM and SOAB.**

The ARSXM is required by law to report on its activities to the governor and Parliament by means of an annual report. As noted above, the deadline for submission of the annual report to the legislature is 1 July.<sup>509</sup>

Except for required additional information on investigations that might be of use for the Parliament's deliberation of the policy it has pursued,<sup>510</sup> no legal requirements are set on the content of these annual reports. The national ordinance on promoting integrity for ministers<sup>511</sup> does allow the ARSXM to report on other advisory activities besides auditing – those relating to proper performance of the office of the minister or to the preservation of its impartiality.

The ARSXM is required to provide the ministers concerned with information permitted by the nature of its work.<sup>512</sup> In auditing the administrative bodies the adversarial principle is to be applied.<sup>513</sup>

On the auditing of ARSXM's own financial management, no requirement in the legislation was found. The budget of the General Audit Chamber, as part of the country budget, is subject to the internal audit by the SOAB.<sup>514</sup>

There are no legal provisions to allow appeal against final opinions of the ARSXM and SOAB.

#### **Accountability (practice)**

**Score: 100**

TO WHAT EXTENT DOES THE AUDIT INSTITUTION REPORT AND IS ANSWERABLE FOR ITS ACTIONS IN PRACTICE?

**In general, existing provisions to ensure the ARSXM's accountability are applied by the ARSXM.**

In practice, the ARSXM sends its annual reports to the governor and Parliament as required. The annual reports contain – although not specifically stipulated by law – financial reporting for the respective year, as well as information on operations and – where applicable – advisory activities.<sup>515</sup> Also, the critical findings of audit activities are included in the report.

The annual reports of all operational years of the ARSXM are published on the website, including the report for the year 2013 (as of July 2014).

As noted before, the ARSXM maintains an audit protocol that outlines its methodology.<sup>516</sup> Entities under review are notified at the start of an audit and informed of the process as well as the planning.

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<sup>509</sup> National Ordinance General Audit Chamber, Article 38.

<sup>510</sup> National Ordinance General Audit Chamber, Article 39.

<sup>511</sup> National Ordinance General Audit Chamber, Article 3.

<sup>512</sup> National Ordinance General Audit Chamber, Article 39.

<sup>513</sup> National Ordinance General Audit Chamber, Articles 28 and 29.

<sup>514</sup> National Financial Accounting Ordinance, Articles 52 to 54.

<sup>515</sup> See annual reports.

<sup>516</sup> General Audit Chamber, *Audit Protocol*.

There are two phases of consultation (adversarial) to ensure that the findings are checked and that the executive can react to opinions and recommendations.<sup>517</sup>

Although there is no legal requirement for Parliament to debate annual reports of the ARSXM, Parliament did invite the General Audit Chamber once, in February 2014, to provide a report of its 2013 activities as well as its plans for 2014. During this visit, the ARSXM took the opportunity to report on a number of topics from inception to date. A public meeting was held to discuss the content.<sup>518</sup>

In the 2013 annual report the ARSXM stated its concern that Parliament has not debated audit reports.<sup>519</sup> In practice, the ARSXM audit results are not challenged by relevant agencies.

### **Integrity mechanisms (law)**

**Score: 75**

#### **TO WHAT EXTENT ARE MECHANISMS IN PLACE TO ENSURE THE INTEGRITY OF THE AUDIT INSTITUTION?**

There are several general provisions in place for the ARSXM to ensure its integrity; in addition, specific integrity rules apply to the members and professional staff.

Several legal provisions are in place to ensure the integrity of the ARSXM. These provisions mainly relate to rules on accepting gifts; on fairness, care and impartiality,<sup>520</sup> on conflict of interest, tendering and additional functions/independence; and on confidential information, reimbursement, international travel and use of ARSXM facilities.<sup>521</sup> The provisions apply to the (deputy) members of the ARSXM. (Deputy) members and the secretary general take an oath regarding their rules. This occurs before the governor and in advance of accepting their appointment.

In addition, the (adjunct) members of the ARSXM are subject to Rules of Order.<sup>522</sup> The ordinance also provides for rules for the (deputy) members and secretary general not to be present during deliberations and the decision-making process in cases of blood or marriage relationship.<sup>523</sup>

The adopted Code of Conduct, which is published on the website,<sup>524</sup> also stipulates that donations received by board members in respect of their function be reported to the secretary general of the ARSXM for registration and that such donations become the property of the ARSXM. Only donations of a limited (financial) value are allowed to be retained, although no definition of "limited" has been found. Respondents noted that presently, the amount considered limited is equal to that maintained in the Substantive Law for Civil Servants (LMA),<sup>525</sup> i.e. ANG100/US\$55.55.<sup>526</sup>

With regard to post-employment restrictions there is nothing mentioned in the Code of Conduct.

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<sup>517</sup> Interviews conducted by the authors with interviewees from the supreme audit institution, 2014.

<sup>518</sup> Ibid.

<sup>519</sup> Ibid.

<sup>520</sup> National Ordinance General Audit Chamber, Article 7.

<sup>521</sup> General Audit Chamber, *Code of Conduct*.

<sup>522</sup> National Ordinance General Audit Chamber, Article 14.

<sup>523</sup> National Ordinance General Audit Chamber, Article 7.

<sup>524</sup> www.arsxm.org.

<sup>525</sup> Chapter VII, paragraph 5.

<sup>526</sup> Interviews conducted by the authors with interviewees from the supreme audit institution, 2014.

Regarding provisions, the code and the ordinance pertain to the (adjunct) members of the ARSXM. Both the chairman and the secretary general are subject (by law)<sup>527</sup> to a so-called A-screening (highest degree) by the security services of the country, as both are authorised to audit the confidential expenditures of the country's agencies. This screening is to be repeated every three years.

For staff members of the ARSXM, rules on integrity as set in the LMA<sup>528</sup> apply as for all staff members in government. These rules have not yet been declared applicable to the secretary general. Staff members, being accountants as well, are bound to their own specific professional rules. They have to present a good conduct certificate (usually called a VOG) upon employment. Furthermore, personnel employed by the ARSXM under civil law employment contracts have to take an oath, either a declaration or a solemn affirmation before the chair of the chamber.<sup>529</sup>

### **Integrity mechanisms (practice)**

**Score: 75**

TO WHAT EXTENT IS THE INTEGRITY OF THE AUDIT INSTITUTION ENSURED IN PRACTICE?

**In general, integrity rules are enforced for (deputy) members and staff of the ARSXM and awareness of integrity issues exists.**

Within the ARSXM there seems to be adequate awareness of integrity issues. The above mentioned regulations on integrity are followed.<sup>530</sup> According to respondents, the integrity declaration is signed by staff not only upon employment but also when leaving the ARSXM.<sup>531</sup> However, as the position of secretary general is officially not regarded as being a staff member/civil servant, neither general rules on integrity as set in the LMA nor the Code of Conduct apply to the position of secretary general. However, in practice the secretary general is held to the stipulations of the code. In 2013 both the chair and the secretary general passed the screening and as a result were authorised as from 2013 to audit confidentially expenditures.<sup>532</sup>

In the four years of existence of the ARSXM, no violations of ethical standards have been reported. Before the chair of the initial board of the ARSXM took the oath to become a member of the executive in 2012, he resigned from the board on the basis of incompatibility of functions, as is stipulated in the law.<sup>533</sup>

The ARSXM considers integrity one of the essential prerequisites for good governance. As a result, a baseline study on the subject has been executed by the ARSXM for several institutions, like Parliament, the executive, ministries, the police force, the High Councils of State, and the ARSXM itself. This baseline study provides an overview of legislation related to integrity management and notes to what extent these regulations actually are enforced in practice. The ARSXM recommends improvement of integrity within its own organisation and the development of a more comprehensive code of conduct that would also apply for the position of the secretary general.<sup>534</sup>

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<sup>527</sup> National Ordinance for Confidential Functions and Execution of Security Screenings, paragraph 4.

<sup>528</sup> National Ordinance Substantive Civil Servant Law/*Landsverordening Materieel Ambtenarenrecht*.

<sup>529</sup> National Ordinance General Audit Chamber, Article 19.

<sup>530</sup> Ibid.

<sup>531</sup> Ibid.

<sup>532</sup> Regulatory Audit 2012: financial statement 2012, [www.arsxm.org](http://www.arsxm.org).

<sup>533</sup> [www.sintmaartengov.org/press2012](http://www.sintmaartengov.org/press2012).

<sup>534</sup> General Audit Chamber, 2014.

Respondents noted that integrity is part of the training programme for staff members.<sup>535</sup>

## **Role**

### **Effective financial audits (law and practice)**

**Score: 50**

TO WHAT EXTENT DOES THE AUDIT INSTITUTION PROVIDE EFFECTIVE AUDITS OF PUBLIC EXPENDITURE?

**The effectiveness of the ARSXM audits of public expenditures is hampered by delays and incomplete information of the entities under review; for example, expenditures of public-owned companies and public foundations have not been reviewed as yet.**

The law requires the ARSXM to perform a review of the annual account of government based on reports by ministers and the budget management by Parliament (regulatory audits), and to assess the efficiency and effectiveness of the operations of public institutions (performance audits).<sup>536</sup> In order to be able to perform its duties the ARSXM is dependent on the information that is provided by the executive and by Parliament, as is required by law.<sup>537</sup>

Although respondents were positive with regard to the cooperation with entities under review, the timeliness and completeness of information are not always optimal. Nevertheless, the ARSXM eventually was able to complete the audits. Although the ARSXM, as well as the SOAB, have the authority<sup>538</sup> to audit the finances of public-owned companies and public foundations, these audits have not been conducted as yet, due to lack of information.<sup>539</sup>

The conduct of performance audits is challenged due to the absence of, amongst other things, policy-based budgeting. However, the ARSXM has reviewed subtopics on performance in its audit of the financial statements for the last two years. These reports include comparisons with previous years in order to measure improvement and progress. An example of a performance audit is the audit of the optimisation of tax revenues, which was completed in 2014.<sup>540</sup>

Respondents noted that in the last three years Parliament has not debated on reports that were presented by the ARSXM or called ministers to account.<sup>541</sup> However, the ARSXM has noted that the civil service has made progress in executing recommendations or making improvements based on the reports of the ARSXM. These improvements are said to be reported in the yearly financial statements by the ARSXM.<sup>542</sup> Improvements concern, for example, the financial management of the Security Service St. Maarten (VDSM) and include the debts of the Social Health Insurance Fund (SZV) in the 2013 financial statement.<sup>543</sup>

In performing its tasks the ARSXM may make use of other (internal) auditors.<sup>544</sup> The ARSXM can use the results of the internal audits of Stichting Overheids Accountantsbureau (SOAB).

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<sup>535</sup> Interviews conducted by the authors with interviewees from the supreme audit institution, 2014.

<sup>536</sup> National Ordinance General Audit Chamber, Chapters 3 and 4.

<sup>537</sup> National Ordinance General Audit Chamber, Article 26.

<sup>538</sup> National Ordinance General Audit Chamber, Article 20

<sup>539</sup> Interviews conducted by the authors with interviewees from the supreme audit institution, 2014.

<sup>540</sup> Ibid.

<sup>541</sup> Ibid.

<sup>542</sup> Ibid.

<sup>543</sup> Compliance audit 2013: financial statements St. Maarten. [www.arsxm.org](http://www.arsxm.org)

<sup>544</sup> National Ordinance General Audit Chamber, Art. 25.

Collaboration between the ARSXM and the SOAB is considered to be good, although they too experience backlogs resulting from the constitutional transition.<sup>545</sup>

In practice financial compliance is the priority of the ARSXM. However, in 2014 it launched its first report on an investigation on its own initiative: the Baseline Study on Integrity Management (see the section on integrity mechanisms in practice). The organisation has also completed and published a performance audit on the tax revenue policy of government and audited the Pension Fund for 2011 and 2012.<sup>546</sup>

### **Detecting and sanctioning misbehaviour (law and practice)**

**Score: 25**

DOES THE AUDIT INSTITUTION DETECT AND INVESTIGATE MISBEHAVIOUR OF PUBLIC OFFICEHOLDERS?

**The ARSXM has not yet investigated misbehaviour of public officeholders, although it has the power to do so.**

According to the national ordinance on the General Audit Chamber,<sup>547</sup> the ARSXM is authorised to undertake investigations into the administrative integrity of political and civil service employees (for these purposes political employees refer to political “managers”).<sup>548</sup>

In addition the secretary general of the ARSXM is authorised, insofar as it is considered necessary for the performance of her/his duties, to demand information in relation to payments that might be subject to obligations of confidentiality.<sup>549</sup>

In practice, the ARSXM has not done any investigation into the misbehaviour of public officeholders. According to the ARSXM this is due to the fact that the definition of misbehaviour is not always clear (indeed the law does not specify its definition) and there are other agencies specifically tasked with this type of investigation. Moreover, the ARSXM has not found, during its audits in the four years since its inception, any misbehaviour that would warrant such investigation.<sup>550</sup>

Based on the national Ordinance General Audit Chamber,<sup>551</sup> the ARSXM confidentiality can be renounced during the conduct of an audit, if it finds information that raises suspicion of a criminal act. According to respondents, to date no such instance has occurred.<sup>552</sup>

### **Improving financial management (law and practice)**

**Score: 50**

TO WHAT EXTENT IS THE AUDIT INSTITUTION EFFECTIVE IN IMPROVING THE FINANCIAL MANAGEMENT OF GOVERNMENT?

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<sup>545</sup> Interviews conducted by the authors with interviewees from the supreme audit institution, 2014; and interviews conducted by the authors with interviewees from SOAB, 2014.

<sup>546</sup> [www.arsxm.org](http://www.arsxm.org)

<sup>547</sup> Article 33.

<sup>548</sup> National Ordinance General Audit Chamber, Article 38, Explanatory Memorandum.

<sup>549</sup> National Ordinance General Audit Chamber, Article 44

<sup>550</sup> Interviews conducted by the authors with interviewees from the supreme audit institution, 2014.

<sup>551</sup> Article 47.

<sup>552</sup> Interviews conducted by the authors with interviewees from the supreme audit institution, 2014.

**The ARSXM, SOAB and Cft can and make recommendations in their reports on how to improve financial management. The effectiveness of the recommendations of the ARSXM and SOAB, however, is limited due to insufficient follow-up.**

Although the ARSXM is authorised to advise public bodies unsolicited, nothing could be found in the law specifically on the provision of recommendations in general or financial management. Also, Parliament is not required by law to give any follow-up on these recommendations by implementing them. However, the ARSXM has included recommendations in its audit reports with regard to the country's financial management; they are provided as part of the report related to the audit of financial statements. In the report on the 2013 financial statements, the ARSXM reports on the progress of follow-up on the recommendations made in the previous report.<sup>553</sup>

In 2014, the SOAB initiated an audit on personnel, which was partly a result of a review on personnel expenditures executed by the ARSXM in 2012.<sup>554</sup> The SOAB, in carrying out its internal audits, may – in consultation with the ARSXM – use information from the ARSXM.<sup>555</sup>

According to the rules in the Kingdom Law on Financial Supervision for Curaçao and St. Maarten, the administrative bodies will report to the Cft (see Structure and Organisation) “concerning the performance of the implementation plans to improve financial management”.<sup>556</sup> Since 2010 the supervision of the Cft has led to an “instruction” once, in 2011, issued by the Kingdom Council of Ministers. This barred intended loans and new investments, and placed a hiring freeze on the civil service. In 2013 the Cft advised the Kingdom Council to again dictate an instruction, because the administrative bodies did not follow up on the recommendations with regard to the financial management of the country; this advice did not lead to an actual instruction.<sup>557</sup>

## 9 ANTI-CORRUPTION AGENCIES

Total score: 0

Transparency International in its NIS uses the following definition for anti-corruption agencies: “A specialised, statutory and independent public body of a durable nature, with a specific mission to fight corruption and reduce the opportunity structures propitious for its occurrence in society, through preventive and/or repressive measures”.<sup>558</sup>

These agencies should fight corruption by engaging in preventive and educational activities and in investigation into alleged corruption.<sup>559</sup> According to this definition, St. Maarten does not have an anti-corruption agency.

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<sup>553</sup> Financial statements 2013.

<sup>554</sup> Ibid.

<sup>555</sup> National Ordinance SOAB/*Landsverordening aanwijzing SOAB tot interne accountant overheid*, Article 5.

<sup>556</sup> Kingdom Law on Financial Supervision for Curaçao and Sint Maarten, Article 19.

<sup>557</sup> Advice Cft 2013; *The Daily Herald*, 17 October 2013.

<sup>558</sup> [www.transparency.org](http://www.transparency.org)

<sup>559</sup> [www.transparency.org/methodology/toolkit](http://www.transparency.org/methodology/toolkit)

## 10 POLITICAL PARTIES

### Summary

St. Maarten's legal framework provides for the free establishment and operation of political parties and safeguards against unwarranted state interference in the activities of political parties. Effective political competition as a result of fair funding does not seem to exist and was regulated in practice for the first time for the 2014 elections. Political parties lack transparency in their accounting and internal procedures and are limited in their ability to represent social interests.

### Structure and Organisation

In St. Maarten Parliament elections are structured along the lines of political groups whose candidates run for important positions in the country, although there is no legal relation between political parties and Parliament. According to the constitution, these political groups, being associations, have a right to exist.<sup>560</sup> Although members of Parliament are considered to be part of a political party and are to be chosen that way, in practice people often choose a candidate on personal qualifications and members are known to leave their party to become independent members of Parliament.

St. Maarten has a history of one party dominating the political landscape for decades. In 1991 a coalition was formed for the first time. The oldest party, the Democratic Party (DP), is 60 years old and the youngest, the United St. Maarten's Party (USP) was established in 2014. The National Alliance (NA) has taken part in the elections from the 1980s and the United Party (UP) took part in the 2010 elections for the first time.

In the last four years St. Maarten had two elections and four coalitions in which ruling and opposition parties (three in total) "interchanged" seats every election. At the moment this landscape is subject to change. During the run-up to the 2014 elections, eight political parties registered, of which five are new. One new party obtained enough votes in the elections to join a coalition.

Directly after the election, results were announced in August 2014 and a new coalition was formed by the NA, the DP and the USP. This fell apart a few weeks later, even before suggesting any minister. The present cabinet, Gumbs, is formed by the UP party and two independent members.

### Assessment

#### **Capacity**

#### **Resources (law)**

**Score: 75**

TO WHAT EXTENT DOES THE LEGAL FRAMEWORK PROVIDE AN ENVIRONMENT CONDUCIVE TO THE INFORMATION AND OPERATIONS OF POLITICAL PARTIES?

**The legal framework does not restrict the establishment or operation of political parties, other than requirements regarding an electoral threshold. Financial support of the state is not allowed.**

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<sup>560</sup> Constitution, 2010. Article 12.

Political parties are not specifically mentioned in the constitution, other than through the recognition of the right of association. This right can only be restricted if in the interest of public order.<sup>561</sup> In December 2010 new legislation on the formation and operations of political parties was established.<sup>562</sup> A political party must be established as an association by notarial deed, in which the articles of association must be included. A request for registration is required to be sent to the Electoral Council at least six weeks before the elections. The council will review the application and will decide upon registration within three weeks. If a registration is found not to comply with the regulations, the Electoral Council will grant one additional week for the party to comply with the rules before making a final decision.<sup>563</sup>

The list of candidates is submitted to the Electoral Council by the political party representative. The list needs to be supported by a number of voters equal to 1 per cent of the stemcijfer (total vote) determined by the Central Electoral Committee at the previous elections. Voters can support the list by signing it at the Civil Registry. An amount of ANG2,000 is required to be deposited with the receiver's office, and a receipt of this is to be attached to the candidate list submitted.<sup>564</sup> This requirement is not applicable to political parties that won one or more seats during the previous elections.<sup>565</sup>

Decisions of the Electoral Council with regard to registration can be appealed before the court of first instance within six days of official publication. The decision of the court is binding.<sup>566</sup>

Political parties are not very restricted by law, apart from the above mentioned requirements and requirements for associations as laid down in the Civil Code.<sup>567</sup> No minimum number of founders is required to set up a political party and no legal restrictions exist with regard to party ideology.

The state does not subsidise political parties or candidates, and private donations are allowed. Moreover, political parties and their candidates may not accept gifts from organisations in which the government is a stakeholder or from organisations that receive government subsidies.<sup>568</sup> Private donations are restricted to a maximum amount of ANG30,000/US\$16,670 for a political party or ANG20,000/US\$11,110 for a single candidate per year, with a total amount of ANG50,000/US\$27,780 for a political party and its candidates. Gifts in cash may not exceed ANG5,000/US\$2,780.<sup>569</sup>

### **Resources (practice)**

**Score: 25**

**TO WHAT EXTENT DO THE FINANCIAL RESOURCES AVAILABLE TO POLITICAL PARTIES ALLOW FOR EFFECTIVE POLITICAL COMPETITION?**

**Information on financial resources available to political parties is not known and therefore it could not be determined how they allow for effective political competition.**

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<sup>561</sup> Constitution, 2010. Article 12.

<sup>562</sup> National Ordinance on Registration and Finances of Political Parties.

<sup>563</sup> National Ordinance on Registration and Finances of Political Parties, Articles 15 to 19.

<sup>564</sup> Election Ordinance, Article 26.

<sup>565</sup> Election Ordinance, Article 23.

<sup>566</sup> National Ordinance on Registration and Finances of Political Parties, Article 25.

<sup>567</sup> Civil Code, Book 2, Articles 51 and 57.

<sup>568</sup> National Ordinance on Registration and Finances of Political Parties, Article 35.

<sup>569</sup> National Ordinance on Registration and Finances of Political Parties, Articles 37 to 41.

St. Maarten's political parties are dependent on private funding as they do not receive any subsidies from government. In practice funding comes mostly from direct sponsorship of big businesses. Although some of the parties do impose membership fees, this is not actually followed up by members of the party.<sup>570</sup>

According to respondents, donors are more loyal to political party leaders or certain members than to a party itself. This phenomenon is also applicable to voting behaviour, as will be discussed in the coming paragraphs. This might threaten stability in financial resourcing, as if a member should leave the party the risk of losing a donor is always present. As funding is very much dependent on the social and business networks of members, financial situations of parties are noted to be different (several interviews, political parties, 2014). However, this could not be verified because information on these financial situations was not available.

During campaigning all parties have access to airtime access. The allocated time is arbitrary and sometimes depends on how much is paid for it (several interviews, political parties, 2014).

As a result of the small scale of St. Maarten's society, it is likely that the variety in local financial sources is limited. To what extent donations for political parties are received from outside the country could not be assessed. With the new electoral law in place, information on financial resources should be available in the near future.

### **Independence (law)**

**Score: 75**

TO WHAT EXTENT ARE LEGAL SAFEGUARDS IN PLACE TO PREVENT UNWARRANTED EXTERNAL INTERFERENCE IN THE ACTIVITIES OF POLITICAL PARTIES?

**There are several legal safeguards to prevent unwarranted external interference in the activities of political parties, although there are some loopholes as regards party funding.**

No specific legislation regarding state monitoring of political parties exists, and state authorities do not have the power to ban a political party. Nor are there any regulations allowing for mandatory state attendance of political meetings. However, the minister of justice has the power by general provisions, if necessary in the interest of the public order, to access meetings or demonstrations open to the public.<sup>571</sup>

It is set by law that political parties are monitored in their financial operations by the Electoral Council, which, as mentioned in the previous chapter, operates independently from the legislature and executive.<sup>572</sup> Restrictions in party funding (see also resources, law) are clearly defined in the law. However, penalties for not abiding by these rules are limited to refunding of exceeded amounts.<sup>573</sup>

### **Independence (practice)**

**Score: 50**

TO WHAT EXTENT ARE POLITICAL PARTIES FREE FROM UNWARRANTED EXTERNAL INTERFERENCE IN THEIR ACTIVITIES IN PRACTICE?

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<sup>570</sup> Several interviews conducted by the authors with interviewees from political parties, St. Maarten, 2014.

<sup>571</sup> National Ordinance Public Manifestations, Article 11.

<sup>572</sup> National Ordinance on Registration and Finances of Political Parties, Articles 3 and 43.

<sup>573</sup> National Ordinance on Registration and Finances of Political Parties, Articles 41 and 42.

**Political parties generally appear to be free from unwarranted external influence in practice, but the influence of party funding cannot be assessed due to non-transparency regarding donors.**

Political parties in St. Maarten generally appear to be free in conducting their activities, including campaigning, which is dependent on the financial resources a party can obtain. No cases of the state dissolving and/or prohibiting parties are reported; nor has there been any unequal treatment of political parties by the authorities in recent years.

Although in the last four years members of political parties have been accused of certain misconduct and put under investigation of the Public Prosecutor's Office, these cases are not considered "politically influenced" cases.

Until this year, in which the Electoral Council for the first time will oversee the accounts of political parties, sources of financial donations to political parties have not been transparent or known. According to respondents, as some members of the authorities also have interests in the private sector, financial contributions from the private sector can be used to interfere with activities of political parties in practice.

As noted before, St. Maarten as a young country is still building its democracy, and the principle of dualism has not been internalised fully yet. This makes it difficult to determine the extent of interference and conflicts of interest that might occur.<sup>574</sup>

## **Governance**

### **Transparency (law)**

**Score: 25**

TO WHAT EXTENT ARE REGULATIONS IN PLACE THAT REQUIRE POLITICAL PARTIES TO MAKE THEIR FINANCIAL INFORMATION PUBLICLY AVAILABLE?

**Political parties are not required to make their financial information publicly available; however, there are requirements on disclosure of their financial information to the public through the General Audit Chamber.**

All registered financial parties are required to have a financial administration and at all times provide insight into their financial status. Every year before the first of April, an annual report should be sent to the Electoral Council, including a financial statement with an overview of all income and expenditure. Donations exceeding ANG5,000/US\$2,780 and the total value of donations received are also included in the statement. General information on donations, like the date of donation, the precise amount and the name of the donor, will be included in the report. However, if the donor wishes to stay anonymous, this is permitted and instead the business category of the donor's organisation will be mentioned.<sup>575</sup>

Political parties' financial reports will be sent by the Electoral Council to the General Audit Chamber for auditing. In turn the General Audit Chamber will make these available for public inspection.<sup>576</sup>

### **Transparency (practice)**

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<sup>574</sup> Several interviews conducted by the authors with interviewees from political parties, 2014.

<sup>575</sup> National Ordinance Registration and Finances of Political Parties, Article 29.

<sup>576</sup> National Ordinance Registration and Finances of Political Parties, Articles 26 to 30.

**Score: 0**

TO WHAT EXTENT CAN THE PUBLIC OBTAIN RELEVANT INFORMATION FROM POLITICAL PARTIES?

**In practice political parties do not reveal their financial status or give the public access to information on their private donations and their expenditures. The websites or other social media political parties use do not mention anything on the subject.**

Although transparency in political finances was not required until the new law was established (see transparency, law section above), political parties could have taken the opportunity to demonstrate their commitment to the principle of transparency by revealing their financial status.<sup>577</sup>

As 2014 was the first year political parties were required to provide the Electoral Council with relevant financial information, it is expected that in the near future the public will have access to finances of the political parties on St. Maarten. Up to now there has been a complete lack of transparency on the finances of political parties.

**Accountability (law)**

**Score: 50**

TO WHAT EXTENT ARE PROVISIONS IN PLACE GOVERNING FINANCIAL OVERSIGHT OF POLITICAL PARTIES BY A DESIGNATED STATE BODY?

**There are several provisions for financial oversight of political parties, although they do not cover all aspects of financial accounting.**

From December 2010 political parties in St. Maarten are required by law to provide information on their financial operations to the Electoral Council.<sup>578</sup> The Electoral Council, which became operational in 2014, monitors the political parties' financial administration – both income and expenditures, including donations.

Regulations regarding electoral accounting focus on the receiving of gifts, with specified maximum amounts permitted to be received by a party or a candidate. Within one month after the elections, an elected candidate is required to submit a copy of the registration of gifts he/she received, accompanied by a written statement.<sup>579</sup>

Regulations regarding non-electoral accounting include the obligation to have a financial administration that at all times provides insight into the financial status of a political party. This administration should be kept available for a period of five years. As mentioned before, every year before the first of April, an annual report should be sent to the Electoral Council, including a specified overview of income, expenditures, donations exceeding ANG5,000/US\$2,780 and the total value of donations received.<sup>580</sup> Financial means allocated through fundraising are not required to be registered as gifts.

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<sup>577</sup> Several interviews conducted by the authors with interviewees from political parties, 2014.

<sup>578</sup> National Ordinance Registration and Finances of Political Parties.

<sup>579</sup> National Ordinance Registration and Finances of Political Parties, Article 37.

<sup>580</sup> National Ordinance Registration and Finances of Political Parties, Articles 26 to 28.

The financial statement contains information on the financial position of the party both at the start and at the end of the year and is supported by an accountant's statement.<sup>581</sup>

A political party is required to keep a permanent chronological register of all received gifts. A candidate is required to keep a register of received gifts from the day he/she is named a candidate until the day of election. The registration of gifts should include the total amount, the date, and the name and address of the individual, company or organisation of the donor. Gifts are defined by law with reference to a monetary amount, or the receipt of a good or service that can be defined with a monetary value.<sup>582</sup>

The Electoral Council has the authority to investigate the adherence to the regulations and request inspection of all documentation that it deems relevant.<sup>583</sup> If it determines that an infraction of the regulations has occurred, it is authorised to impose a cease and desist until the infraction has been corrected.<sup>584</sup> Money received by the Electoral Council in this process will be deposited in the state budget.<sup>585</sup>

### **Accountability (practice)**

#### **Score -**

TO WHAT EXTENT IS THERE FINANCIAL OVERSIGHT OF POLITICAL PARTIES IN PRACTICE?

**No financial oversight of political parties existed at the time of this assessment, as this requirement was to be applicable for the first time in the 2014 elections.**

During the assessment Transparency International could not get clear insight into the extent to which political parties keep a permanent chronological register of all received gifts. At the time of drawing up this report, no political party had presented an annual report and/or a financial statement to the Electoral Council yet.<sup>586</sup>

As political parties have not yet met requirements, it cannot be determined whether the new system of accountability is efficient.

### **Integrity mechanisms (law)**

#### **Score: 50**

TO WHAT EXTENT ARE ORGANISATIONAL REGULATIONS IN PLACE REGARDING THE INTERNAL DEMOCRATIC GOVERNANCE OF THE MAIN POLITICAL PARTIES?

**There are some regulations on internal democratic governance of political parties, such as having articles of association in place.**

A political party must be established as an association by notarial deed (also see resources, law section). The articles of association must be included in the notarial deed and should consist of information on at least the election of party leadership, the selection of candidates, the decision-

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<sup>581</sup> Ibid.

<sup>582</sup> National Ordinance Registration and Finances of Political Parties, Articles 32, 33 and 34.

<sup>583</sup> National Ordinance Registration and Finances of Political Parties, Article 43.

<sup>584</sup> National Ordinance Registration and Finances of Political Parties, Article 44.

<sup>585</sup> National Ordinance Registration and Finances of Political Parties, Article 52.

<sup>586</sup> Several interviews conducted by the authors with interviewees from political parties, and with interviewees from the Electoral Management Board, 2014.

making process and membership.<sup>587</sup> These articles of association are not required by law to be published, but will be made available to the public by the Electoral Council.<sup>588</sup>

Candidates who become newly appointed members of the legislature are required to submit a declaration with their credentials to the legislature, in which they declare that they have followed all regulations as set forth in the national ordinance regarding financing and registration.<sup>589</sup>

### **Integrity mechanisms (practice)**

**Score: 25**

TO WHAT EXTENT IS THE INTERNAL DEMOCRATIC GOVERNANCE OF POLITICAL PARTIES EFFECTIVE IN PRACTICE?

**We could not determine whether political parties follow provisions for internal democratic governance in practice.**

Little information could be obtained during this assessment on internal policies, like selection procedures for leadership and candidates for the main political parties in St. Maarten. According to respondents, the leader is chosen at the “general members’ meeting”.<sup>590</sup> Whether internal elections are actually held for the purpose of democracy could not be verified; they might just serve as a formality as experts stated that it is destined that the founder of the party will be chosen as the leader.

Many respondents have noted that the political parties tend to be unstable because people are chosen based on what they as individuals represent and not so much in relation to what the party stands for.<sup>591</sup>

Articles of association could not be found on the websites or in other social media of several political parties in St. Maarten.

### **Role**

#### **Interest aggregation and representation**

**Score: 25**

TO WHAT EXTENT DO POLITICAL PARTIES AGREGATE AND REPRESENT RELEVANT SOCIAL INTERESTS IN THE POLITICAL SPHERE?

**In general, political parties seem to be insufficiently able to represent overall social interests and it is difficult for social interest groups to have a voice in the party system.**

In the 2014 elections eight political parties had registered, out of which four got enough votes to be part of a new coalition. The number of political parties in relation to the scale of the country should suggest that people have a choice in different angles of social interests. This seems to be supported by the fact that the voter turnout was around 70 per cent.<sup>592</sup> However, political parties with regard to

<sup>587</sup> National Ordinance Registration and Finances of Political Parties, Article 15.

<sup>588</sup> National Ordinance Registration and Finances of Political Parties, Article 18.

<sup>589</sup> National Ordinance Registration and Finances of Political Parties, Article 53.

<sup>590</sup> *Algemene ledenvergadering*; and several interviews conducted by the authors with interviewees from political parties, 2014.

<sup>591</sup> Several interviews conducted by the authors with interviewees from political parties, 2014.

<sup>592</sup> Several interviews conducted by the authors with interviewees from the Electoral Management Board, 2014.

their manifestoes are not very distinct and in general they all promote the same areas in society, like education, housing and economics.<sup>593</sup>

In practice, as one expert noted, what matters is not so much the party or its manifesto, but rather the politician as a person. The fact that politicians are more focussed on their own interests instead of the interests of society as a whole not only creates an instability within the parties, as elected candidates tend to leave their party easily to become an independent member of Parliament, but it also reflects weak or no affiliations of political parties with social interest groups.<sup>594</sup> This is a system that reinforces itself as, on the other hand, the choice of the voter is based on what a person in politics can do for him or her in exchange for his or her vote.

### **Anti-corruption commitment**

**Score: 25**

TO WHAT EXTENT DO POLITICAL PARTIES GIVE DUE ATTENTION TO PUBLIC ACCOUNTABILITY AND THE FIGHT AGAINST CORRUPTION?

**Legislation on public accountability is enacted, and although integrity is given attention by one party, in general the fight against corruption is not prominent within political parties.**

In the campaigning of the political parties in St. Maarten corruption is not mentioned, although one party has been promoting good governance and integrity, for instance by implementing an integrity programme and addressing the issue on several political occasions. Other parties noted that St. Maarten is not yet ready for such a change in culture and it will take time to develop awareness on the subject.<sup>595</sup> Activities for how to make such a change happen were not referred to in the published manifestoes.

Although new legislation on good governance and public accountability has been enacted, like the screening of the executive, dealing with criminal offences of members of the executive, and the electoral law, the development of anti-corruption legislation or the existence of an anti-corruption agency has not been addressed by political parties. In addition, the commitment of political parties in following up on the implementation of these new rules on good governance and public accountability has yet to be shown.

As an expert noted, the St. Maarten politicians do not consider the issue of corruption a serious problem in St. Maarten's society, but rather one of the aspects that can occur.<sup>596</sup>

## 10 MEDIA

### Summary

St. Maarten does not have restrictive laws on the establishment and operation of media entities. In practice the media does not seem to operate in a transparent way and their independence, although different for broadcast and written media, is not safeguarded to a large extent. Human resources in written media mostly depend on foreign workers, who are dependent on local officials for their

<sup>593</sup> Published on the websites of the political parties.

<sup>594</sup> Several interviews conducted by the authors with interviewees from civil society organisations and with interviewees from the executive, St. Maarten, 2014.

<sup>595</sup> Several interviews conducted by the authors with interviewees from political parties, 2014.

<sup>596</sup> Ibid.

resident permits. St. Maarten media are not successful in investigating or exposing cases of corruption, as they do not carry out investigative journalism. The small scale of St. Maarten society gives rise to a culture of self-censorship on the part of its journalists and makes it difficult to develop a critical media culture.

## Structure and Organisation

St. Maarten has different types of media organisations, of which newspapers and radio stations are the most influential. There are six radio stations: Laser 101, Oasis, Island 92, Tropixx, PJD2 and Pearl FM, varying from news stations to all-day music stations. Radio stations all broadcast in English.

There are two main newspapers, *The Daily Herald* and *The Today Newspaper*, both written in English. In addition, a newspaper from Curaçao in the Dutch language is available (Antilliaans Dagblad).

There is one local television channel that is more oriented towards tourists, providing general information on the country. Internet is also available and some online outlets, like Caribisch netwerk and Carib online,<sup>597</sup> are known by a certain sector of the public; however, their impact is less significant than that of the mentioned local newspapers.

## Assessment

### **Capacity**

#### **Resources (law)**

**Score: 75**

TO WHAT EXTENT DOES THE LEGAL FRAMEWORK PROVIDE AN ENVIRONMENT CONDUCTIVE TO A DIVERSE INDEPENDENT MEDIA?

**The legal framework pertaining to the existence and operations of independent media does not hamper printed media and only requires a licence for broadcast media.**

St. Maarten's legal framework does not render any significant hurdles to achieve a diverse and independent media sector.

There are no legal restrictions on setting up a print media entity, nor is entry into the journalistic profession restricted by law. According to the constitution, everyone is allowed to express their opinions or feelings by way of press and nobody is required to have prior approval to collect and research information.<sup>598</sup>

Broadcast media can be subjected to licence regulations by country ordinance, in the interest of a diverse broadcasting environment.<sup>599</sup> These media entities are required to apply for a licence with BTP in St. Maarten (see also the section on independence, law below).<sup>600</sup> According to the ordinance on telecommunication services, a licence is required for technical infrastructure,

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<sup>597</sup> <http://caribischnetwerk.ntr>.

<sup>598</sup> Constitution, 2010. Article 10.

<sup>599</sup> Ibid.

<sup>600</sup> Island Decree BT&P Sint Maarten, Article 6.

maintenance and operation of a broadcast medium. Each licence includes the appointed frequencies that are coupled with that licence.<sup>601</sup>

Broadcasting legislation does not provide for appeal in case a broadcast licence is denied.

### **Resources (practice)**

**Score: 50**

TO WHAT EXTENT DOES A DIVERSE INDEPENDENT MEDIA EXIST, PROVIDING A VARIETY OF PERSPECTIVES?

**There is a variety of media sources covering the political and social spectrum. However, due to an insufficient number of trained journalists, the media are not able to provide critical perspectives.**

According to respondents, printed and broadcasting media are diverse and cover a broad social spectrum. Newspapers and radio stations provide a variety of news items, although in practice this often concerns politically based news. Newspapers, in covering news items on politics, in general focus mainly on representing views and not so much on construing a critical opinion. Interviewees noted that newspapers, in covering news, tend to be politically biased in the sense that they focus on certain persons from the political spectrum.<sup>602</sup> On the other hand, special supplements or news on non-political or social items, such as music and sports, are given much attention in all printed media.

With regard to broadcast media, one radio station transmits a (short) programme every morning that is critical of the government. It contains critical opinions of the reporter on daily news items from the government.

Media outlets get their financial resources mainly from financiers and advertisements. Financial resources are adequate to operate and salaries for journalists are considered to be sufficient. However, there is an insufficient number of trained journalists in St. Maarten and almost all journalists come from abroad. Journalistic education is not provided on the island, so journalists have to learn by training on the job.<sup>603</sup> In addition St. Maarten does not have a professional organisation for journalists. There used to be such an organisation, called SOPEC. However, as an expert noted, as membership was not mandatory nobody could be found to run the organisation and it ceased to exist.<sup>604</sup>

### **Independence (law)**

**Score: 75**

TO WHAT EXTENT DO LEGAL SAFEGUARDS EXIST TO PREVENT UNWARRANTED EXTERNAL INTERFERENCE IN THE ACTIVITIES OF THE MEDIA?

**Comprehensive legal safeguards exist to prevent unwarranted external interference in the content of media. Operations in broadcast media, however, are dependent on the state budget.**

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<sup>601</sup> Country Ordinance Telecommunication Service, Article 2.

<sup>602</sup> Several interviews conducted by the authors with interviewees from the media, St. Maarten, 2014.

<sup>603</sup> Several interviews conducted by the authors with interviewees from the media, 2014.

<sup>604</sup> Interview conducted by the authors with interviewee from the media, 2014.

Freedom of expression is anchored in the constitution,<sup>605</sup> although this can be limited in the case of publication of discriminatory remarks or opinions.<sup>606</sup> Censorship is not legal, as it is contrary to the right of freedom of expression as laid down in the constitution.<sup>607</sup> In St. Maarten the establishment and operation of private or community media, regardless of the format (e.g. print, broadcast or internet), are not prohibited.

According to the national ordinance on open government, anyone can have access to government information by filing a request that, in general, shall be granted.<sup>608</sup> Certain restrictions apply, however, such as in case provision of information would jeopardise the unity of government, or if policy views can be traced to persons.<sup>609</sup> Journalists acquiring information are required to ensure personal information is true and accurate, with regard to the purpose for which it was collected,<sup>610</sup> and they are not required to openly name their sources. Any person knowingly publishing or distributing defamatory information is subject to a prison sentence of at most three years or a monetary fine.<sup>611</sup>

Broadcast media are under supervision of BTP on Sint Maarten, which is also responsible for granting licences to broadcast organisations. BTP is a public entity and is to operate independently regarding its internal organisation and management of its assets and its advocacy.<sup>612</sup> It used to be the responsibility of the island council, but since the constitutional change the bureau is the responsibility of the minister of tourism, economic affairs, traffic and telecommunication.

Licensing to broadcasting agencies deals with technical aspects only, including assigned frequencies, and does not regulate the type of broadcast programmes (Island decree BT&P Sint Maarten, Art. 6). There is no oversight on programme content prior to broadcasting. The constitution does include a statement regarding regulation of the content of broadcast shows that are accessible to persons under 16 years of age, to protect public order.<sup>613</sup>

With the exception of broadcasting of commercials or printing of advertisements, there are no rules allowing government to control media information at any time.

### **Independence (practice)**

**Score: 25**

**TO WHAT EXTENT IS THE MEDIA FREE FROM UNWARRANTED EXTERNAL INTERFERENCE IN ITS WORK IN PRACTICE?**

**Private ownership of media leads to dependence on financiers and businesses. Media entities are dependent on their advertisers, risking the independence of the news content.**

While law and regulations with regard to freedom of speech and unwarranted interference are in place, according to respondents indirect influence does exist and is mainly related to ownership of the written media.<sup>614</sup> Newspapers are family businesses and, although this could not be verified by this assessment, according to several interviewees one is owned by the family of a political

<sup>605</sup> Article 10.

<sup>606</sup> Penal Code, Article 2:62.

<sup>607</sup> Article 10.

<sup>608</sup> Article 3.

<sup>609</sup> National Ordinance Open Government, Articles 11 and 12.

<sup>610</sup> Country Ordinance Protection of Personal Data, Article 11.

<sup>611</sup> Penal Code, Article 2:224.

<sup>612</sup> Island Decree BT&P Sint Maarten, Article 2.

<sup>613</sup> Article 10.

<sup>614</sup> Several interviews conducted by the authors with interviewees from the media, 2014.

leader.<sup>615</sup> While the media are divided along the lines of politics according to media experts, consumers, very much aware of this, read the newspaper in favour of their political party.<sup>616</sup>

No respondents noted any kind of harassment in any way of journalists, nor was any evidence found of harassment of journalists. But according to one media expert, a radio reporter was intimidated because of his critical comments on government decisions.<sup>617</sup>

Journalists, as noted earlier, mostly come from abroad and therefore need a permit and permit extension. Therefore they are, according to a media expert, reluctant to pursue controversial topics.<sup>618</sup>

## **Governance**

### **Transparency (law)**

**Score: 25**

TO WHAT EXTENT ARE PROVISIONS IN PLACE TO ENSURE TRANSPARENCY IN THE ACTIVITIES OF THE MEDIA?

**There are no legal provisions or individual rules and codes of media outlets to seek transparency, except for general registration requirements with the Chamber of Commerce and Industry.**

Print media and broadcast companies are not required to disclose their ownership, other than as part of the registration with the Chamber of Commerce. As they are registered as NVs (limited liability companies), their capital is divided into shares. There are no requirements for media companies to disclose their financial information. In general, larger companies (with a minimum of 20 employees under contract and an asset value of at least ANG5 million/US\$2.8 million) are required to compile their financial statements in accordance with international financial reporting standards such as those adopted by the International Accounting Standards Board.<sup>619</sup> Media entities are also not required by law to disclose any information relating to internal staff, reporting and editorial policies.

### **Transparency (practice)**

**Score: 0**

TO WHAT EXTENT IS TRANSPARENCY MET IN THE MEDIA IN PRACTICE?

**In general, media outlets do not provide disclosure of relevant information on their ownership, staff, and reporting and editing policies.**

Media entities in St. Maarten do not publish any information on their ownership, finances, staff or editing policies. Information on the names of board members was difficult to obtain even from the

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<sup>615</sup> Several interviews conducted by the authors with interviewees from the media, 2014.

<sup>616</sup> Several interviews conducted by the NIS assessment team, 2014.

<sup>617</sup> Interview conducted by the authors with interviewee from the media, 2014.

<sup>618</sup> Ibid.

<sup>619</sup> Civil Law Book 2, Article 120.

interviewees. With regard to broadcasting licence holders, an overview is published on the website of BTP for public inspection.<sup>620</sup>

### **Accountability (law)**

**Score: 50**

TO WHAT EXTENT ARE LEGAL PROVISIONS IN PLACE TO ENSURE THAT MEDIA OUTLETS ARE ANSWERABLE FOR THEIR ACTIONS?

**Broadcast media do have some provisions in place to ensure their accountability, although provisions to regulate the work of the print media are limited.**

Broadcast media, if registered, are supervised by BT&P, which is also responsible for granting them their permits. Although, as mentioned above, the bureau operates independently regarding its internal affairs,<sup>621</sup> overall operation in the end is the responsibility of the minister of tourism, Economic Affairs, Traffic and Telecommunication. Apart from overseeing the telecommunication organisations, tasks of the bureau include ensuring the technical infrastructure's compliance with the prescribed standards.<sup>622</sup> In this regard, the bureau has the authority to ask questions, review financial accounts and perform on-site inspections. If the broadcast organisations are not complying with the regulations, BT&P is authorised to impose a fine or retract the licence.<sup>623</sup>

Consumers have the possibility to file a complaint with BT&P. A complaint may concern service received, equipment or reception, billing, customer service and privacy.<sup>624</sup> In case of a dispute between permit holders, the minister is authorised to decide on the matter. His/her decision cannot be appealed.<sup>625</sup>

For print media no such organisations and/or regulations exist.

Accountability regulations for publication of erroneous information are provided in the Civil Code. If the press spreads erroneous information on persons or entities, a judge may require the correction this information.<sup>626</sup> The judge may impose requirements to the publication of corrected information, such as deadlines and the manner in which this should take place.<sup>627</sup>

### **Accountability (practice)**

**Score: 25**

TO WHAT EXTENT CAN MEDIA OUTLETS BE HELD ACCOUNTABLE IN PRACTICE?

**In general media outlets do not have to account for their activities, although rectification of printed information does occur in practice.**

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<sup>620</sup> [www.sxmregulator.sx](http://www.sxmregulator.sx).

<sup>621</sup> Island Decree BT&P Sint Maarten, Article 2.

<sup>622</sup> Island Decree BT&P Sint Maarten, Article 6.

<sup>623</sup> Country Ordinance on Telecommunication Services, Articles 31 and 35.

<sup>624</sup> <http://www.sxmregulator.sx/node/add/complaintentry>.

<sup>625</sup> National Ordinance Dispute Resolution Permit Holders/*Landsbesluit geschillenbeslechting concessiehouders*, Articles 2 and 3.

<sup>626</sup> Civil Code, Book 6, Article 167.

<sup>627</sup> Ibid.

According to experts interviewed, it is not very common for media entities, both broadcasting and print, to account for their journalistic activities.<sup>628</sup>

No print media outlets have set up fora through which the public can interact with editors and reporters, like blogs or chats. One media expert noted that he is not very much in favour of this, because the editor will not be able to control the content of and opinions given on those blogs and he will not want to have interference of a personal opinion in the newspaper policy.<sup>629</sup> However, open letters to the editor are common practice in St. Maarten and offer possibilities to give one's opinion or reply on a matter. According to respondents, the small scale of St. Maarten society provides low-threshold possibilities of directly contacting the different media organisations and their staff.<sup>630</sup> As for broadcasting entities such as the radio stations, programmes exist in which the public can respond live by phone (call-in programmes) to topics discussed.

Newspapers do in practice correct erroneous information on request of the reader, which mostly regards details like numbers and names. Media experts noted that they will avoid any statements on (alleged) criminal acts to prevent the risk of getting into a judicial process.<sup>631</sup> When asked, no examples of cases ending up in court were given by the interviewees.

### **Integrity mechanisms (law)**

**Score: 25**

TO WHAT EXTENT ARE PROVISIONS IN PLACE TO ENSURE THE INTEGRITY OF MEDIA EMPLOYEES?

**Legal provisions to safeguard the integrity of media employees are limited.**

In St. Maarten there is no sector-wide code of conduct for the media, nor does there appear to be any code of conduct within individual media organisations or ethics committees for these organisations.

In general, the law provides rules on safeguarding personal information acquired for journalistic purposes, such as regarding truism and accurateness.<sup>632</sup> In addition, anyone who has acquired personal information on others is required by law to safeguard this information from loss and any kind of illegal (further) processing.<sup>633</sup>

### **Integrity mechanisms (practice)**

**Score: 25**

TO WHAT EXTENT IS THE INTEGRITY OF MEDIA EMPLOYEES ENSURED IN PRACTICE?

**Actions to ensure the integrity of media employees are limited and the approach to ensuring integrity is reactive.**

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<sup>628</sup> Several interviews conducted by the authors with interviewees from the media, 2014.

<sup>629</sup> Ibid.

<sup>630</sup> Ibid.

<sup>631</sup> Ibid.

<sup>632</sup> Country Ordinance Protection of Personal Data, Article 11.

<sup>633</sup> Country Ordinance Protection of Personal Data, Article 13.

According to respondents, in practice media entities do not have overall integrity codes and individual codes of ethics are not standard in the process of hiring new employees.<sup>634</sup> In general, the subject of ethics is more focussed on work processes or in case a specific issue arises. During the daily team meeting when dividing the work, the editor monitors the choices of reporters on who and why they will interview. For instance, if a journalist was personally wronged by a company or organisation, he/she would not be allowed to write an article regarding this subject.<sup>635</sup>

In practice, in print media, according to the errata published, journalists do not seem to always check the various sides of an issue and do not always rely on several sources because news has to be quick in following up on events.

## **Role**

### **Investigate and expose cases of corruption practice**

**Score: 25**

TO WHAT EXTENT ARE THE MEDIA ACTIVE AND SUCCESSFUL IN INVESTIGATING AND EXPOSING CASES OF CORRUPTION?

**In general, the media are not very active and successful in investigating and exposing cases of corruption.**

The media in St. Maarten are not active in investigating cases of corruption and investigative journalism is not very common. Newspapers are dependent on businesses for funding through advertisements and do not want to jeopardise their financial resources and. In addition, as mentioned in the section on resources, many reporters come from abroad and, according to media experts, because they are dependent on the authorities for their working permits, they do not want to be too critical and take the risk of repercussions.<sup>636</sup> As one expert told the researchers for this assessment, following a critical programme on government issues, the reporter in question and his family had been threatened and told not to continue.<sup>637</sup>

The small scale of St. Maarten society, with close family ties between its members, also makes it difficult for local radio and newspaper reporters to investigate specific cases.

### **Inform public on corruption and its impact**

**Score: 50**

TO WHAT EXTENT ARE THE MEDIA ACTIVE AND SUCCESSFUL IN INFORMING THE PUBLIC ON CORRUPTION AND ITS IMPACT ON THE COUNTRY?

**Media outlets do pay attention to informing the public on corruption cases, yet reports are often limited.**

In recent years, different corruption related cases have been depicted by the media, especially the newspapers. The Bada Bing case, for instance, and the accusations of bribery by a politician before elections (see preceding chapters) were widely exposed. However, in general media entities do not

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<sup>634</sup> Several interviews conducted by the authors with interviewees from the media, 2014.

<sup>635</sup> Ibid.

<sup>636</sup> Several interviews conducted by the authors with interviewees from the media, 2014.

<sup>637</sup> Ibid.

see themselves as “watchdogs” and stick to covering the news.<sup>638</sup> This assessment could not find evidence of the St. Maarten media fulfilling the role of public educator on corruption and how to curb it through specific programmes or in any other way.

### **Inform public on governance issues**

**Score: 50**

TO WHAT EXTENT ARE THE MEDIA ACTIVE AND SUCCESSFUL IN INFORMING THE PUBLIC ON THE ACTIVITIES OF THE GOVERNMENT AND OTHER GOVERNANCE ACTORS?

**Media outlets do pay attention to informing the public on government issues, although (quick) access to relevant information is difficult.**

Media outlets are active on reporting activities of the government and government actors although, as a media expert noted, access to government information can be difficult and depends to a large extent on the professional and social networks journalists have.<sup>639</sup> Whether the lack of information disclosures is due to lack of availability or to an unwillingness of government to provide information with regard to certain topics is unknown.<sup>640</sup>

## 12 CIVIL SOCIETY

### Summary

The existing legal framework does not hamper the registration and operation of CSOs in St. Maarten; in practice, however, most CSOs lack professional staff. The CSOs – with the exceptions of the service organisations and the unions – at present rely entirely on local government funding. Civil society in St. Maarten is weak, partly due to a decrease in financial means and partly because of the change of the funding organisation, causing a lack of information for the people working in CSOs. Mechanisms for ensuring transparency in practice are almost non-existent and the accountability is weak. The ability to hold the government accountable and to influence its policy is also non-existent.

### Structure and Organisation

For the purposes of this assessment, civil society is defined as those organisations and institutions initiated by individuals and collective action to advance shared interests in society. Civil society in St. Maarten consists mostly of non-governmental organisations (NGOs), trade unions, and service and religious organisations.

Until 2010 the NGOs in St. Maarten (and of the other islands of the Netherlands Antilles) were organised in an umbrella organisation called Antillean Co-financing Foundation (AMFO/Stchting Antilliaanse Medefinancieringsorganisatie), funded for the most part by the Dutch government. Around 400 NGOs were part of AMFO.

As a result of St. Maarten’s new constitutional structure, the St. Maarten Development Fund (SMDF) was established as a new local funding foundation succeeding AMFO, in 2012. In 2013 the SMDF

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<sup>638</sup> Ibid.

<sup>639</sup> Ibid.

<sup>640</sup> Ibid.

prepared a policy document (A Society that Cares) for the Social Economic Council (SER) in St. Maarten, covering the activities in the years 2013-2023. Funding from the local government started in 2012 to continue ongoing projects from AMFO.<sup>641</sup>

St. Maarten NGOs are structured per sector and are united in the NGO federation St. Maarten United Non-governmental Federation (SUNFed), which brings together hundreds of smaller and diverse NGOs, according to interviewees. SUNFed provides support to the community in the process of applying for community development projects. There are also around nine foundations.<sup>642</sup>

Two trade unions, Windward Island Civil Servants Union (WICSU) and Private Sector Union (PSU), exist in St. Maarten. WICSU/PSU operate as one organisation. Together they have about 700 members.

Well-known service organisations like Rotary and the Lions Club are also present in St. Maarten, the latter very active in the social field. There are also religion-related organisations, like the Roman Catholic school board, and religious organisations, like churches of different alignments.

This chapter will deal mostly with the NGOs in St. Maarten.

## Assessment

### Capacity

#### **Resources (law)**

**Score: 100**

TO WHAT EXTENT DOES THE LEGAL FRAMEWORK PROVIDE AN ENVIRONMENT CONDUCTIVE TO CIVIL SOCIETY?

**The legal framework does not restrict the establishment and operation of CSOs. The tax exemptions for CSOs are significant as CSOs are completely exempt from the payment of profit tax.**

The constitution provides for the right to associate, insofar as it is not being restricted in the interests of public order by national ordinance.<sup>643</sup>

Most CSOs are organised through the legal entity of a foundation as this is the easiest and quickest way to be formally registered. To register, no other legal requirements are necessary other than a notarial deed of incorporation and a registration with the Chamber of Commerce. In order to apply for government subsidy, CSOs are required to be incorporated as a legal entity.<sup>644</sup>

Unregistered CSOs are not prohibited. The law also recognises the right to assembly and demonstration without prejudice to the responsibility of everyone under the law.<sup>645</sup>

CSOs are free to engage in advocacy/criticise the government. The rights of both registered and unregistered CSOs may be restricted (by national ordinance) to protect public order.<sup>646</sup>

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<sup>641</sup> [www.sintmaartengov.org](http://www.sintmaartengov.org).

<sup>642</sup> Several interviews conducted by the authors with interviewees from civil society organisations, St. Maarten, 2014.

<sup>643</sup> Constitution, 2010. Article 12.

<sup>644</sup> National Ordinance on Subsidies, Article 8.

<sup>645</sup> Constitution, 2010. Article 13.

The tax system is to a large extent favourable to CSOs. All CSOs that are organised in the legal form of a foundation are tax exempt, in the sense that they do not pay profit tax.<sup>647</sup>

### Resources (practice)

**Score: 25**

TO WHAT EXTENT DO CSOS HAVE ADEQUATE FINANCIAL AND HUMAN RESOURCES TO FUNCTION AND OPERATE EFFECTIVELY?

**As the organisational framework of the CSOs is in a transitional state, these organisations do not operate effectively and survival of some NGOs is threatened because of a lack of resources.**

Before 2010 funding for social development in St. Maarten came mainly from one donor, the Dutch government. Funds were managed by AMFO. Due to the constitutional change AMFO is no longer operational and a new foundation (SMDF) for allocating money to social development projects has been established (see the section on structure and organisation). The SMDF has only one donor, the St. Maarten government, which has planned to spend AMG100,000/US\$55,500 yearly on social development projects.<sup>648</sup> At present the SMDF board consists of people from the government and other sectors in society.

Besides donating to social activities initiated by the service organisations,<sup>649</sup> private funding to CSOs for social development projects does not occur, although it is not restricted by law. According to respondents this is due to the fact that the business sector is not interested in small-scale social projects.<sup>650</sup>

Human resources for local NGOs is a restraint, in both quantity and quality. Most of the CSOs and NGOs are dependent on volunteers and it is difficult to meet the various requirements necessary to access the funds, due to the complexity of procedures, especially with regard to the application forms. Because of inadequate financial resources it is difficult to hire professionals.<sup>651</sup>

Also, according to many respondents the role of SUNFed in the new structure is not clear. Indeed, several interviewees throughout the NIS assessment were convinced that SUNFed did not exist anymore.

It was noted by several respondents that the Tax Office interfered with many NGOs in a negative way by the Tax Office on the issue of sales tax. Apparently it is not clear to the Tax Office that the NGOs referred to here are registered as foundations and not as businesses.

Another donor organisation active on St. Maarten is The Collaborative Foundation (Stichting Samenwerkende Fondsen), which in St. Maarten mainly invests in youth projects, educational

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<sup>646</sup> Constitution, 2010. Article 12.

<sup>647</sup> National Ordinance on Profit Tax, Article 1.

<sup>648</sup> [www.sintmaartengov.org](http://www.sintmaartengov.org); Several interviews conducted by the authors with interviewees from civil society organisations, 2014.

<sup>649</sup> Interview conducted by the authors with interviewee from the business sector, St. Maarten, 2014.

<sup>650</sup> Several interviews conducted by the NIS assessment team, 2014.

<sup>651</sup> Several interviews conducted by the authors with interviewees from civil society organisations, 2014.

projects and addiction prevention. And Prince Bernhard Cultuur Fonds has projects in the field of culture and nature preservation.<sup>652</sup>

### **Independence (law)**

**Score: 75**

TO WHAT EXTENT DO LEGAL SAFEGUARDS EXIST TO PREVENT UNWARRANTED EXTERNAL INTERFERENCE IN THE ACTIVITIES OF CSOs?

**There are comprehensive legal safeguards to prevent unwarranted external interference in the activities of CSOs.**

All St. Maarten citizens are allowed by law to form and get engaged in groups promoting good governance and anti-corruption, regardless of political ideology, religion or objectives.<sup>653</sup> Additionally, everyone has the constitutional right to respect for privacy, without prejudice for restrictions laid down by or pursuant to national ordinance.<sup>654</sup>

The permissible grounds for state interference in CSOs are limited to issues of public order, public health and traffic.<sup>655</sup> Thus government oversight is limited to necessary and proportionate means to pursue legitimate government interests.<sup>656</sup>

No regulations stipulating state membership on CSO boards or allowing for mandatory state attendance of CSO meetings were found, nor restrictions for members of the executive or the legislature to become members of the board of a CSO.

### **Independence (practice)**

**Score: 50**

TO WHAT EXTENT CAN CIVIL SOCIETY EXIST AND FUNCTION WITHOUT UNDUE EXTERNAL INTERFERENCE?

**Although no examples have been found of direct government interference in the operations of CSOs, there is indirect government pressure on the organisation of civil society.**

CSOs in St. Maarten are generally able to operate without undue government interference. No examples could be found of arrest or detention of civil society actors or of state officials attacking civil society actors. Several respondents noted, however, that the result of the new structure set up by the St. Maarten government (funding from the local government and establishment of community centres) is indirect government pressure on the organisation of civil society. Interviewees consider this to be a way in which government is influencing the community centres, for instance with regard to project tendering. An example of a non-transparent bidding process, according to CSO respondents, concerns a renewable energy project that was supposedly delayed by the government-owned electricity company.<sup>657</sup> (In the course of the assessment the research team has not been able to obtain additional information on the subject.)

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<sup>652</sup> [www.cultuurfonds.nl](http://www.cultuurfonds.nl).

<sup>653</sup> Constitution, 2010. Article 12.

<sup>654</sup> Constitution, 2010. Article 5.

<sup>655</sup> Constitution, 2010. Article. 1.

<sup>656</sup> Constitution, 2010. Article 12.

<sup>657</sup> Several interviews conducted by the authors with interviewees from civil society organisations, 2014.

Indirect influence is also considered to exist because two board members of the St. Maarten Development Fund are members of the government.<sup>658</sup>

The SUNFed organisation considers the cooperation with government to be virtually non-existent. As a result it is not able to fulfil its task as an intermediate organisation between donors and community centres. Given that respondents have noted that this has remained the same with all three cabinets St. Maarten had over four years, it is difficult to say whether this is the only factor playing a role.<sup>659</sup>

## **Governance**

### **Transparency (practice)**

**Score: 25**

TO WHAT EXTENT IS THERE TRANSPARENCY IN CSOs?

**The level of transparency of St. Maarten CSOs is inadequate. Information on their activities mostly comes via the media.**

CSOs are not required by law to provide annual reports making their activities available to the public, or to provide financial statements.<sup>660</sup>

Actual information on CSOs' activities and finances can be obtained from the media (see also Chapter VII.4 on the media) and through internet news pages. Both SMDF and SUNFed are on Facebook. Information is limited to the organisations' establishment, tasks and available jobs. No annual reports containing information on activities, finances or organisation are published.

Several interviewees noted that CSOs are constrained by organisational weaknesses and that the lack of transparency is due to insufficient resources, both human and financial. This is also true for most of their members.<sup>661</sup>

Transparency and independence are very much intertwined in civil society. Lack of transparency in the field of CSOs also triggers CSO members of the SUNFed foundation to go to the government directly for funding, because they are not aware of the new structure. This jeopardises the independence of civil society in St. Maarten.<sup>662</sup>

### **Accountability (practice)**

**Score: 25**

TO WHAT EXTENT ARE CSOs ANSWERABLE TO THEIR CONSTITUENCIES?

**CSO boards and members are only partially effective in providing oversight of CSO management decisions.**

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<sup>658</sup> One member working for the Ministry of Justice (director court of guardianship)([www.sintmaartengov.org/government/Jus](http://www.sintmaartengov.org/government/Jus)), and one member being the department head of social development ([www.dutchcaribbeanlegalportal.com](http://www.dutchcaribbeanlegalportal.com)).

<sup>659</sup> Several interviews conducted by the authors with interviewees from civil society organisations, 2014.

<sup>660</sup> Civil Code, Book 2, Article 89.

<sup>661</sup> Several interviews conducted by the authors with interviewees from civil society organisations.

<sup>662</sup> Interview by the authors with SUNFed, St. Maarten, 2014.

Most NGOs in St. Maarten have membership with a federation and with regard to their internal formal organisation, according to respondents, overall they meet accountability tenets, such as having their institutional structure in order and launching their annual reports.<sup>663</sup> However, during the course of this assessment no annual reports of CSOs could be obtained.

Apart from the fact that there are general regulations on foundations in the Civil Code,<sup>664</sup> their *raison d'être* is dependent on effective accountability mechanisms, because it is often the basis on which they will acquire (follow-up) funding.<sup>665</sup> We could not assess whether this is still actually the case.

As pointed out earlier, the weakness of most CSOs concerning the quantity and quality of their human resources makes it a difficult task for them to meet the requirement of professional reporting.

### **Integrity (law and practice)**

**Score: 0**

TO WHAT EXTENT ARE MECHANISMS IN PLACE TO ENSURE THE INTEGRITY OF CSOs AND TO WHAT EXTENT IS THE INTEGRITY OF THE CSOs ENSURED IN PRACTICE?

**There are no codes of conduct or other self-regulation mechanisms for St. Maarten CSOs.**

Besides the legal requirements for registration for CSOs, there are no regulations for the operation of civil society. No sector-wide code of conduct for CSOs is prescribed by law.

The umbrella organisations and NGOs are responsible for implementing their own codes of conduct. To what extent this is being done is unknown. The respondents in this assessment did not know of the existence of any such code of conduct.

### **Role**

#### **Hold government accountable**

**Score: 0**

TO WHAT EXTENT IS CIVIL SOCIETY ACTIVE AND SUCCESSFUL IN HOLDING GOVERNMENT ACCOUNTABLE FOR ITS ACTIONS?

**Although CSOs are inactive in holding government accountable for its actions, there is some criticism regarding the new civil society structure.**

CSOs in St. Maarten do not actively take up a role in influencing the decision-making process on the government's social policy. It is noted by the respondents in this field that many NGOs are reluctant to seek confrontation with the government, because they are now dependent on the local government for funding.<sup>666</sup>

St. Maarten does not have specific watchdog CSOs or any pressure groups. No activities like advocacy campaigns or public engagement with regard to government misconduct take place.

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<sup>663</sup> Several interviews conducted by the authors with interviewees from civil society organisations.

<sup>664</sup> Book 2, Article 89.

<sup>665</sup> Several interviews conducted by the authors with interviewees from civil society organisations.

<sup>666</sup> Several interviews conducted by the authors with interviewees from civil society organisations, 2014.

Government accountability to CSOs is very much restricted to the relationship between civil society itself and the government, according to the respondents (several anonymous interviews, 2014). Examples of accountability raised by CSO members are more directed to specific projects, such as the earlier mentioned energy project, which allegedly took place without a proper tender procedure.<sup>667</sup>

### **Policy reform**

**Score: 0**

TO WHAT EXTENT IS CIVIL SOCIETY ACTIVELY ENGAGED IN POLICY REFORM INITIATIVES ON ANTI-CORRUPTION?

**In recent years good governance has become more and more discussed in St. Maarten society. Given the types of projects initiated by CSOs, their impact on the subject seems non-existent.**

The new constitution and the new country status of St. Maarten in 2010 also implied many institutional changes in the field of democracy. New institutions, such as the High Councils of State, needed to be established. It also meant a new awareness of good governance, a process that is still in progress.

With this change, the institutional field of civil society also changed (see Structure and Organisation). CSOs with specific goals on good governance are not yet present in St. Maarten. However, being a small-scale society with strong personal relations, criticism is more often expressed on a personal level. To what extent this influences the discussion on good governance is difficult to measure.

The impact of CSOs on good governance seems to be non-existent, given the types of projects that have been initiated in the past.<sup>668</sup>

## **13 BUSINESS**

### Summary

In general the legal framework is favourable for doing business in St. Maarten. In practice, however, lengthy procedures might hamper the establishment of new businesses. Although the independence of private businesses is to a large extent ensured in by law, examples of undue interference have occurred and are investigated. While rules on integrity within certain branches exist, in practice there is insufficient integrity in the business sector. Currently the business sector in St. Maarten is not involved in anti-corruption policies and there is no relationship with civil society in fighting corruption.

### Structure and Organisation

The Chamber of Commerce and Industry in St. Maarten is the official body for businesses to register with. Limited liability companies (NVs) and private limited liability companies (BVs) are the most

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<sup>667</sup> Ibid.

<sup>668</sup> www.amfo.an.

common legal structures for doing business in St. Maarten ([www.sxmcoci.org](http://www.sxmcoci.org)). Hospitality (about 80 per cent of GDP) and trade are the main sectors in St. Maarten.<sup>669</sup>

St. Maarten has several business associations, such as the Sint Maarten Hospitality and Trade Association (SHTA), representing the tourist and trade sector with about 150 members in total, as well as the Indian Merchant Association, the St. Maarten Marine Association and a number of smaller business associations and individual entrepreneurs. The financial sector is represented by the St. Maarten Banking Association.

Business employees are organised in a trade union, the Private Sector Union (PSU), which operates together with the Windward Island Civil Servants Union (WICSU) as one organisation.

In general, larger companies refer to companies with a minimum of 20 employees under contract and an asset value of at least ANG5 million/US\$2.8 million.

## Assessment

### **Capacity**

#### **Resources (law)**

**Score: 75**

TO WHAT EXTENT DOES THE LEGAL FRAMEWORK OFFER AN ENABLING ENVIRONMENT FOR THE FORMATION AND OPERATIONS OF INDIVIDUAL BUSINESSES?

**The laws governing the establishment, operation and closing down of businesses are clear, but some aspects are non-transparent.**

Mandatory regulations with regard to legal entities under private law, such as private limited liability companies (BVs), limited liability companies (NVs), foundations and associations are contained in the Civil Code, Book 2. The incorporation of limited liability companies is done by the execution of a notarial act. The establisher does not have to be a citizen of Sint Maarten but one of the directors – a limited liability company is allowed to have more than one director – has to be registered on the island. A limited liability company needs a business licence, which can be requested by sending a letter to the minister of economic affairs, including the name of the owner, the nature and objectives of the business, the invested capital and the business location. This also applies to partnerships. Partnerships or limited liability companies, which are already incorporated in the (former) Netherlands Antilles and want to open a branch, do not have to incorporate the branch. They only have to request a business licence.<sup>670</sup>

At the granting of business licences the minister of economic affairs is authorised to set certain conditions regarding the nature and the place of business, and also concerning the financial ability of the applicant and the way the business will be financed.<sup>671</sup> After the business and management licences have been granted, businesses are registered at the Chamber of Commerce and Industry – although this is not required by law – and with the Labour Department. The initial registration fee – ranging from US\$34 to US\$550 – and the annual contribution – ranging from US\$34 to US\$475 – to the Chamber of Commerce and Industry depend on the invested capital.

<sup>669</sup> Rabobank, *Country Report Sint Maarten*, (Rabobank, 2011).

<sup>670</sup> [www.sxmcoci.org](http://www.sxmcoci.org).

<sup>671</sup> Business Establishment Rules/*vestigingsregeling bedrijven*, Article 6.

A business licence can be refused in the interest of the public order, peace and general interest of Sint Maarten. Suspension or retraction of a business licence by the minister of economic affairs will only take place after discussion with the Chamber of Commerce.<sup>672</sup> Opening or operating a business without the necessary permits granted by the minister of economic affairs is not allowed.<sup>673</sup>

The Civil Code contains provisions governing contract enforcement procedures.<sup>674</sup> The protection of intellectual property in St. Maarten is stipulated by law,<sup>675</sup> and a bureau for registration of patents will be operational at the beginning of 2015. The regulation of public procurement is limited, with only rules that apply to the amounts involved (see Chapter VII.4 on the public sector).

### **Resources (practice)**

**Score: 25**

TO WHAT EXTENT ARE INDIVIDUAL BUSINESSES ABLE IN PRACTICE TO FORM AND OPERATE EFFECTIVELY?

**In general, to start and operate a business is costly in terms of time.**

In general St. Maarten's legal framework is considered to be business friendly by respondents. In practice, however, procedures are time consuming and lengthy and without any transparency on reasons of delay. According to respondents, it is common for companies have to wait between six months and a year before receiving the necessary documents. Some experts in the business sector argue this is a result of the inefficiency of organisations involved in the registration process and of bureaucracy, as licences have to be renewed every year.

In addition, respondents have noted that they find the process to be "vulnerable" as it is easier for local entrepreneurs to obtain documents in time than is the case for foreigners.<sup>676</sup>

In practice, also as a result of the non-transparency in the registration process, instead of filing a complaint, entrepreneurs will try to follow up with the official organisation in the process and will make use of their network in order to speed things up. Some businesses will just start operating without having received their licence and as a consequence the state will receive less income because the respective taxes will not be paid.<sup>677</sup> One expert noted that with so many non-local entrepreneurs in the country and insufficient checks regarding business licences, these businesses become seasonal, in the sense that they are operational during the winter season when tourists visit St. Maarten and are then shut down (until the next winter), in that manner making use of the inertness of the registration process.<sup>678</sup>

### **Independence (law)**

**Score: 75**

TO WHAT EXTENT ARE LEGAL SAFEGUARDS IN PLACE TO PREVENT EXTERNAL INTERFERENCE IN ACTIVITIES OF PRIVATE BUSINESSES?

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<sup>672</sup> Business Establishment Rules, Articles 5 and 8.

<sup>673</sup> Business Establishment Rules, Article 2.

<sup>674</sup> Civil Code, Book 6.

<sup>675</sup> Country Ordinance Brand Names.

<sup>676</sup> Several interviews conducted by the authors with interviewees from the business sector, St. Maarten, 2014.

<sup>677</sup> Ibid.

<sup>678</sup> Ibid.

**There are several comprehensive legal safeguards to prevent unwarranted external interference in the activities of private businesses.**

Although registration and the granting of licences are based upon set rules, public officials are involved in the execution of the registration process for private business licences and permits at the Chamber of Commerce and Industry by judging applications on the completeness of data.<sup>679</sup> The role of public officials regarding the operation of private businesses concerns taxation matters and audits.<sup>680</sup>

On the other hand public officials may be excluded from being a board member or a shareholder in organisations that are in regular contact with the public administration department (National Ordinance on Legal and Material Rights of Civil Servants, Art. 55).

Complaints mechanisms for businesses to seek redress in the case of undue external interference are laid down by law with the ombudsman. The ombudsman is the authority with whom members of the public or a legal entity can file complaints against a government body or appeal any decision by a governmental organisation that concerns them.<sup>681</sup>

No specific regulations that allow businesses to seek compensation in the case of undue state interference are laid down by law. In addition to filing a complaint with the ombudsman, one can take the opposing party to court based on the rules of administrative law.<sup>682</sup>

Regarding unfair competition and the establishment of cartels or mergers, no authority exists in St. Maarten.

**Independence (practice)**

**Score: 50**

**TO WHAT EXTENT IS THE BUSINESS SECTOR FREE FROM UNWARRANTED EXTERNAL INTERFERENCE IN ITS WORK IN PRACTICE?**

**There are examples of state actors interfering with the activities of the business sector.**

In general, it is difficult to determine the extent of unwarranted interference between the public and private sectors. According to respondents there are many rumours of irregularities, but as yet few confirmed instances of public officials soliciting unofficial payments in terms of bribes in their dealings with private businesses.<sup>683</sup> However, one earlier mentioned case (the Bada Bing case) – still under investigation – concerns irregularities in the process of issuing resident permits for women to work in a brothel in exchange for money.<sup>684</sup>

Undue interference between government-owned companies and private businesses focuses on conflict of interest, or rather unfair competition, as in the case of the St. Maarten Harbor Group and the Simpson Bay Lagoon Authority Corporation, through which the harbour both regulates and operates within the commercial marine industry.<sup>685</sup>

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<sup>679</sup> Business Establishment Rules, Article 2.

<sup>680</sup> Ordinance on National Taxes/*Algemene landsverordeing landsbelastingen 2010*, Articles 6 and 7.

<sup>681</sup> National Ordinance Ombudsman, Articles 7 and 15.

<sup>682</sup> National Ordinance Ombudsman, Article 15; and National Ordinance Administrative Law, Article 7.

<sup>683</sup> Several interviews conducted by the NIS assessment team, 2014.

<sup>684</sup> *Today*, 20 March 2013; and *The Daily Herald*, 27 August 2014.

<sup>685</sup> *The Daily Herald*, 30 September 2014.

As mentioned in the previous section, complaints against the behaviour of public administration or civil servants can be filed at the office of the ombudsman. According to respondents interviewed throughout this whole assessment, access to this complaint office is easy and handling of complaints adequate (see also Chapter VII.7 on the ombudsman). Civil procedures tend to be time consuming in practice.

## **Governance**

### **Transparency (law)**

**Score: 50**

TO WHAT EXTENT ARE PROVISIONS IN PLACE TO ENSURE TRANSPARENCY IN THE ACTIVITIES OF THE BUSINESS SECTOR?

**Although there are a number of legal provisions to ensure transparency in the activities of the business sector, businesses are not required to make their annual accounts publicly available.**

All legal entities must prepare financial audits. The applicable financial auditing and reporting standards are dependent on the type of organisation. A distinction is made between large limited liability companies and small and medium-sized companies, including other legal entities such as foundations and associations.<sup>686</sup> Only large companies are required to compile their financial statements in accordance with international financial reporting standards such as those adopted by the International Accounting Standards Board.<sup>687</sup> All other entities are allowed to compile their financial statements in accordance with generally accepted local accounting principles. These financial statements must contain at least a balance sheet and profit & loss account including explanatory notes. Only large companies are required to appoint a certified external auditor (such as a RA, AA, CPA or equivalent).<sup>688</sup> These auditors are subject to international standards on auditing that can be considered stringent. All other entities are allowed to appoint an expert who does not have to comply with (minimum) requirements.

Large companies – with a minimum of 20 employees working under contract, an asset value of at least ANG5 million and a net revenue during the financial year equal to or larger than ANG10 million<sup>689</sup> – are required to compile their annual accounts in line with international financial reporting standards (IFRS) within six months after the end of the financial year and send it to the general meeting of shareholders for approval. The general meeting of shareholders does have the authority to amend certain posts of the annual account. After approval, the annual account will be available for inspection by a registered accountant. After this, it will be available for inspection by all interested parties for a period of two years.<sup>690</sup>

Smaller companies will send their annual accounts to the general meeting of shareholders for approval. Every shareholder and other stakeholder has the right to review the annual accounts for a period of two years.<sup>691</sup>

Local banks are under the scrutiny of the Central Bank of Curaçao and Sint Maarten (CBCS).<sup>692</sup> The supervised (banking) institutions are required to file a yearly management report to the CBCS

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<sup>686</sup> Civil Code, Book 2, Article 119.

<sup>687</sup> Civil Code, Book 2, Article 120.

<sup>688</sup> Civil Code, Book 2, Article 121.

<sup>689</sup> Civil Code, Book 2, Article 119.

<sup>690</sup> Civil Code, Book 2, Articles 119 to 122.

<sup>691</sup> Civil Code, Book 2, Article 116.

containing the financial position of businesses. The CBCS requires banks to publish a summary of their financial statements in the newspaper and on their website.<sup>693</sup>

### **Transparency (practice)**

**Score: 25**

TO WHAT EXTENT IS TRANSPARENCY MET IN THE BUSINESS SECTOR IN PRACTICE?

**In general, businesses do not make their financial accounts publicly available, except for larger companies.**

The Chamber of Commerce and Industry offers on its website general information on registration procedures and the economy of St. Maarten. Information on separate businesses or regarding overall statistics can be obtained upon request.

The website of the SHTA contains a database of all joint businesses, with, in most cases, a link to the website of that particular company with information on their board structure.<sup>694</sup> However, information regarding the ownership structure is not mentioned on these websites, nor is information available to the public on the business finances.

According to respondents, companies that are required to involve an accountant, like the larger companies, will effectively apply financial audits and reporting standards, but they will not publish their financial reports on their websites. None of the respondents could think of an example in which companies disclose or publish information related to countering corruption.<sup>695</sup>

### **Accountability (law)**

**Score: 50**

TO WHAT EXTENT ARE RULES AND LAWS GOVERNING OVERSIGHT OF THE BUSINESS SECTOR AND GOVERNING CORPORATE GOVERNANCE OF INDIVIDUAL COMPANIES IN PLACE?

**General rules to govern oversight of the business sector are established by law; companies are allowed to address their internal issues by their own charters.**

General provisions regarding the roles of boards of directors, supervisory boards and shareholders are included in the law<sup>696</sup> and are applicable to all legal entities. Specific provisions on corporate governance are only applicable for government-owned companies and foundations, including the Corporate Governance Council, as well as a corporate governance code.<sup>697</sup>

All businesses, regardless of their legal form, must report to the general meeting of shareholders for approval of their financial statements.<sup>698</sup> Under the Penal Code, anyone who does not comply with

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<sup>692</sup> Constitution, 2010. Article 103; and *Kader-vaststellingslandsverordening centrale bank, geldstelsel, deviezenverkeer en wisselkoers*, Articles 1 and 2.

<sup>693</sup> CBCS, Provisions for the Disclosure of Consolidated Financial Highlights of Domestic Banking Institutions, Article 3.  
<sup>694</sup> [www.shta.com](http://www.shta.com).

<sup>695</sup> Several interviews conducted by the authors with interviewees from the business sector, 2014.

<sup>696</sup> Civil Code, Book 2, Articles 11, 15 and 19.

<sup>697</sup> National Ordinance Corporate Governance, Articles 1, 3 and 4.

<sup>698</sup> Civil Code, Book 2, Articles 116 and 120.

the prescribed regulations regarding publication of the annual accounts (also see the section on transparency) is punishable with a prison sentence of three months or a monetary fine.<sup>699</sup>

The articles of association – unless a provision for a division between executive management and supervisory management is included – may provide for a board of supervisory directors. In that case, the articles of association will also specify tasks of the board. The board will at least supervise the management of the company, and has the authority to appoint, suspend and dismiss any manager.<sup>700</sup> If the constitution of the board of supervisory directors is not specified in the articles of association, the members can be appointed, suspended and dismissed by the annual general meeting of stakeholders.<sup>701</sup>

The Central Bank of Curaçao and St. Maarten is a professionally staffed regulator that oversees the financial sector, including credit institutions, institutional investors, insurance brokers, investment institutions and administrators, and trust service providers.<sup>702</sup>

In addition, the Financial Intelligence Unit (MOT) oversees any unusual transaction reported.<sup>703</sup> The MOT is also – by membership of the Kingdom – a member of the Financial Action Task Force, an intergovernmental body to combat money laundering and terrorist financing.<sup>704</sup>

St. Maarten has no stock market and therefore no stock market oversight body.

### **Accountability (practice)**

**Score: 25**

TO WHAT EXTENT IS THERE EFFECTIVE CORPORATE GOVERNANCE IN COMPANIES IN PRACTICE?

**Due to a lack of public information, effectiveness in ensuring good corporate governance is difficult to determine, although some branches do meet accountability standards.**

As transparency is not met with regard to information from supervising boards and oversight bodies, it is difficult to determine whether good corporate governance is being ensured in practice and being effective or not in the private sector (for the Corporate Governance Council, which oversees public-owned companies, see Chapter VII.4 on the supervisory institutions in the public sector). Some information on specific branches from external regulators, like the Central Bank and the MOT, is provided through their annual reports.<sup>705</sup>

As argued by respondents, compliance with corporate governance rules is not very common in St. Maarten.<sup>706</sup>

### **Integrity mechanisms (law)**

**Score: 50**

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<sup>699</sup> Civil Code, Book 2, Article 3:24.

<sup>700</sup> Civil Code, Book 2, Article 19.

<sup>701</sup> Civil Code, Book 2, Article 80.

<sup>702</sup> Constitution, 2010. Article 103; and *Kader-vaststellingslandsverordening centrale bank, geldstelsel, deviezenverkeer en wisselkoers*, Articles 1 and 2.

<sup>703</sup> National Ordinance Reporting of Unusual Transactions, Article 11.

<sup>704</sup> [www.fatf-gafi.org](http://www.fatf-gafi.org).

<sup>705</sup> [www.centralbank.an](http://www.centralbank.an) and [www.fiu-sxm.net](http://www.fiu-sxm.net).

<sup>706</sup> Several interviews conducted by the authors with interviewees from the business sector, 2014.

TO WHAT EXTENT ARE MECHANISMS IN PLACE TO ENSURE THE INTEGRITY OF ALL THOSE ACTING IN THE BUSINESS SECTOR?

**While some branch organisations do have integrity mechanisms in place, in general other businesses do not have regulations to ensure integrity.**

The business sector in St. Maarten as a whole does not have a sector-wide code of conduct or anti-corruption code. However, some sectors have their own code of conduct and several companies have internal codes, although these are usually more focussed on working processes.

Different sectors have their own integrity mechanisms. As for the financial sector, organisations that are supervised by the CBCS are required to have an integrity policy.<sup>707</sup> The CBCS is to perform integrity testing every three years for certain pre-defined integrity-sensitive positions, based on antecedent research.<sup>708</sup> In addition (also see the section on accountability, law above), general legislation on anti-money laundering and financing of terrorism exists.<sup>709</sup>

Accountants or at least all chartered accountants registered with the Dutch accountants' organisation, NBA, are bound to its code of conduct.<sup>710</sup> The code covers issues such as integrity and objectivity. Complaints regarding professional behaviour of individual accountants may be subjected to the 'Accountantskamer'.<sup>711</sup> Members of the legal profession join a bar association and complaints regarding unprofessional behaviour of individual lawyers may be subjected to the supervisory council of the bar. In addition, according to the country ordinance, complaints against a lawyer can be filed with a supervisory council (consisting of a judge and two lawyers).<sup>712</sup>

In St. Maarten no provisions are in place that require bidders for public contracts to have ethics programmes, such as anti-corruption agreements or business principles and corresponding compliance mechanisms.

Corporate codes of conduct and other aspects of corporate responsibility hardly exist within companies. Some of the larger companies may have a professional compliance officer, although this is not very common in St. Maarten.

The legal framework contains provisions regarding private sector bribery. As mentioned earlier, under the Penal Code this is a punishable offence and may be punished with a prison sentence or a monetary fine.<sup>713</sup>

### **Integrity mechanisms (practice)**

**Score: 25**

TO WHAT EXTENT IS THE INTEGRITY OF THOSE WORKING IN THE BUSINESS SECTOR ENSURED IN PRACTICE?

**There is no sector-wide code of ethics. In general, there is a reactive approach regarding integrity issues, and the effectiveness of existing rules can be questioned.**

<sup>707</sup> CBCS, Policy rule for sound business operations in cases of conflict of interest, incidents and integrity-sensitive positions.

<sup>708</sup> CBCS, Policy rule on integrity testing.

<sup>709</sup> National Ordinance Reporting Unusual Transactions; and National Ordinance Identification when Rendering Services.

<sup>710</sup> [www.nba.nl](http://www.nba.nl): Outline regulations accountancy.

<sup>711</sup> [www.accountantskamer.nl](http://www.accountantskamer.nl)

<sup>712</sup> [www.barsxm.com](http://www.barsxm.com); and Country Ordinance Advocacy 1959.

<sup>713</sup> Penal Code, Articles 2:212 to 2:214.

In practice, there is no integrity policy for businesses in general. As mentioned in the previous section, integrity mechanisms are only required within certain professional organisations. The effectiveness of these rules can only be measured by the number of complaints within that sector and related information is not sufficiently available.

According to respondents, codes of conduct, if existing, are not applied consistently. Moreover, the notion of what a code of conduct exactly needs to articulate, in terms of ethics, seems lacking and in practice focuses more on working process-related issues than on rules of integrity. Experts noted that the general concern about integrity within and outside the private sector is low.<sup>714</sup>

In St. Maarten no whistleblowing policies exist. It was argued by interviewees that St. Maarten society is too small for such a mechanism. Nor has a blacklist of companies involved in corruption and money laundering been compiled, although the website of the Central Bank does have an international list of companies sponsoring terrorism.<sup>715</sup>

## **Role**

### **Anti-corruption policy engagement**

**Score: 0**

TO WHAT EXTENT IS THE BUSINESS SECTOR ACTIVE IN ENGAGING THE DOMESTIC GOVERNMENT ON ANTI-CORRUPTION?

**There are no examples of business associations publicly calling on the government to fight corruption.**

At present St. Maarten has no specific lobbying groups for anti-corruption. According to experts in the business sector interviewed, the business sector does not participate actively in government integrity policies, although irregularities within the public sector are discussed with members of one's own association. With the recent focus on the subject, business associations might participate in new initiatives regarding the subject.<sup>716</sup>

### **Support for/engagement with civil society**

**Score: 0**

TO WHAT EXTENT DOES THE BUSINESS SECTOR ENGAGE WITH/PROVIDE SUPPORT TO CIVIL SOCIETY ON ITS TASK OF COMBATTING CORRUPTION?

**In general, the business sector does not engage with or provide support to civil society in combatting corruption.**

CSOs (see also Chapter VII.12 on CSOs) in St. Maarten are not funded by private businesses, and there is no link between CSOs and the private sector.

An expert noted that at present CSOs are weak in performance due to a lack of financial and professional human resources, and do not actively seek support from the private sector. In addition they do not have the confidence that the private sector would be interested in joint initiatives,

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<sup>714</sup> Several interviews conducted by the authors with interviewees from the business sector, 2014.

<sup>715</sup> Ibid./CBCS, Policy rule for sound business operations in the case of incidents and integrity-sensitive positions, January 2011.

<sup>716</sup> Several interviews conducted by the NIS assessment team, 2014.

especially now after the constitutional change, as these organisations are funded by the local government.<sup>717</sup>

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<sup>717</sup> Ibid.

# VIII. CONCLUSIONS AND RECOMMENDATIONS

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This final chapter presents a) an overview of the strengths and weaknesses of the St. Maarten NIS by pillar and b) systemic and pillar-by-pillar recommendations to strengthen the integrity system and as a result reduce corruption risks in St. Maarten.

## NIS PILLARS: KEY STRENGTHS AND WEAKNESSES

The sections below summarise the most important strengths and weaknesses of the St. Maarten national integrity pillars, as presented in the respective previous chapters.

### LEGISLATURE

#### Key strengths

- generally strong legal framework
- sufficient powers in law to oversee the executive

#### Key weaknesses

- very limited executive oversight in practice
- low on independence in practice
- low on transparency and accountability in practice
- low on integrity in practice

### EXECUTIVE (ministers and Council of Ministers)

#### Key strengths

- strong legal provisions on independence and accountability

#### Key weaknesses

- insufficient accountability in practice
- low on functioning mechanisms for the implementation of integrity provisions, such as the screening of ministers
- insufficient public sector management

### CONSTITUTIONAL COURT

#### Key strengths

- very strong legal provisions on independence and transparency
- very strong powers to oversee the executive

### **Key weaknesses**

- no website to inform the public on its activities
- no independent body to investigate complaints against the Constitutional Court

## PUBLIC SECTOR (ministries, public-owned companies)

### **Key strengths**

- generally good legal provisions on accountability and integrity

### **Key weaknesses**

- lack of independence of public sector employees in law, low on independence in practice
- limited legal provisions concerning transparency and weak transparency in practice
- accountability mechanisms are insufficiently used and/or largely ineffective in practice
- low on cooperation with civil society and private agencies in addressing corruption
- low transparency regarding public procurement

## LAW ENFORCEMENT AGENCIES (St. Maarten police forces and the Public Prosecutor's Office)

### **Key strengths**

- strong legal provisions on accountability and integrity

### **Key weaknesses**

- limited transparency mechanisms
- insufficient speed regarding processes on investigation and prosecution of corruption cases
- no ownership of cases (prosecutor's office) due to rapid turnover of prosecutors

## ELECTORAL MANAGEMENT BODIES (Civil Registry, Electoral Committee and Electoral Council)

### **Key strengths**

- strong legal provisions on transparency and independence
- strong campaign regulation and election administration both in law and in practice

### **Key weaknesses**

- regulation on political funding only in effect after nomination day
- no legal sanctions for infractions of the law

## Ombudsman (Ombudsman St. Maarten)

### **Key strengths**

- strong independence in both law and practice

- sufficient in resources in dealing with complaints

#### **Key weaknesses**

- improvements can be made on transparency regarding individual investigations

## SUPREME AUDIT INSTITUTION AND PUBLIC SUPERVISORY INSTITUTIONS (ARSXM, SOAB, Cft)

#### **Key strengths**

- strong legal provisions to support independence and integrity
- sound independence, transparency and integrity in practice
- very strong on accountability in practice

#### **Key weaknesses**

- in practice, the ARSXM has not investigated the misbehaviour of public officeholders

## POLITICAL PARTIES

#### **Key strengths**

- strong legal provisions on resources; free establishment and operation
- strong legal provisions on independence; internal governance

#### **Key weaknesses**

- weak legal provisions on transparency and lack of transparency in accounting in practice
- weak aggregation and representation of the larger social interest
- weak commitment to anti-corruption

## MEDIA

#### **Key strengths**

- strong legal provisions on free establishment/registration
- strong legal provisions on independence and internal governance

#### **Key weaknesses**

- limited human resources in terms of trained journalists
- weak legal provisions on transparency and lack of transparency on ownership in practice
- high dependency on businesses and advertisers
- potential risk of conflict of interest regarding licensing of reporters
- weak provisions to ensure integrity in media
- lack of investigative journalism

## CIVIL SOCIETY

#### **Key strengths**

- strong legal provisions on free establishment and operation and independence

### **Key weaknesses**

- lack of resources in practice
- weak transparency and no information on accountability in practice
- weak legal provisions on transparency and lack of transparency in accountability in practice
- lack of integrity mechanisms
- ineffective to hold government accountable and to contribute to policy reform

## **BUSINESS**

### **Key strengths**

- strong legal provisions on resources; free establishment/registration
- strong legal provisions on independence; internal governance

### **Key weakness**

- time-consuming registration procedures
- weak on transparency in accountability in practice
- weak integrity mechanisms in practice
- lack of competition authority
- failure to participate in anti-corruption policies or support civil society on anti-corruption

## **RECOMMENDATIONS**

The following are the main systemic recommendations for the NIS St. Maarten:

- Create increased awareness of the undermining effects of corruption on society as a whole, and on how funds lost to corruption could be used for community development (education, social welfare, etc.), for example by measuring the costs of corruption.
- Increase resources dedicated to implementation of laws and regulations, to ensure their enforcement and if necessary sanctioning.
- Increase transparency and accountability of all institutions by increased use of information technology and by making reports publicly available on websites.
- Enhance transparency on political party funding to the public, to help create a shift from solely personal interest to aggregation of social interests by political parties.
- Make publicly available the annual reports and accounts of public companies and foundations.
- Improve resources within the law enforcement agencies in order to be able to effectively conduct investigations (Special Police Force) and prosecute (Public Prosecutor's Office).
- Improve the legal framework on integrity by assembling all regulations into one uniform law on integrity, in accordance with the recommendations of all recently published Integrity reports. Include sanctions for integrity breaches to be monitored by an independent integrity institution.
- Establish an independent Integrity/good governance Institution for all (semi-) government institutions (for example, use the Corporate Governance Council and change its objectives), and seek support for policy development and training on integrity.
- Take measures to prevent changes of political affiliation once elected without the requirement to give up one's seat in Parliament (taking into consideration the popular votes), to create more political stability. Change the electoral law accordingly.

- Introduce a definite sanction that a political candidate is removed from public office in case of any infraction of the law.
- Train political candidates and members of the legislature on their role in society and set up a handbook for candidates and legislators.
- Train members of the executive, their cabinets and top management of the government departments on integrity regulations and implement an integrity protocol for members of the executive.
- Implement a human resources recruitment and career development plan for the public sector, for example including a database of students going abroad
- Increase cooperation between various institutions within and across pillars, for example via secondments.
- Enforce existing rules on misbehaviour within institutions for example by strengthening internal complaint procedures.

On a pillar level, detailed recommendations to help improve performance in that specific pillar are as follows:

## LEGISLATURE

- Make all documents available on the official website of Parliament.
- Make publicly available the status of new legislation processing.
- Make the rules to inform the audit chamber more specific.
- Make publicly available all information on activities related to the position of a member of Parliament.
- Establish a code of conduct with specific rules on additional functions and activities and financial interests.
- Develop and implement training for all members of Parliament regarding their monitoring task towards the executive.
- Enact legislation on the establishment of anti-corruption agencies.

## EXECUTIVE

- Accelerate the process of publication of all (translated) legislation on the official website of the government.
- Establish and make use of functioning mechanisms for the implementation of integrity provisions, such as screening procedures.
- Make publicly available all information on activities related to the position of a member of the executive.
- Ensure the establishment and implementation of anti-corruption agencies.

## CONSTITUTIONAL COURT

- Establish a code of conduct.
- Develop and implement the court's own website to inform the public on the institution itself and its activities.

## PUBLIC SECTOR

- Make rules on appointments and dismissal more specific.
- Make all documents publicly available on the internet as required.
- Implement all provisions regarding the ordinance on corporate governance.
- Make publicly available the annual reports and accounts of public companies and foundations.

- Inform the public on public procurement by making available information on the decision-making process.
- Implement a qualitative reorganisation in order to improve the effectiveness of civil servants' work.
- Take measures to protect whistleblowing activities.
- Establish and implement a public anti-corruption campaign.

## LAW ENFORCEMENT AGENCIES

- Enhance transparency by informing the public of the status of cases.
- Increase of resources from the executive in order to be able to effectively conduct investigations (Special Police Force) and prosecute (Public Prosecutor's Office).

## ELECTORAL MANAGEMENT BODIES

- Have the executive make appropriate infrastructure and resources available.
- Make publicly available information on the actual funding of political parties.

## OMBUDSMAN

- Make publicly available (anonymised) reports on individual investigations, including official reactions to the ombudsman's recommendations.
- In compliance statistics differentiate between integrity and non-integrity breaches.

## SUPREME AUDIT AND PUBLIC SUPERVISORY INSTITUTIONS

- Initiate investigations into the misbehaviour of public officeholders.

## POLITICAL PARTIES

- Implement measures to ensure a connection is maintained between votes obtained and a seat in Parliament
- Enhance transparency on internal governance.

## MEDIA

- Implement and monitor rules of integrity or a code of conduct and
- Enhance transparency regarding the process of licensing of individual reporters.
- Seek funds to train reporters on investigative journalism, for example with support from an international foundation on journalism.

## CIVIL SOCIETY

- Seek advice and knowledge exchange with experienced civil society organizations – in particular within the Caribbean region – to increase resources and effectiveness of work

## BUSINESS

- Increase transparency with regard to annual reports.
- Establish and implement internal complaint procedures and a whistleblowing policy.

- Implement and monitor rules on integrity for board members and staff, such as screening regulations.
- Create employee awareness of anti-corruption through training.
- Work with legislative to design and implement new legislation on competition, including the establishment of a competition authority.
- Implement and monitor a law governing the registration and publication of audited annual accounts of registered companies by the Chamber of Commerce.

# ANNEX: LIST OF INTERVIEWEES

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**Eveline Henriquez-Dijkhoffz**, Member of the Social Economic Council. Interview 27 May 2014.

**Rachnilda J.A. Arduin**, Ombudsman, and **Patricia Philips, LLB**, Secretary General for the Office of the Ombudsman. Interview 28 May 2014.

**Erik van Engelen**, Policy Advisor, Financial Supervisory Board. Interview 28 May 2014.

**Ronald Halman**, Chairman General Audit Chamber, and **Joane Dovale-Meit**, Secretary General, General Audit Chamber. Interview 30 May 2014.

**Alberto F. Bute**, Chairman, SUNFed. Interview 2 June 2014.

**P. de Witte**, Chief of Police, Chief Commissioner of the Police Force of Sint Maarten, and **H.K.F. van Straten LLM**, Strategy Advisor, Chief of Police, Police Force of Sint Maarten. Interview 3 June 2014.

**Dennis L. Richardson**, Minister of Justice. Interview 4 June 2014.

**Claret Connor**, Executive Director, St. Maarten Chamber of Commerce & Industry. Interview 4 June 2014.

**Rene Richardson**, (former) Secretary General, Social Economic Council. Interview 5 June 2014.

**William A. Reed**, Secretary General, WICSU/PSU/Board Member, Social Economic Council. Interview 5 June 2014.

**Taco H.W. Stein**, Solicitor General. Interview 6 June 2014.

**M.H. Steenbergen**, Secretary General / Head Inspector Council of Law Enforcement, **W.H. Wijga**, Inspector Council of Law Enforcement, and **Lixzandra Marquez LLM**, Inspector Council of Law Enforcement. Interview 6 June 2014.

**William Marlin**, Party Leader, National Alliance. Interview 10 June 2014.

**Paul de Windt**, Publisher, *The Daily Herald*. Interview 11 June 2014.

**Sarah Wescott-Williams**, Party Leader, Democratic Party. Interview 12 June 2014.

**Prakash Mirpuri**, President, Indian Merchants Association, **Damu Rawtani**, Vice President, Indian Merchants Association, and **Cookie Bijlani**, Treasurer, Indian Merchants Association. Interview 13 June 2014.

**Kathy Snijders**, Head, Civil Registry. Interview 13 June 2014.

**Carl W. Duinker**, Associate Member, SUNFed. Interview 16 June 2014.

**Mr. Bert G. Hofman**, Chairman, Electoral Council. Interview 16 June 2014.

**Remco M. Stomp LLM**, Attorney at Law Stomp Lawyers. Interview 17 June 2014.

**Miguel de Weever, MA**, Acting Secretary General, Staff Bureau, Ministry of Tourism, Economic Affairs, Traffic and Telecommunication. Interview 17 June 2014.

**Gracita P. Arrindell**, President of Parliament. Interview 18 June 2014.

**Eveline Henriquez-Dijkhoffz**, President, St. Maarten Hospitality and Trade Association, **Lorraine Talmi**, Vice President, St. Maarten Hospitality and Trade Association, and **Keith Graham**, Treasurer, St. Maarten Hospitality and Trade Association. Interview 19 June 2014.

**Theo Heyliger**, Party Leader, United People's Party. Interview 20 June 2014.

**Francis Carty**, Owner, Phillipsburg Broadcasting. Interview 23 June 2014.

**Ademar P. Doran**, Head, National Detectives (Landsrecherche). Interview 23 June 2014.

**Sidney Ricardo**, Senior Audit Manager, administration's internal auditor. Interview 24 June 2014.

**Louis L. Duzanson**, (former) Chairman, Corporate Governance Council. Interview 25 June 2014.

**Jason J. Rogers LLM**, Chairman, Main Voting Bureau, and **Willem van Asselt**, Member, Main Voting Bureau. Interview 25 June 2014.

**Ligia M.I. Stella**, Director, Financial Intelligence Unit. Interview 27 June 2014.

**Valerie Giterson-Pantophlet**, Board Member, University of St. Maarten. Interview 27 June 2014.

**Jacob (Bob) Wit**, President, Constitutional Court St. Maarten. Interview 20 December 2014

**Susanne Camelia-Romer**, Substitute Member, Constitutional Court St. Maarten. Interview 20 December 2014.

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