

**Linette A. Gibs**

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**Subject:** FW: Draft National Ordinance to Amend the National Ordinance Administrative Jurisdiction  
**Attachments:** Draft National Ordinance to amend the National Ordinance administrative Jurisdiction.pdf  
**Importance:** High

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**From:** Nancy R. Guishard-Joubert  
**Sent:** Friday, November 2, 2018 3:20 PM

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**From:** Pieters, Marilyn <[Marilyn.Pieters@sintmaartengov.org](mailto:Marilyn.Pieters@sintmaartengov.org)>  
**Sent:** Friday, November 2, 2018 3:17 PM  
**To:** Sarah A. Wescot-Williams <[Sarah.Wescot-Williams@sxmparliament.org](mailto:Sarah.Wescot-Williams@sxmparliament.org)>; Nancy R. Guishard-Joubert <[nancy.joubert@sxmparliament.org](mailto:nancy.joubert@sxmparliament.org)>  
**Subject:** Draft National Ordinance to Amend the National Ordinance Administrative Jurisdiction  
**Importance:** High

Hon. Ms. Wescot-Williams,

The Cabinet of the Ministry of Justice hereby presents to you the Draft National Ordinance to amend the National Ordinance Administrative Jurisdiction.  
Hoping to have informed you correctly.

Respectfully,

**Mrs. Marilyn Pieters**  
**Executive Assistant**  
**Cabinet of the Minister of Justice**  
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V.H.C. de Weever  
Minister of Justice  
Administration Building  
Souliga Road 1 - Pond Island  
Philipsburg - St. Maarten

To:  
The President of the Parliament of St. Maarten

Philipsburg, November 2, 2018

Our ref.: 326-18B/JUS

Your ref.:

Re: Draft National Ordinance to amend the National Ordinance Administrative Jurisdiction

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Government hereby sends Parliament its response to the report of the Central Committee meeting of June 11, 2018 on the Draft National Ordinance to amend the National Ordinance Administrative Jurisdiction (hereafter mentioned as: Draft Ordinance).

Government has taken note with great interest of the questions and remarks of the faction members of the United Democrats, the Sint Maarten Christian Party, the National Alliance and the United St. Maarten Party. It is good to notice that not one of the factions have spoken against the Draft Ordinance.

In the following Government will first give a general introduction to the Draft Ordinance. The introduction relates especially to the questions and remarks of the United Democrats-faction, which would like for Government to explain what the essence is of the Draft Ordinance, and of the National Alliance-faction, which wants Government to educate (the public) more on this piece of legislation. Government will then react to the remaining questions of the factions in so far they are not already dealt with in the following introduction to the Draft Ordinance.

#### **General introduction**

The Draft Ordinance was initiated under the Netherlands Antilles and consists of procedural-technical amendments to administrative proceedings as prescribed in the National Ordinance Administrative Jurisdiction. It was already pending for approval at the Parliament of the Netherlands Antilles and as a consequence of the dissolution of the Netherlands Antilles it was forwarded to the Parliament of Sint Maarten (also to the Parliament of Curacao) for further handling on the basis of article Additional IV, paragraph 1, of our Constitution.

This provision reads as follows:

*"On a proposal by the Government, the Parliament may deliberate upon a draft national ordinance that had been raised by the Government of the Netherlands Antilles with the Parliament of the Netherlands Antilles before this Constitution came into effect. They shall take up the deliberation of the draft in question from the point the draft had reached at the relevant time."*

The purpose of this provision is to create continuity in the legislative process and to not unnecessarily burden the legislative system, and its limited resources. Curacao has exactly the same provision in its constitution and there the parliament approved this same draft ordinance on July 18, 2015. Considering that Sint Maarten shares the same court system as Curacao (and Aruba), namely


the Joint Court of Justice, and, that both countries (together with Aruba) have signed an agreement in 2010 to have uniform procedural laws,<sup>1</sup> it would behoove Sint Maarten to adopt this law.

The Draft Ordinance provides for some procedural-technical changes in the National Ordinance on Administrative Jurisdiction (the '*Landsverordening administratieve rechtspraak*', hereafter referred to as: the LAR). The LAR is a procedural law pertaining to formal administrative proceeding. The proposed amendments to the LAR are aimed to make these administrative proceedings more effective and efficient with less administrative and time-consuming burdens and costs for those who are seeking legal redress to defend themselves against undesirable decisions of administrative organs.

The LAR gives individuals (natural persons and legal entities) the possibility to object or contest decisions of an administrative organ by which they are directly affected. They may object respectively appeal such a decision to that same administrative organ respectively to the Court of First Instance and, in higher appeal, in accordance with the procedures specified in the LAR. One may object or appeal an unfavorable decision of an administrative organ by him- or herself or by his or her representative. If a person wants to make use of lawyer to appeal such a decision, but has insufficient income to pay for the lawyer, he or she may be eligible for subsidized legal assistance.<sup>2</sup>

#### **Remaining questions**

*The Sint Maarten Christian Party-faction supports the Draft Ordinance, but thinks that it only makes sense for Parliament to go forward with it after the LAR has been aligned in accordance with the Sint Maarten situation after the dissolution of the Netherlands Antilles. Therefore, the faction proposes for the Government to first revise the LAR accordingly.*

Government refers the Sint Maarten Christian Party, in this regard to Article 1 of Annex I of the National Ordinance transitional provisions for legislation and administration.<sup>3</sup> Pursuant to the provisions in this legislative article the LAR is aligned with the new constitutional constellation of Sint Maarten. There is however still the possibility to publish a consolidated text of the law and Government will be exploring that possibility.

*The United St. Maarten Party-faction has asked questions on the workload and the delay and backlog in cases of the Court in relation to the passing of hurricane Irma.*

The Court, i.e. its buildings and facilities sustained serious damages due to the passing of hurricane Irma. Staff – the judges, the administrative and security personnel - had to deal with their own damages on the home front. The latter was also the same for attorneys and their clients or others with pending court cases. The Court was also faced with persons who (temporarily) left the island due to Irma. It was, therefore, a direct consequence of Irma and out of necessity that several court cases had to be delayed. However soon after Irma the court was able to quickly clear the backlog in court sessions and cases with the assistance of an extra judge who came to the Island for a period of three months.

*This faction also asked if the Draft Ordinance does not conflict with other (draft) legislation, especially the tax laws, if it has any financial implications and if the subsidized legal assistance is applicable to the administrative proceedings.*

<sup>1</sup> Onderlinge regeling, zoals bedoeld in artikel 38, eerste lid, van het Statuut voor het Koninkrijk regerende de samenwerking tussen Aruba, Curaçao en Sint Maarten (Samenwerkingsregeling eenvormig procesrecht Aruba Curaçao en Sint Maarten).

<sup>2</sup> Pursuant to Article 6 of the LAR the National Ordinance on free legal aid is applicable to an appeal based on the LAR.

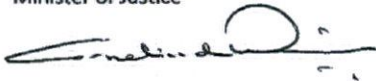
<sup>3</sup> Landsverordening overgangsbepalingen van wetgeving en bestuur (AB 2010, GT no. 30):

The Draft Ordinance does not conflict with other existing legislation or pending drafts. The LAR (and its amendments pursuant to the Draft Ordinance) is not applicable to tax cases.<sup>4</sup> The tax office uses and applies its own procedural laws: the 1940 National Ordinance on appeal in tax cases 1940.<sup>5</sup> The implementation of the Draft Ordinance does not come with extra costs for Sint Maarten. Also, pursuant to Article 6, paragraph 1, of the LAR the National Ordinance on free legal assistance<sup>6</sup> is applicable to administrative court proceedings.

On a final note, the Draft National Ordinance to amend the National Ordinance Administrative Jurisdiction promotes uniformity and concordance within the administrative procedure legislation of both Curacao and Sint Maarten. It serves the principle of legal certainty and is also to the benefit of all who seeks legal redress against decisions from an administrative body. Therefore, I give the members of this esteemed legislative body in serious consideration to urgently approve this Draft Ordinance.

Yours Sincerely,

Minister of Justice



V.H. Cornelius de Weever

<sup>4</sup> See Article 7, par. 2, sub 2, of the LAR.

<sup>5</sup> Landsverordening op het beroep in belastingzaken 1940.

<sup>6</sup> Landsverordening kosteloze rechtsbijstand.