



OMBUDS INSTITUTIONS FOR THE ARMED FORCES AND GENDER

Benjamin S. Buckland



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1. Introduction¹

Ombuds institutions for the armed forces are essential elements of any well-governed security sector. By receiving and investigating complaints and by issuing reports and recommendations they can help to prevent, identify and address a range of issues relating to maladministration and human rights, as well as to improve the effectiveness of efficiency of state institutions.

Gender equality is integral to human rights promotion and protection, a fact which is underlined by the specific UN Security Council Resolutions (1325 and 1820) which call for security sector institutions to be gender-responsive in their activities.

Ombuds institutions are well placed to support the development of gender-sensitive practices by receiving and investigating complaints, issuing reports and recommendations and by advising and overseeing the armed forces as they move to more fully integrate women within their ranks.

This paper seeks to provide an introduction to this issue by looking, first, at some of the key issues and challenges relating to gender and the armed forces and, second, at the ways in which ombuds institutions can help to improve equality, reduce discrimination, and deal with specific issues such as bullying and harassment. It concludes with a small number of recommendations on improving gender equality (and non-discrimination more generally) in the armed forces.

This study has been developed on the basis of DCAF's general research on ombuds institutions and the work of our in-house Gender and Security Programme, as well as two specific research tools: a workshop for ombuds institutions, held in London on the 15th and 16th of July 2013, in cooperation with the UK Armed Service Complaints Commissioner, and a questionnaire sent to all ICOAF participating institutions.

2. Key Issues and Challenges

Change has been slow with respect to the legal framework governing the position of women in the armed forces. As states began to introduce sex discrimination legislation in the 1970s, most exempted the military from its coverage. The United Kingdom was typical in this regard. When the 1975 Sex Discrimination Act came into force, the military still operated with separate units for men and women and a rank ceiling was in effect for female personnel.

In a number of states, the late 1980s and early 1990s saw a reduction in the number of male only roles. Ireland allowed women unrestricted access to all military roles in 1991 (ten years after the 1981 adoption of equal opportunity legislation). Canada made a similar move in 1989, although submarine restrictions remained in place until 2000.

A number of well-worn arguments have been deployed in opposition to the expanded role of women in the armed forces, although they have evolved from fairly simplistic debates about physical strength (for example, that women are supposedly not strong enough to carry wounded soldiers and thus cannot serve on the battlefield) to more subtle (and thus harder to rebut) discussions about moral cohesion, cultural solidarity, collective identity and comradeship (for example, that the presence of women in small military units is a distraction that reduces their cohesion and effectiveness).

Despite this opposition, a large number of states have already, or are in the process of, abandoning restrictions on roles that women can play in the armed forces. Nevertheless, special forces and submarine deployments remain something of a sticking point. The UK, for example, lifted restrictions on all but close-combat and submarine roles in 2010, deciding a year later to go further and phase out submarine restrictions between 2013 and 2015.

These restrictions continue to have a serious negative impact on the ability of women to reach leadership positions. Combat and operational experience weigh heavily in promotion decisions and when women are primarily represented in support roles, such as secondary trades and in medical or logistical regiments, they are far less likely to reach the top. In the UK, for example, women fill only 1 per cent of top military posts, compared to around 17 per cent in the police service, 13 per cent of senior judges, 26 per cent in the public service and 7 per cent in medium-sized companies. When restrictions were removed in Ireland, women rose rapidly as a result, although even there, the fact that overseas service is an important promotion criterion has exerted downward pressure on the rise of women. This is due to the fact that the primary carer role many women play in their families mean fewer are willing to spend long periods abroad. Likewise, the example of the

Netherlands shows that simply removing restrictions is no panacea. While positions within the Dutch special forces have been open to women since 1982,² very few women complete the requisite training, in part because, as a minority, they are often the target of bullying and harassment.

Box 1. Women in Combat Positions (2007)³

Women are allowed to fulfil combat positions in: Austria, Belarus, Belgium, Bosnia and Herzegovina, Canada, Croatia, the Czech Republic, Denmark, Estonia, Finland, Georgia, Germany, Ireland, Latvia, Lithuania, Luxembourg, Norway, Poland, the Russian Federation, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, and Turkey.

Women are not allowed to fulfil combat positions in: Azerbaijan, France, Portugal, Ukraine, the United Kingdom, and the United States.

Better working conditions for female armed forces personnel have made similarly patchy and uneven progress. Of the states surveyed as part of this research, only five make provision for flexible working hours and/or part time work for care givers.⁴ Similarly small numbers of states make provision for breastfeeding⁵ and only three states, among those surveyed, reported making childcare facilities available or contributing to childcare costs.⁶ On a more positive note, ombuds institutions in eighteen surveyed states reported that the armed forces (in case of Finland for example it is not the armed forces but the state in general that provides this) provide adequate paid maternity leave.⁷

Similarly, a majority of ombuds institutions in surveyed states noted that the armed forces in their countries had a gender mainstreaming strategy, action plan or policy. In particular, Canada noted that the United Nations Security Council

Resolutions 1820 regarding sexual violence in conflicts and 1325 on the inclusion of gender perspectives in operations had provided some impetus for reform.⁸ The response of the Austrian Parliamentary Commissioner for the Armed Forces, noted, for example, that the principles of Resolution 1325 had now been integrated into the planning, implementation and evaluation of operations and that its use had helped to promote the participation of women in international deployments.⁹ Other international instruments, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) have also proved to be a spur to reform in a number of armed forces.¹⁰

It is worth noting too that, even among states without such a strategy, some relevant objectives are still in place. In the UK, for example, the Ministry of Defence has published, in the context of its strategic equality objectives 2012–16, its aim to: “better understand the factors affecting representation of women, of Lesbian, Gay and Bisexual (LGB) personnel, and of people from UK ethnic minority communities in the Armed Forces, and to work to improve their representation to a level consistent with that in the wider population,” something which clearly represents a degree of progress.¹¹

One part of gender mainstreaming strategies in some states has been the introduction of gender focal points and advisors within the armed forces. Indeed, seven of those states surveyed for this research reported the existence of such advisors in the armed forces.¹² Such advisors can be particularly helpful in military cultures where a basic understanding of terms like zero tolerance and sexual harassment may be lacking. While the educational role of advisors and focal points is crucial, it is mitigated, however, in many situations by the fact that such focal points and advisors are commonly too low in the hierarchy to be influential.

The form of such focal points or advisors varies considerably among those states surveyed. In Canada, for example, the Defence Women's Advisory Organization (DWAO) is a volunteer group set up to assist in the resolution of systemic issues affecting women. This Advisory Group (alongside those for minorities, persons with disabilities and Aboriginal peoples) is able to voice its concerns directly to: the Chief of Military Personnel, the Associate Deputy Minister of Human Resources, the Co-chairs of the Defence Diversity Council, as well as to the senior representatives from all Environmental Commands and Group Principals. In addition, each of the four Groups has a Defence EE Champion to whom the National co-chairs have direct access.¹³ A small number of states also reported the existence of female and/or LGBT staff associations.¹⁴ For example in The Netherlands, the first country in the world where the ban on gays and lesbians in the armed forces was lifted in 1974, a special staff organisation for gay and lesbian armed forces personnel exists, with the aim of "to create a situation of social acceptance, equal rights and equal labor participation for all LGBT's (civilian and military) working for the Ministry of Defense."

While there has been progress in improving the policies and legal frameworks concerning women in the armed forces over the past few decades, the actual treatment of women in the armed forces remains troublingly far behind. Women in the UK armed forces, for example, are still over two times more likely to be bullied or harassed than their male colleagues and ten times more likely to suffer discrimination.

Perhaps more troubling still, women in the armed forces are also much less willing to make complaints. Indeed, many military women seem to accept sexual harassment as part of their jobs. Furthermore, both direct and indirect discrimination at the structural, institutional and individual levels remain problems that are extremely difficult to deal with in the closed

world of the armed forces, where hidden and unwritten rules continue to govern a great deal of behaviour.

This last point perhaps goes some way towards explaining why our survey data on complaints varies so wildly in this regard. In the Netherlands and Slovenia, for example, ombuds institutions report that sexual violence makes up between a quarter and a third of overall received complaints, suggesting it is a serious problem. In most other surveyed states, however, the issue was not reported as significant at all. Bullying and harassment showed similar variation. In some states these issues were reported as making up a very significant proportion of complaints. Bullying in the Netherlands and Belgium, for example, accounted for approximately 20 per cent of complaints and almost 65 per cent in Armenia. Harassment in the Netherlands was, likewise, reported as making up 35 per cent of complaints, as well as 20 per cent in Slovenia and 6 per cent in the UK. In other states there are almost no complaints on these issues. We can draw one of two conclusions from this; either these are not significant issues in many states or something is preventing people from making complaints. The second conclusion seems more likely.

3. Role and Involvement of Ombuds Institutions

Ombuds institutions clearly have a crucial role to play with regard to promoting and protecting equal opportunities, diversity, non-discrimination and human rights in the armed forces. At the most fundamental level, this role concerns the receipt and investigation of complaints. In the first instance, this means ensuring that all who wish to make a complaint are able to do so. With regard to gender issues, ombuds institutions have underlined the importance of tools such as: gender specific focus groups, training for staff on dealing with specific

types of complaints (particularly relating to sensitive topics such as sexual violence). In addition, it is important to make sure that actions (such as site visits) are conducted in such a way as to ensure that men and women can contact investigators without drawing attention to themselves. Referrals, anonymous complaints and publicising protective measures may also be useful tools in this regard.

Those ombuds institutions that responded to our survey reported a good deal of variation in the types of complaints received by women and men. While in some states, the overwhelming majority of complaints made by servicewomen concerned improper behaviour, such as bullying and harassment, in others, most complaints about such issues came from men. Caution should thus be exercised before too many general assumptions are made about the victims of particular types of behaviour. Indeed, in Canada, for example, the top three complaint categories (benefits, medical issues and release) are identical for women and men (although ordered differently).

Surveys and other baseline data collection is crucial here, in order to ensure that the complaints that ombuds institutions receive match up with the actual experiences of service men and women and that key issues are not being underreported or somehow hidden (due to fear of reprisal, for example). The Polish Human Rights Defender notes, for example, that it combats the underreporting of discrimination cases by carrying out social research of discrimination based on sex, sexual orientation and sexual identity in order to determine whether complaints match reality.

If serious differences appear to exist between data that has been gathered and the number of complaints that are being received, a powerful tool at the disposal of many ombuds institutions is their ability to conduct so-called own-motion investigations. Such investigations are those initiated by an institution without any requirement that a complaint triggers

the investigation. The power to conduct such investigations is crucial where underreporting is suspected, as is often the case with respect of harassment and bullying. If an institution is not receiving any complaints about an issue, it does not mean that there is not a problem worth looking into. A number of those institutions surveyed for this study reported having conducted such investigations.¹⁵ Additionally, in some states work satisfaction surveys among armed forces personnel are conducted by external institutions. These surveys often include data on gender related issues, for example, equal opportunities or harassment. In Finland, for example, the University of Tampere conducted a work satisfaction survey among conscripted and volunteer armed forces personnel in 2012. The study resulted in a wealth of information about gender related issues and showed that substantial numbers of armed forces personnel is subjected to bullying (20 per cent of female and 8 per cent of male service personnel), sexual harassment (17 per cent of female and 5 per cent of male service personnel).¹⁶ These and other gender related data, collected by an external institution, can be used to double check possible under-reporting via the official complaints mechanisms.

Outreach is a crucial part of the work of ombuds institutions. It takes place at the most basic level through standard reporting instruments, such as annual or thematic reports. In this regard, a number of surveyed institutions noted the importance of reporting trends, background information about gender-related complaints and recommendations in both their internal and public reports. Outreach can also take the form of training provided by an ombuds institution to the armed forces themselves. In this regard, a small number of surveyed institutions reported that they provide training on gender based violence,¹⁷ on sexual harassment,¹⁸ non-discrimination,¹⁹ LGBT rights,²⁰ and general human rights²¹ to members of the armed forces. The UK also reported that it provides training to those taking up command appointments to promote best

practices in leading a diverse workforce and in the handling of complaints about all matters, including equal opportunities, diversity, non-discrimination and human rights.

Survey respondents also underlined the importance of experienced and specialised staff in dealing with gender-related issues. A large number reported that they conduct internal staff training on equality and non-discrimination,²² human rights,²³ gender-based violence,²⁴ sexual harassment,²⁵ and LGBT rights.²⁶ Some surveyed institutions also reported the existence of specialised units or divisions dealing with equality and non-discrimination within the ombuds institution as a whole.²⁷ The Georgian Public Defender, for example, has an Equality Department with two permanent staff, four interns and a UN Expert on Gender Issues.²⁸ Likewise, in Montenegro, there exists a special unit, “The Institutional Mechanism for the Protection Against Discrimination, Minority Rights and Gender Equality,” within the office of the ombudsman, which deals with human rights issues relating to non-discrimination, and the rights of members of minority nations and other minority national communities, elderly persons, religious rights, rights of persons with disabilities, gender equality, gender identity and sexual orientation and other similar fields.²⁹ In Ukraine, the Commissioner has a representative for non-discrimination and gender equality who cooperates with a volunteer “Expert Council,” consisting of subject-matter specialists from civil society, the government and other associations.³⁰

This type of thematic cooperation is also common between ombuds institutions and similar bodies with specific mandates to focus on equality, non-discrimination and related issues. Examples of such institutions include the Estonian Gender Equality and Equal Treatment Commissioner and the Finnish Ombudsman for Equality. In a related note, the Austrian Parliamentary Commissioner reported having this type of cooperative arrangement with the gender advisor within

the Ministry of Defence³¹ and the UK Service Complaints Commissioner notes that it has worked with the cadre of Independent Harassment Investigating Officers within the armed services.³²

Cooperation with relevant civil society actors and other stakeholders is also common among surveyed institutions. In particular, institutions reported cooperating with NGOs working on gender issues,³³ trade unions³⁴ and associations,³⁵ LGBT organisations,³⁶ women’s networks,³⁷ members of parliament,³⁸ service prosecutors,³⁹ and international organisations.⁴⁰

This cooperation can include complaint referrals, joint workshops and roundtable discussions, and working groups on issues of common interest. The Georgian Public Defender, for example, acts as a working group member at the Council of Gender Equality and, in this role, advocates for the consideration of gender perspectives in security and the implementation of relevant Security Council resolutions. Stakeholder cooperation can also be important in cases where legitimate concerns are raised but where the institution does not have competence to deal with a specific complaint. The Public Defender of Georgia, for example, reports that it may consider handing over such cases to NGOs who are able to provide further relevant assistance.⁴¹ Joint training is also a fruitful area of cooperation. In this regard, the Ombudsman of Montenegro, for example, notes that it sends representatives to NGO training events on LGBT and gender issues.⁴² Finally, institutions may cooperate on data gathering and on refining research methodologies. The Polish Human Rights Defender, for example, reports that it consults with a range of organisations focusing on LGBT and gender issues on its own research methodologies and on the recommendations it publishes in annual and thematic reports.⁴³

4. Conclusions

A number of conclusions can be drawn, both from the discussion above, as well as from recommendations made by ombuds institutions themselves in the context of the survey conducted for this report.

First, it is crucial that effective legislation is in place. In the majority of states, men and women are still unable to participate equally within the armed forces, contributing to the lower status of women and creating a barrier to promotion and thus to the rise of women into those positions of leadership in which they would be able to affect positive change. More worrying still, perhaps, is that in some states, relevant protection standards do not exist in national legislation on issues like sexual harassment, making it very difficult for ombuds institutions to deal effectively with complaints.⁴⁴ A related problem is the fact that even where solid legislative and institutional frameworks in the field of gender equality are in place, women still suffer unfavourable treatment in practice.⁴⁵

Second, and related to this last point, institutions must work to ensure that serious issues are not being hidden from view. This includes recognizing that when women are in the minority, they face great difficulties in raising complaints.⁴⁶ As noted above, part of the solution to this issue is to conduct baseline studies to ensure that rates of complaints match the actual experiences of servicemen and women.

Third, ombuds institutions need specific expertise (and in some cases specific systems) to deal with many types of complaints, including those relating to gender. This might include specific procedures for receiving and investigating certain types of complaints, as well as ensuring that staff are appropriately trained.⁴⁷ This might also involve developing institutional or ad hoc cooperation arrangements with relevant NGOs, associations, oversight institutions and judicial bodies.

Fourth, institutions should report specifically on gender issues in their annual and thematic reports. This may include the provision of gender-disaggregated data, as well as specific recommendations on, for example, the position of women in the armed forces. Institutions may also consider making recommendations on particularly important topics directly to ministers and service chiefs.⁴⁸

Fifth, while ombuds institutions do not generally have a mandate to investigate criminal matters, they should cooperate with and monitor the activities of service and civilian police and specialist prosecutors to ensure that such cases are dealt with efficiently and effectively.⁴⁹

Finally, ombuds institutions should invest in education, training and outreach in order to ensure that the armed forces understand gender-related issues and, in particular, the experience and perception of both servicemen and women and the potential and differing impacts of decisions on them and their human rights.

Notes

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2. Katia Sorin (ed.), *Des femmes militaires en Occident, quels enseignements pour la France ?* (Paris: Centre d'études en sciences sociales de la défense, 2005), pp. 94-118, available at: <http://www.c2sd.sga.defense.gouv.fr/IMG/pdf/SORIN_femmes_militaires_occident_premiersemestre2005.pdf>.
3. Hans Born and Ian Leigh, *Handbook on Human Rights of Armed Forces Personnel*, DCAF and OSCE/ODHIR 2008, 120. The data provided in the table are based on a survey among all participating OSCE states. The replies are provided by the governments of those states (as of 2007).
4. Belgium, Finland, Austria, Czech Republic, Slovakia, Mongolia .
5. Belgium, Netherlands, Slovenia, UK, Czech Republic, Slovakia
6. Belgium, Finland, UK
7. Belgium, Canada, Estonia, Finland, Netherlands, Slovenia, Tajikistan, UK, Austria, Czech Republic, Montenegro, Poland, Slovakia, Ukraine, Albania, Ireland, Armenia
8. Response of Canada
9. Response of Austria
10. Response of Slovakia.
11. See, UK Ministry of Defence Corporate Equality team, *Strategic Equality Objectives 2012-16*, Available online: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/227514/ea10_strategic_equality_objectives.pdf
12. Canada, Belgium, UK, Austria, Czech Republic, Poland, Ireland
13. Response of Canada
14. Netherlands, UK, Austria, Albania, Armenia
15. Austria, the Netherlands, Poland, Ukraine
16. Minna Leinonen, Risto Nikkanen, Katri Otonkorpi-Lehtoranta: Sukupuolten tasa-arvo puolustusvoimissa - Kehittämistarpeiden näkökulma asepalvelusta suorittavien ja henkilöstön kokemuksiin. Tampereen yliopisto, Työelämän tutkimuskeskus, Työraportteja 88/2012.
17. Belgium, Austria, Slovakia
18. Belgium, Slovakia
19. Belgium, Estonia, Austria, Slovakia, Mongolia
20. Belgium
21. Belgium, Estonia, Austria, Czech Republic, Slovakia, Mongolia
22. Belgium, Estonia, Finland, Slovenia, Tajikistan, the UK, Austria, Georgia, Montenegro, Poland, Slovakia, Albania, Armenia
23. Belgium, Finland, Slovenia, Tajikistan, Austria, Czech Republic , Georgia, Montenegro, Poland, Slovakia, Ukraine, Albania, Armenia
24. Belgium, Austria, Georgia, Slovakia, Ukraine, Albania, Armenia
25. Belgium, Canada, Finland, Slovenia, Slovakia, Ukraine, Armenia
26. Belgium, Finland, Georgia, Montenegro, Ukraine, Albania, Armenia
27. Georgia, Montenegro, Ukraine and Armenia
28. Response of Georgia
29. Response of Montenegro
30. Response of Ukraine
31. Response of Austria
32. Response of the UK
33. Slovenia, Georgia, Montenegro, Poland, Ukraine
34. Slovenia
35. Albania
36. Tajikistan, UK, Albania, Montenegro, The Netherlands
37. UK
38. UK
39. UK
40. Ukraine
41. Response of Georgia
42. Response of Montenegro
43. Response of Poland
44. Response of Georgia and Armenia
45. Response of Montenegro
46. Response of the UK
47. Response of Georgia
48. See the response of the UK
49. See the response of the UK

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Ben Buckland has worked for a number of years on independent oversight institutions, with a particular focus on ombuds institutions and national human rights institutions. His publications include: Ombuds Institutions for the Armed Forces: A Handbook, Whistleblowing and the Security Sector, Access to Information for Security Sector Oversight Institutions and major contributions to Global Principles on National Security and the Right to Information. He holds a BA with first class honours from the University of Melbourne and an MA from the Graduate Institute of International and Development Studies.

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