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A Comparative Perspective of Ombudsman Institutions for the Armed Forces

Hans Born, Aidan Wills and Benjamin S. Buckland



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A Comparative Perspective of Ombudsman Institutions for the Armed Forces

*Hans Born, Aidan Wills and Benjamin S. Buckland**

1. Introduction

Ombudsman institutions, in their many guises, have now been around for two centuries. However, it is only since the Second World War that these institutions have been more widely embraced as an important component of democratic governance. This trend has been reflected in the gradual proliferation of ombudsman institutions over the past fifty years. The development of the ombudsman model has generated increased interest in their work, illustrated by the establishment of several international associations and research institutes dedicated to studying, promoting and strengthening ombudsman institutions.¹ In spite of this, there has been little attention paid to the role of ombudsman institutions in overseeing the work of the armed forces. Nevertheless, there is growing awareness that ombudsman institutions can play a valuable role in helping to ensure that the armed forces are governed in accordance with the rule of law and with respect for the human rights of both armed forces personnel and the civilians with which they engage.

This policy paper is part of an ongoing research project which will analyse the functions and performance of ombudsman institutions in relation to the armed forces and identify lessons of best practice on the basis of comparative research. This paper builds on work done in preparation for the first international conference of ombudsman institutions for the armed forces, held in Berlin in May 2009.² Some preliminary findings were presented at the conference and the paper that follows represents some of the work done by the authors since that time and in collaboration with ombudsman institutions to fill some of the many existing research gaps and suggest some direction for future study. As there is almost no literature on this subject, this paper aims to make an initial contribution by presenting the results of a questionnaire sent to ombudsman institutions which deal with the armed forces in 15 states in Europe and North America.³ This comparative study will

* The authors would like to express their gratitude to all of the institutions that completed the questionnaire, as well as all those institutions that provided feedback in drafting this paper. Any comments or suggested corrections would be greatly welcomed and should be sent to: h.born@dcaf.ch, a.wills@dcaf.ch and b.buckland@dcaf.ch and at The Geneva Centre for the Democratic Control of Armed Forces (DCAF).

¹ Linda Reif, *The ombudsman, good governance, and the international human rights system* (Leiden: Martin Nijhoff Publishers, 2004).

² "Oversight, protection and welfare: The ombudsman institutions as advocates for military personnel" (Proceedings of the international conference on the occasion of the 50th anniversary of the German Parliamentary Commissioner for the Armed Forces Bundestag, Berlin, 10-12 May 2009).

³ The questionnaire (which can be found in the Annex of this paper) posed questions about their structure and status; mandate and functions; investigations processes; complaints-handling procedures; reporting functions; monitoring and enforcement; and independence. The following institutions responded to the questionnaire in early 2009: Austria - Parliamentary Complaints Commission of the Austrian Armed Forces; Belgium - Inspector General Mediator of the Belgian Armed Forces; Canada - the Ombudsman for the Department of National Defence and the Canadian Forces; Estonia - the Office of the Chancellor of Justice; Finland - the Parliamentary Ombudsman of Finland; Germany - Parliamentary Commissioner for the Armed Forces; the Netherlands - Inspector General of the Armed Forces; Norway - the Parliamentary Ombudsman for the Armed Forces; Ireland - the Ombudsman for the Defence Forces; Poland - the Commissioner for Civil Rights Protection; Romania - People's Advocate Institution; Serbia - Protector of Citizens; Slovenia - the Human Rights Ombudsman; Sweden - the Ombudsman; the United Kingdom - Service Complaints Commissioner. The authors would also like to thank Branko Zrno of the Joint Committee of Defence and Security of

undertake the following: (i) an enquiry into the different models of ombudsman institutions involved in overseeing the work of the armed forces; (ii) an overview of the factors that triggered the establishment of these institutions; (iii) an examination of their mandates and functions; (iv) a discussion of independence in the work of these institutions; (v) remarks on the implementation of their recommendations; and, finally, (vi) on the basis of comments submitted by ombudsman institutions. We shall outline the principal challenges faced in their work, as well as options for strengthening the role of ombudsman institutions for the armed forces. Because this is one of the first research studies in this area, it is largely a mapping study and, thus, quite descriptive in tone.

2. Grouping ombudsman institutions for the armed forces

There is a rich variety of ombudsman institutions which are mandated to address issues arising from and within the work of armed forces. The status and functions of these institutions differ significantly between states and are undoubtedly conditioned by national military traditions, legal systems, and the calibration of civil-military relations. Indeed, as P. Nikiforos Diamandouros (the European Ombudsman) has highlighted, the rich variety of such institutions suggest that the spread and development of the ombudsman institution has been facilitated by their flexibility as a model. This flexibility has enabled the ombudsman institution to be adapted to diverse cultural, constitutional, and legal environments.⁴

This diversity is well reflected by the ombudsman institutions which responded to the 2009 questionnaire and in the titles of these bodies, which range from ‘Commissioner’ to ‘Inspector General,’ ‘Ombudsman,’ ‘complaints manager,’ ‘People’s Advocate,’ and ‘Chancellor of Justice.’ In spite of this diversity, the ombudsman institutions examined in this research can be grouped according to whether they are integrated within the military itself (usually under the title of inspector-general) or are external institutions with responsibility for the military.

Furthermore, while this paper focuses on the role of ombudsman institutions in overseeing the armed forces, almost half of the institutions examined in this research do not deal exclusively with the armed forces. Indeed, the ombudsman institutions of Estonia, Finland, Poland, Romania, Serbia, Slovenia, and Sweden are all what we can term ‘general ombudsman institutions;’ they have jurisdiction over a large spectrum of activities performed by the public administration or public bodies. The remaining eight ombudsman institutions are part of a small, but steadily growing group of bodies that are mandated to deal exclusively with the armed forces. These armed forces-specific institutions include those of Austria, Belgium, Canada, Germany, Ireland, the Netherlands, Norway, and the United Kingdom.

Bosnia-Herzegovina for completing the questionnaire; Bosnia and Herzegovina was not included in this study because its ombudsman institution was yet to be established.

⁴ P. Nikiforos Diamandouros, “The Ombudsman Institution and the Quality of Democracy” (paper presented at the University of Siena, October 17, 2006), 2.

3. Precipitates

The Swedish Ombudsman was established more than a century before any of the other institutions included in this study and is widely regarded as the progenitor of the ombudsman concept.⁵ The allocation of power was a reason for conflict between the Swedish King and Parliament in the years 1771-1809. This conflict ended with the abdication of the then King in 1809 and the adoption of a new constitution, which granted the Parliament – through the ombudsman – the ability to supervise how the King executed his duties.⁶

The Swedish case set the tone for what would become the key role of the ombudsman: ‘to address administrative problems that the courts, the legislature and the executive cannot effectively resolve.’⁷ Although, as the four precipitates below reveal, the circumstances surrounding the establishment of an ombudsman institution in Sweden still make it something of an outlier case.

Re-calibration of civil-military relations after the Second World War

A number of the ombudsman institutions examined in this research were established as part of efforts to recalibrate civil-military relations after the Second World War. This occurred in Germany (1959) and was also the rationale underlying the establishment of ombudsman institutions for the armed forces in Norway (1952) and the Netherlands (1945). In the cases of Germany and Norway, it was considered necessary to establish an independent institute to promote democratic control of the armed forces, whereas in the Netherlands, policy-makers saw the need to establish a ‘quality control’ mechanism within the armed forces.⁸

Transition to Democracy

A similar process took place in post-communist states in Central and Eastern Europe, where the new democracies saw the need to establish independent institutions to protect the rights of citizens. This was the case in Romania (1997), Poland (1987), Slovenia (1995) and Serbia (2007). It is noteworthy that these post-communist states, as part of the consolidation of democracy, all opted to create general ombudsman institutions, mandated to address issues pertaining to all public services and branches of government.

Response to Problems

In another group of countries, the establishment of the ombudsman institutions for the armed forces has been driven by problems arising from the work of the armed forces. In the United Kingdom, the Service Complaints Commissioner was created upon the recommendation of an independent inquiry into the deaths of young recruits at an army base.⁹ The Canadian Ombudsman for the Department of National Defence and the Canadian Forces (1998) was created in similar circumstances, following allegations of

⁵ Reif, *The Ombudsman, Good Governance, and the International Human Rights System*.

⁶ Question 4, Sweden.

⁷ *B.C. Development Corp. v. Friedmann*, [1985] 1 W.W.R. 193 (S.C.C.) at 206.

⁸ Question 4. Germany, the Netherlands, and Norway.

⁹ Question 2. UK.

serious misconduct against Canadian soldiers deployed to the United Nations peacekeeping operation in Somalia (1992-1993). This led to a commission of inquiry which recommended the establishment of an ombudsman institution for the armed forces.¹⁰ In both cases, problems arising from their actions precipitated the creation of ombudsman institutions mandated to deal exclusively with the armed forces.

Improvement of existing complaints-handling mechanisms

The fourth precipitate for the creation of ombudsman institutions for the armed forces has been a desire to strengthen and improve existing complaints-handling mechanisms. In Belgium and Ireland, the ombudsman institutions that deal with armed forces were set up in response to concerns about the adequacy of existing *ad hoc* systems for addressing grievances. In Ireland, important stakeholders, such as the representative bodies of service personnel, lobbied for the creation of an independent complaints-handling mechanism, making it clear that there was a lack of confidence in the armed forces' internal procedures for addressing the grievances of service personnel.¹¹ Their ongoing calls led to the establishment of the Ombudsman for the Defence Forces in 2005.

Looking at this set of precipitates, there are a number of distinguishable underlying motives for the creation of an ombudsman institution with jurisdiction over the armed forces. The first is the desire to strengthen civilian and democratic control over the armed forces. The second is to better protect rights of soldiers by creating more effective mechanisms for complaints-handling and redress. The third is to create an independent quality control mechanism to oversee the procedures, practices, and policies within the armed forces.

4. Mandate: Functions and scope

As has already been noted, this study includes both general ombudsman institutions and those which are mandated to deal exclusively with the armed forces. Notwithstanding this important distinction, this paper will only examine the parts of the ombudsman institutions' mandates which pertain to armed forces. Their mandates will be discussed in terms of the functions they perform, the scope of their mandate, as well as the range of the institutions and actors that they are entitled receive to complaints from.

What are the functions of ombudsman institutions in relation to the armed forces?

The functions that the fifteen ombudsman institutions perform in relation to the armed forces vary greatly. Nevertheless, it is possible to identify two functions – complaints-handling and making policy recommendations – which are performed by almost all ombudsman institutions with jurisdiction over the armed forces, as well as a number of additional functions that are only exercised by a few institutions.

¹⁰ Question 4. Canada.

¹¹ Question 4. Ireland.

Complaints-handling

Complaints-handling is widely agreed to be one of the core functions of an ombudsman institution.¹² All but two of the ombudsman institutions included in this study perform a complaints-investigating function, addressing complaints arising from or within the work of the armed forces, and most indicated that this is their primary function.¹³

The type of complaints that these ombudsman institutions can address differs between institutions. However, all fifteen institutions, which are mandated to handle complaints, reported that members of the armed forces could submit complaints to them. In addition, most can also deal with complaints addressed to them by the families of service personnel.¹⁴

Two thirds of the institutions questioned for this research are also able to deal with complaints addressed to them by members of the public. However, with the exception of Germany and Austria, these are all general ombudsman institutions which are, by definition, mandated to address complaints submitted by all citizens.¹⁵

Overseeing armed forces' complaints-handling processes

As is clear from the paragraphs immediately above, most of the institutions examined in this study receive and investigate complaints directly. By contrast, however, the UK's Service Complaints Commissioner is unique in that the office is mandated to oversee the armed forces' own internal complaints-handling system.

The Commissioner is mandated to oversee the efficiency, effectiveness, and fairness of the armed forces' complaints system but has no power to investigate complaints directly or to make a final decision on the complaint. As well as ensuring that complaints are dealt with quickly, at the appropriate level, and in a way that keeps everyone involved informed of what is going on, the Commissioner can also refer any complaints received to the relevant officer within the chain of command and has the power to oversee the handling of specific complaints to ensure that they are dealt with properly. The Commissioner's assessment of individual cases informs the office's annual assessment to ministers and parliament on the complaints system.¹⁶

Making policy recommendations

The second most commonly identified function of ombudsman institutions in relation to the armed forces is the provision of policy recommendations to the armed forces, the executive, and parliament. Many respondents suggested that this is a key part of their mandate.¹⁷ A smaller number of respondents also perform a related, and equally

¹² Reif, *The Ombudsman, Good Governance, and the International Human Rights System*, 2; Diamandouros, "The Ombudsman Institution and the Quality of Democracy," 2.

¹³ Responses to question 8. The Netherlands' Inspector General for the Armed Forces and the UK Service Complaints Commissioner are the two exceptions.

¹⁴ Responses to question 10.

¹⁵ Responses to question 10. Sweden, Norway, Poland, Austria, Germany, Slovenia, Estonia, Romania, Serbia, and Finland.

¹⁶ UK Armed Forces Act 2006, Section 338 (2), and 339(1).

¹⁷ Responses to question 8. Sweden, Ireland, Belgium, Netherlands, UK, Canada, Serbia, Finland, Poland, Germany, Austria, Norway, and Estonia.

important function: formulating recommendations on draft laws.¹⁸ The provision of recommendations may be in response to requests from the executive or the armed forces, but most of these institutions are also able to put forward recommendations on their own initiative. The practice of providing policy recommendations serves a preventative function, as recommendations are designed to encourage reforms to practices which have given rise to malfeasance, and to, thus, prevent the reoccurrence of these wrongdoings. As the Irish Ombudsman for the Defence Forces, points out:

An Ombudsman often identifies administrative procedures and practices that are out-of-date, badly administered or in need of reform. Systemic issues which require attention also come to light.

[...]

One of the far-reaching benefits of this administrative oversight is that a decision in one case, not only vindicates the Complainant's case, but ensures that the underlying causes are addressed.¹⁹

Monitoring compliance with human rights law and international humanitarian law

The third function that many of the ombudsman institutions indicated that they perform is the monitoring of the armed forces' compliance with human rights law and international humanitarian law (IHL).²⁰ With the exception of the German Parliamentary Commissioner for the Armed Forces and the Norwegian Parliamentary Ombudsman for the Armed Forces, only general ombudsman institutions stated that they fulfil this role. This perhaps indicates that monitoring compliance with human rights and IHL fall within the broader remit of overseeing public administration, but it is not generally seen as a task of military ombudsman institutions, particularly as it is generally considered to be the responsibility of military justice systems.

This function of the ombudsman institution is in particular relevant for military operations and military deployments abroad. The issue of the role of ombudsman institutions in deployments abroad is an area that deserves further attention. In this context, it would be important to identify the lessons learned from the role of ombudsman institutions in protecting and promoting the rights of armed forces personnel deployed abroad.

Mediation

Mediation in disputes between citizens and public authorities is widely proclaimed to be one of the primary functions of an ombudsman institution.²¹ Therefore, it is surprising that only three of the ombudsman institutions addressed in this study, the Netherlands, Canada, and Belgium, indicated that they are mandated to mediate in disputes within the armed forces. The inspectors general of both the Dutch and Belgian armed forces are heavily involved in the resolution of internal disputes within the armed forces.

¹⁸ Question 8. Ombudsman-institutions of Sweden, Serbia, Poland, Finland, UK, Slovenia, Germany, Norway, Austria, Estonia, and Romania indicate that they make recommendations on draft legislation.

¹⁹ *Ombudsman for the Armed Forces: Annual Report 2008*, (Dublin: ODF, 2008).

²⁰ Responses to question 8. Eight states indicated that they monitor compliance with national human rights law and IHL: Sweden, Germany, Poland, Slovenia, Serbia, Finland, Norway, and Estonia.

²¹ See for example, Reif, *The Ombudsman, Good Governance, and the International Human Rights System*, 15-16; Marten Oosting, "Protecting the Integrity and Independence of the Ombudsman Institution: the Global Perspective," in *The International Ombudsman Yearbook*, ed. the International Ombudsman Institute. (Alphen aan den Rijn: Kluwer Law International, 2001).

Last but not least, another function of ombudsman institutions is directly related to the two central elements of accountability: being *called* and being *held* to account.²² This aspect of their work is particularly interesting given that it can be perhaps understood as a departure from the ombudsman's more traditional functions. As such, this is an area that merits further research, particularly on the extent of ombudsman institution's power to hold the armed forces accountable in the areas of policy, operations (domestic and abroad), expenditures and compliance with the law.

What issues are ombudsman institutions for the armed forces mandated to address?

Across almost all of the ombudsman institutions examined, the two most significant categories of complaints received are: (a) complaints pertaining to alleged mistreatment or poor working conditions; and (b) complaints relating to contractual issues, leave, and pensions.²³ The third category of complaints, which many of these institutions receive, is related to health concerns arising from service with the armed forces.²⁴ Half of the ombudsman institutions studied are also mandated to deal with complaints about the armed forces' treatment of civilians in their own state. However, with the exception of Austria and Norway, these are all general ombudsman institutions that are mandated to handle complaints from and relating to all members of the public.²⁵

The majority of the complaints addressed by the ombudsman institutions examined in this study arise from the domestic functions of the armed forces.²⁶ However, in Slovenia, Austria, and Norway, 10 percent of complaints arise from deployments of the armed forces overseas, and in Germany, this figure is as high as 30 percent.²⁷ These figures are of course dependent upon the range and extent of the external engagements of the armed forces. Several ombudsman institutions indicated that while they had the right to visit troops abroad they had never done so, presumably because their states do not have sufficient numbers of troops deployed overseas to justify such a mission.²⁸

Which parts of the armed forces can ombudsman institutions examine?

There is significant variation in the range of armed forces institutions which ombudsman institutions are mandated to oversee. This is in part the result of different military structures, security sector traditions, and of course geography, which mean that not all states have the full spectrum of possible branches of the armed forces. While almost all of the institutions studied are mandated to oversee the army, air force, navy, and military police, many do not have jurisdiction over the coastguard or civilians working for the

²² See, for example, Richard Mulgan, *Holding Power to Account* (Basingstoke: Palgrave MacMillan, 2003).

²³ Responses to question 26. Belgium, Sweden, the Netherlands, UK, Canada, Norway, Poland, Austria, Estonia, Romania, Germany, Slovenia, Serbia, and Finland.

²⁴ Responses to question 26. Sweden, UK, Canada, Norway, Austria, Estonia, Romania, Germany, Slovenia, Serbia, and Finland.

²⁵ Responses to question 26 and question 23.

²⁶ For the ombudsman institutions of Serbia, Belgium, Estonia, Finland, and Sweden 99 per cent or more of the complaints received relate to the domestic activities of the armed forces.

²⁷ Responses to question 25(b).

²⁸ Responses to question 19(b). These institutions are those of Estonia, Ireland, Serbia, and Slovenia.

armed forces.²⁹ More research is required to gain a better understanding of why this is so, but a precursory examination of data shows that the institutions that do not have jurisdiction over these actors are all military-specific ombudsman institutions. Therefore, notwithstanding these exceptions, there is a clear trend of general ombudsman institutions being mandated to oversee a broader spectrum of the armed forces; this is to be expected given that these bodies have jurisdiction over the entire spectrum of government agencies. Interestingly, with the exception of Serbia, none of the surveyed ombudsman institutions are mandated to oversee private contractors working for the armed forces. Given that private and military security companies play an ever-increasingly role in defence policy in many states, this group of non-state security actors is likely to pose a growing challenge for ombudsman institutions in the future.

5. Independence

A number of criteria have been proposed for measuring the effectiveness of ombudsman institutions. These include criteria of accessibility (including factors such as proximity and visibility); criteria of expertise (including specialisation and access to information); and criteria of independence (including the capacity to initiate investigations, operate free from interference, and access resources).

Of these, independence is of central importance to the work of ombudsman institutions and is widely argued to be the key ingredient for their effectiveness.³⁰ As the Council of Europe argued in a 2003 report:

His/her duties are best discharged when acting as an independent, impartial intermediary [...] An Ombudsman ought to give the public in general the confidence that there is an impartial 'watchdog' holding government and public administration to account.³¹

It is important, however, to interrogate what exactly is meant here and what elements are required for an office to be truly independent and impartial. Our understanding and assessment of independence is based on the points of reference we establish for its evaluation. In thinking about the concept of independence and considering what it means to be independent, the following two questions may provide instructive answers:

1. Institutional independence: which institutions or actors is a given ombudsman institution independent from? This involves reflecting on the independence of an ombudsman institution in relation to other institutions and, in particular, the institutions which it is mandated to oversee.
2. Operational independence: which functions or operations is the ombudsman institution independent to undertake? These two forms of independence will now be discussed, along with the related question of access to information.

²⁹ The military ombudsman institutions of Canada, the Netherlands, Germany, Ireland, the UK, Austria, and Belgium do not have jurisdiction over the coastguard and the in cases of Germany, the UK, Austria, and Ireland, they have no mandate to address issues arising from the work of civilians in the armed forces.

³⁰ Hans Born and Ian Leigh, *Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel* (Geneva/Warsaw: DCAF/ODIHR-OSCE, 2008), 237; Oosting, "Protecting the Integrity and Independence of the Ombudsman Institution," 8-10; Reif, *The Ombudsman, Good Governance, and the International Human Rights System*.

³¹ Parliamentary Assembly of the Council of Europe, *The Institution of the Ombudsman* (Strasbourg: CoE, 2003).

While the other criteria discussed briefly above are of obvious importance, they were not the focus of our initial primary research and are thus mentioned only briefly below.

Institutional independence

Institutional independence is generally understood to mean that an ombudsman institution is independent from the government and, more specifically, that it is not part of any of the bodies which it is mandated to oversee.³² There was wide agreement amongst respondents that institutional independence is important in order for an ombudsman institution to be effective. A number of ombudsman institutions added that independence must be guaranteed by law and, where applicable, the constitution. These statutory provisions typically dictate that there can be no interference from the executive and, in states such as Sweden and Finland, not even parliament may issue instructions to the ombudsman.³³ Several ombudsman institutions also noted the importance of broad cross-party support for both the establishment of the institution, as well as the selection of office-holders. The German Parliamentary Commissioner for the Armed Forces, for example, noted the importance of his election by an absolute majority of the Bundestag. Similarly, the Irish Ombudsman reported the importance of the fact that no one had voted against the Ombudsman (Defence Forces) Bill in parliament.³⁴

Budgeting and the provision of resources is one area in which the independence of an ombudsman institution vis-à-vis other institutions of state is particularly significant. Financial independence means that an ombudsman institution obtains and manages its funds independently from any of the institutions over which it has jurisdiction. If an ombudsman institution has to rely upon an institution whose activities it oversees for funding, this may compromise its independence. There is the inevitable risk that the institution in charge of the budget may restrict resources in order to restrict the ability of an ombudsman to oversee their activities. As Nili Nabholz-Haidegger has suggested, the financing of an ombudsman institution should never be subject to the goodwill of the executive.³⁵ Furthermore, the Irish Ombudsman for the Defence Forces provides an excellent summary of the importance of budgetary independence:

[I]t is not desirable that an ombudsman has to seek resources from the department or institution which is under its jurisdiction, [and] it is not correct for the budget of an ombudsman's office to be connected to a government department which may be subject to budgetary cuts, thereby having a direct impact on the operation of the ombudsman's work.³⁶

Other respondents supported this view, proclaiming budgetary independence to be a significant factor in ensuring the effectiveness of an ombudsman institution.³⁷ The majority of ombudsman institutions examined in this research have their own budget allocated to them by parliament. However, a number of the military ombudsman institutions, including the Belgium, Ireland, The Netherlands and the United Kingdom, receive their budget from the Ministries of Defence. Some of these institutions pointed

³² Reif, *The Ombudsman, Good Governance, and the International Human Rights System*, 15; Oosting, "Protecting the Integrity and Independence of the Ombudsman Institution," 9; Parliamentary Assembly of the Council of Europe, "The institution of the ombudsman," D 14. (i).

³³ Question 44. Sweden, Poland, Romania, Germany, and Finland.

³⁴ "Oversight, protection and welfare: The ombudsman institutions as advocates for military personnel."

³⁵ Nabholz-Heidegger, D. (iii).

³⁶ Question 51. Ireland.

³⁷ Question 44. Germany and Romania; Question 54. Sweden.

out that this reliance upon the executive for resources has negative consequences for their independence and the performance of their functions.³⁸

An additional dimension of institutional independence is the security of the ombudsman's position and tenure in office. Provisions to safeguard the independence of the ombudsman normally include a legally established tenure of office, clear procedures for the potential removal of an ombudsperson from office, and a narrowly defined set of criteria stipulating the circumstances under which this can happen.³⁹ In all but two states considered in this study, the ombudsperson has a fixed tenure of office. With regards to the removal of the ombudsperson from office, the questionnaire results demonstrated that, with the exception of Estonia, the ombudsperson may be removed from office by the same institution that appointed them. In the majority of states included in this research this institution is parliament; however, in the UK, the Netherlands, Belgium, and Ireland, the ombudsman institution for the armed forces may be removed by the minister of defence.⁴⁰ In the case of the UK, this power is constrained by both administrative practice and law. As with all public appointments in the UK, the ombudsman institution for the armed forces can only be removed for a breach of principle (the 'Nolan Principles') or professional misconduct; they cannot be removed for the proper exercise of their statutory duties.

The independence of an ombudsman institution is not only a matter of independence from other state bodies and of the accompanying obligation incumbent upon these bodies to refrain from interfering with the ombudsman. In many states, the ombudsman is also obliged to take steps to ensure its own independence. Several institutions included in this research highlighted legal obligations which require the ombudsman to abstain from activities which may give rise to a conflict of interest, thus compromising their independence. These provisions include the following prohibitions: engaging in any other professional activities (Serbia), membership of political parties (Serbia and Estonia), the holding of a state or local government position (Estonia), and the avoidance of all conflicts of interest (UK).⁴¹

A related question is that of whether former military officers should be allowed to hold the office of ombudsman. While this was not directly covered by our research, there is clearly potential that, while an office may be institutionally independent, its functional independence could be compromised if an office-holder retains significant ties with the military that it is tasked to oversee. On the other hand, it may, of course, be argued that former-military officers are more likely to have high levels of trust and good contacts required to most effectively carry out their work.

Similar questions relate to the advantages and disadvantages of internal versus external ombudsman institutions. Because they are often deployed with the armed forces, internal offices, such as inspectors-general, may have an advantage in terms of how immediately

³⁸ Question 43. UK; Question 51. Ireland; Question 54. Ireland. The UK Commissioner made it clear, however, that their funding model had never constituted a threat to the institution's independence.

³⁹ Oosting, "Protecting the Integrity and Independence of the Ombudsman Institution," 10. Parliamentary Assembly of the Council of Europe, *The institution of ombudsman*, para 7, iii.

⁴⁰ Question 45.

⁴¹ The PACE Recommendation on the Institution of Ombudsman makes similar recommendations on the need to prohibit ombudspersons from engaging in remunerated activities, para. iv.

they can access troops and receive and investigate complaints. This may allow them to act more quickly and with better knowledge of the context surrounding a complaint. On the other hand, it is possible that, by virtue of their position within military structures, inspectors-general and other internal offices are able to exercise less independence than external offices. Indeed, the Canadian Ombudsman, in her annual report, has argued strongly that the:

[the office] must remain completely independent of the military chain of command and the civilian management structure of National Defence. Independence is absolutely critical to ensure that ‘influence’ (real or perceived) does not taint our actions, findings or recommendations. Only a truly independent Ombudsman, who has no formal ties to the broader organization and no potential conflicts of interest will be trusted and respected by the members of the Defence community and by those whose actions or decisions are being investigated.⁴²

This, however, is an area that requires further research before any firm conclusions can be drawn.

6. Operational independence

The second type of independence to be discussed is operational independence, which is sometimes referred to as functional independence. While institutional independence relates to the position of the office vis-à-vis other institutions, operational independence is no less important, given that it relates to the office’s ability to decide which matters and priorities to pursue, free from interference by other institutions or actors. Indeed, according to several of the institutions that responded to the questionnaire, the key dimension of operational independence is the ombudsman institution’s freedom to choose which issues to examine.⁴³

In most cases, the mechanism which guarantees operational independence is the capacity to launch so-called ‘own-motion investigations,’ meaning that no request or complaint is required in order for an ombudsman to address an issue.⁴⁴ This is an important measure of independence because, if an ombudsman institution can undertake own-motion investigations, their investigative activities are not contingent upon the decisions of other actors. The vast majority of institutions examined in this research do have the capacity to initiate their own investigations, with Belgium, Ireland, and the UK being the only exceptions.

An important corollary of the freedom to address issues deemed to merit investigation is the legally-guaranteed right to pursue investigations to their conclusion, free from the interference of other institutions. More than half of the ombudsman institutions examined in this research stated that their investigations cannot be terminated or suspended by any other body.⁴⁵ However, in several other cases, the ombudsman institutions’ investigations may, in theory, be suspended or terminated. For example, in

⁴² Ombudsman for the Department of National Defence and the Canadian Forces, *Defending Fairness. 2007-2008 Annual Report*, (Ottawa, 2003).

⁴³ Question 44. Sweden and Norway; Question 54. Ireland. This position is supported by the PACE’s Recommendations, para 7, ii.

⁴⁴ Reif, *The Ombudsman, Good Governance, and the International Human Rights System*, 3.

⁴⁵ These institutions are Sweden, Poland, Norway, Austria, Romania, Slovenia, Serbia, Finland, and Ireland.

the case of Germany, the *Bundestag's* Defence Committee may suspend or terminate an ongoing investigation being undertaken by the Parliamentary Commissioner for the Armed Forces.⁴⁶ In both the Netherlands and Canada, the Minister of Defence has the right to suspend or terminate an investigation of the ombudsman for the armed forces, and in Belgium, this prerogative lies with the judiciary.⁴⁷ While, in theory, these institutions may halt the work of the military ombudsman institutions in the states mentioned, in practice this has never happened.⁴⁸ Indeed, the fifteen ombudsman institutions that took part in this research all claimed to have independent investigation processes.

Access to information and reporting

Access to relevant information is essential to the work of any institution mandated to hold a public body to account. It is clearly imperative that ombudsman institutions have access to all information relating to a particular complaint or general investigation. This is closely tied to the issue of independence because restrictions on the information available to an ombudsman institution imply that it is not at liberty to do what is necessary to conduct a full investigation. In many of the institutions examined in this research, the armed forces and political authorities are legally bound to supply the ombudsman institution with all requested information, and there are no grounds for refusal.⁴⁹ This usually requires that state secrets legislation does not apply to requests for information originating from the ombudsman institution. In other cases, information may be withheld from the ombudsman institution in accordance with narrowly-defined criteria. This includes the protection of operational information (concerning the armed forces) in Belgium, Canada, and Ireland, and the protection of national security and/or state secrets in Belgium, Canada, Norway, Germany, and Ireland.⁵⁰ However, in spite of these potential limitations, questionnaire responses indicate that only the Canadian Ombudsman and German Parliamentary Commissioner for the armed forces have been denied requested information.⁵¹

The final aspect of independence to be discussed here is independence in reporting. The issuing of annual reports, as well as case-specific reports represents a key function of ombudsman institutions, which is central to public accountability processes. All of the fifteen institutions examined in this paper have a legal obligation to issue public annual reports. As a number of these bodies highlighted, it is crucial that ombudsman institutions are able to issue public reports which are not censored, 'sanitized' or delayed by the executive or the bodies which they oversee.⁵² Having said this, there are clearly good reasons why it may be inappropriate for some information to be redacted from public reports. The integrity of judicial processes and national security concerns must clearly be balanced with a public right to freedom of information. Although, as the Irish Ombudsman for the Defence Forces suggests that "the power to issue annual and other reports which are not subject to censorship should never be underestimated as a

⁴⁶ Question 47.

⁴⁷ Ibid.

⁴⁸ Questionnaire responses from the Netherlands, Canada, Germany, and Belgium.

⁴⁹ Responses to question 15. These include Sweden, the Netherlands, Poland, Austria, Estonia, Slovenia, Serbia, and Finland.

⁵⁰ Ibid.

⁵¹ Responses to question 15(c).Canada and Germany.

⁵² Responses to question 44. Canada and UK; Response to question 52. Germany.

cornerstone of independence.”⁵³ All ombudsman institutions included in this study are empowered to issue reports which cannot be censored or redacted, and thus, have the final say on the content of their reports.⁵⁴

7. Implementation of ombudsman institutions’ recommendations

The proper implementation of the recommendations made by ombudsman institutions is central to the effectiveness of these bodies. If the armed forces and/or the executive do not implement or, at the very least, take notice of the recommendations made by ombudsman institutions, this may undermine the entire complaints-handling and investigation process. Indeed, one may legitimately question the worth of an ombudsman institution whose recommendations are rarely heeded by armed forces or the executive. As we noted above, the essence of accountability is to be both called and held to account. Proper implementation of recommendations is crucial if the second of these criteria is to be fulfilled.

A broad scan of primary data provided by the ombudsman institutions demonstrates that there is significant variation in the percentage of the ombudsman institutions’ recommendations that are implemented by the relevant stakeholders. The implementation rate varies from nearly 100 percent in Serbia, Sweden, Norway, Slovenia, Finland, and Estonia to 71 percent in Canada; 70 percent in the Netherlands and Germany; and 60 percent in Poland.⁵⁵ It is not possible to give conclusive explanations for these differences on the basis of the available data. However, explanations may be found in both the effectiveness of the strategies adopted to persuade or compel the implementation of recommendations, and the capacity of ombudsman institutions to monitor the implementation of their recommendations.

Strategies for promoting the implementation of recommendations

None of the ombudsman institutions included in this study have the power to enforce their recommendations in the traditional, legalistic sense of the word. Thus, they rely on ‘the power of persuasion’ to increase the chances that their recommendations will be implemented.⁵⁶ If this fails, there are a number of other options at their disposal to ensure compliance. The first may be termed ‘escalation,’ which refers to taking a matter to a higher body in order to achieve the desired results. In most cases, this entails reporting non-compliance or non-implementation to a hierarchically superior individual or body (such as a minister). The ombudsman institutions for armed forces in Romania, the Netherlands, Canada, Ireland, the UK, and Poland indicated that they are able to take this course of action.⁵⁷ Another strategy may be to report non-implementation to parliament, which the Slovenian, UK, and Romanian ombudsman institutions may do. The aim of escalation is to persuade another institution to press the armed forces or the executive to implement recommendations issued by the ombudsman institution.

⁵³ Response to question 54. Ireland.

⁵⁴ Responses to question 32 and 33. In the UK, the Minister may only make such redactions as are necessary to protect national security or individual safety. In practice, there have been no such redactions.

⁵⁵ Responses to question 36. There was no data available for Romania and Belgium.

⁵⁶ Oosting, “Protecting the Integrity and Independence of the Ombudsman Institution,” 5.

⁵⁷ In the UK, the ombudsman institution has a right of unrestricted access to ministers.

A second (and closely related) option available to many ombudsman institutions in order to encourage the implementation of their recommendations is ‘going public.’ This involves the issuing of public declarations of non-compliance and is one of the most powerful tools at the disposal of ombudsman institutions. The Irish, German, Estonian, UK, and Slovenian ombudsman institutions all cited their capacity to go public in the event of non-compliance or non-implementation.⁵⁸ The Serbian ombudsman indicated that he may even publicly recommend the removal of the relevant official.⁵⁹

A third and final option available to a select group of ombudsman institutions to compel compliance with their recommendations or findings is applying to the judiciary. The ombudsman institutions of Austria, Romania, and Slovenia can, in some cases, go to court in an effort to enforce their findings.⁶⁰

Monitoring implementation

The majority of ombudsman institutions monitor the implementation of the recommendations they issue to the armed forces and the executive. In doing so, they employ a range of monitoring techniques. Almost all of the respondents indicated that they conduct field or site visits;⁶¹ hold follow-up discussions with members of the armed forces, such as complainants or commanders;⁶² and arrange follow-up meetings with their defence minister to pose questions on the implementation of their recommendations.⁶³ The effectiveness of the monitoring techniques is likely to affect the number of recommendations that are successfully implemented by the armed forces and civilian authorities.

8. Challenges and strengthening ombudsman institutions

Challenges

Ombudsman institutions for the armed forces face substantial challenges in exercising their mandates. According to the overwhelming majority of institutions surveyed for this research, the biggest challenge to their work is a lack of sufficient resources. This includes both the financial and human resources required to handle the volume of complaints received, conduct thorough investigations, and effectively monitor the implementation of recommendations made.⁶⁴ A number of other challenges were also highlighted, these include: inadequate or incomplete cooperation from the armed forces and the government,⁶⁵ insufficient powers to investigate complaints effectively,⁶⁶ and the lack of

⁵⁸ Questions 16 and 35.

⁵⁹ Responses to question 35(b).

⁶⁰ Response to question 40. In the case of Slovenia, the ombudsman institution can only turn to the constitutional court.

⁶¹ Response to question 35(b). ‘Field visits’ by Austria, Canada, Estonia, Finland, Germany, Netherlands, Norway, Poland, Serbia, Slovenia, Sweden, and the United Kingdom.

⁶² Ibid. ‘Follow up meetings with members of the armed forces’ by Austria, Canada, Estonia, Finland, Germany, Ireland, Netherlands, Norway, Poland, Serbia, Slovenia, Sweden, and the United Kingdom.

⁶³ Ibid. ‘Follow-up meetings with the executive/defence minister’ by Canada, Estonia, Finland, Germany, Ireland, Netherlands, Norway, Serbia, Slovenia, and the United Kingdom.

⁶⁴ Question 52. Lack of resources was mentioned as most pressing challenge by Estonia, Finland, Ireland, Poland, Romania, Serbia and the United Kingdom. In addition, Ireland, the United Kingdom, Serbia and Germany were concerned about the lack of resources to monitor the implementation of recommendations.

⁶⁵ Question 52. Germany and Slovenia.

powers to ensure the implementation of recommendations made by the ombudsman institution.⁶⁷ Several ombudsman institutions also referred to the wider problem of a lack of understanding among both civilian employees at ministries of defence and members of the armed forces about what an ombudsman institution is and what they are mandated they do.⁶⁸

Whereas the problems mentioned above are related to ombudsman institutions of states that are firmly governed by principles of democracy and rule of law, their fellow institutions in post-authoritarian and developing states are plagued by an additional set of problems. Referring to the problems faced by ombudsman institutions in Africa, Emile Francis Short, chair of Ghana's Commission on Human Rights and Administrative Justice, has argued that:

In many of the emerging democracies of Africa ... the ombudsman faces peculiar challenges. The checks and balances expected to exist between the various organs of state are weak, the realisation of good governance is still a huge challenge and human rights abuses are rampant. In many African countries the rule of law is not regularly observed and the arbitrary exercise of state power is rather pervasive. Corruption is rampant and institutionalised.⁶⁹

In post-authoritarian and developing states, the biggest threats to an effective ombudsman institution include the following: an insufficient legal basis or even conflicting regulations pertaining to the ombudsman institution; legal limitations placed on the office to conduct field and base visits; and the lack of access to classified information.⁷⁰ Perhaps more significantly, others refer to the problem of fraud and corruption, which erodes public confidence in state institutions and may undermine the integrity of ombudsman institutions themselves.⁷¹ Even in places where the ombudsman institution itself is relatively insulated from wider problems, proper implementation of directives and recommendations requires cooperation from other institutions, something that may be difficult or impossible to achieve if they are compromised by corruption or are otherwise ineffective.

Strengthening ombudsman institutions

Measures to strengthen the ombudsman institution for the armed forces should be judged in light of conditions for the effective functioning of this office. The respondents mentioned the following four conditions.⁷²

- **Independence:** constitutional and legal independence from the armed forces; ombudsman institutions must have the autonomy to decide how a case should be examined and which cases should be examined; investigations must be insulated from interference by external bodies and must be safeguarded against suspension or termination by these bodies; and finally, reports must be public and should not be subject to censorship by the executive.

⁶⁶ Question 52. Germany.

⁶⁷ Question 52. Germany and Serbia.

⁶⁸ Question 52. Canada.

⁶⁹ Emile Francis Short, cited in Reif, *The Ombudsman, Good Governance, and the International Human Rights System*.

⁷⁰ Katrin Kinzelbach and Eden Cole, *Monitoring and Investigating the Security Sector* (Bratislava: UNDP, 2007), 13.

⁷¹ Oosting, "Protecting the Integrity and Independence of the Ombudsman Institution," 19.

⁷² Replies to question 54.

- **Legal framework:** ombudsman institutions should be anchored on statutory footing; applicable law must articulate a clear mandate for the institution and stipulate the powers and methods at its disposal in exercising this mandate; there should be a clear understanding of the constitutional and legal position of the ombudsman institution vis-à-vis other relevant stakeholders.
- **Policy versus cases:** while investigating and making recommendations about complaints is central to the mandate of ombudsman institutions, it was also repeatedly mentioned that ombudsman institutions should have the power to propose changes in legislation and policy in order to bring about long-term changes to the practices which give rise to problems within the armed forces.
- **Impartiality:** it is essential that the complainants and the defence establishment see the ombudsman institution as impartial and neutral, resulting in a greater willingness to accept the results of investigations and recommendations.

More specifically, the ombudsman institutions examined in this study were asked to put forward several concrete recommendations for strengthening their role and making their offices more effective. The proposed measures can be grouped into the following categories:

- **Resources:** to increase the available financial and human resources;
- **Organisational reforms:** to introduce better case-handling and monitoring systems, backed up by proper IT support; to introduce a continuous staff training programme to develop expertise; more task specialisation within the office of the ombudsman institution; to set up multi-year plan for visiting the troops and for addressing thematic policy issues.
- **Awareness-raising:** to introduce programmes that would generate greater awareness among the public, civil servants and armed forces personnel about the role and the powers of the ombudsman institution, as well as the obligation to cooperate with it.
- **International cooperation:** to strengthen cooperation and the exchange of knowledge and experiences with counterparts abroad.

9. Conclusion

This paper is the first phase of an ongoing research project which will ultimately analyse the functions, performance, and contribution of ombudsman institutions that have jurisdiction over the armed forces. On the basis of this comparative research, examples of best practice will be identified with a view to developing policy-relevant tools. We have used the results of a comprehensive questionnaire addressed to fifteen ombudsman institutions in Europe and North America in order to map out their mandate, functions, and investigation processes. In addition, on the basis of comments provided by ombudsman institutions, we have outlined the challenges faced by these institutions, as well as some potential strategies for strengthening their role.

The ombudsman institution contributes to public accountability of the armed forces and as such is a valuable element of good governance of the security sector. The study has revealed that states have adopted a range of approaches to the ombudsman institution, which can be grouped according to whether the ombudsman is institutionally located

within or outside the ministry of defence, and whether the ombudsman institution covers the entire government or only the armed forces. A similar level of diversity was illustrated in terms of the functions that these institutions fulfil. These functions most commonly include complaints-handling and the provision of recommendations to improve the functioning of the armed forces or remedy situations that have given rise to wrongdoing. In addition to these roles, a number of ombudsman institutions for the armed forces also provide a mediation role to resolve disputes between members of the armed forces and their superiors.

In spite of the rich variety of ombudsman institutions, there is broad consensus that independence is the key criterion for an effective ombudsman institution. The distinction was drawn between institutional independence (independence from government bodies and the armed forces) and operational independence (independent in deciding what and how to conduct its investigations and activities). Both are seen to be highly significant in determining the role played by an ombudsman institution.

This paper forms a first step in acquiring a better understanding of the role and functioning of ombudsman institutions with jurisdiction over the armed forces, and represents the first comparative study on this subject. The next phase of this research will focus more on the practice and performance of these institutions. This will include in-depth case studies and interviews with ombudsman institutions, which will be aimed at developing a deeper insight into their functioning and at identifying best practices.

Annex

Military Ombudsman Institutions: A comparative Perspective Questionnaire

6 February 2009

Instructions:

This questionnaire is part of a comparative research project on the role of military ombudsman institutions, the results will be presented at the “First International Conference of Military Ombudsman Institutions” be held in Berlin on 10-12 May 2009 . We are particularly interested in finding out about the following aspects of your ombudsman institution: its mandate; functions; powers of investigation; complaints-handling procedures; its powers to follow-up and implement its findings; and finally the challenges faced in performing these functions.

Please note that for the purposes of this questionnaire, the label ‘ombudsman institution’ is used as a catch-all term to describe ombudspersons and inspectors general as well as general/civilian ombudsman institutions with a mandate to deal with the military.

COUNTRY NAME: _____

TITLE OF OMBUDSMAN INSTITUTION: _____

SECTION A: STATUS & STRUCTURE

1. Which of the following models best describes your ombudsman institution?

- an independent ombudsman institution which is mandated to deal exclusively with the armed forces.
- an ombudsman institution which is integrated within the armed forces, and has jurisdiction over all sections of the armed forces.
- an ombudsman institution which is integrated within the armed forces but only has jurisdiction over one branch of the armed forces, e.g. the army.
- a general ombudsman institution that is mandated to address complaints arising from/within the work of the armed forces.

2. When was your ombudsman institution established?

3. What is the legal basis of your ombudsman institution?

- Constitution
- Statute
- Executive decree
- Other (please specify): _____

4. What triggered the establishment of the ombudsman institution?

5. Which institution appoints the ombudsperson?

- Parliament
- The minister of defence
- The head of government/state
- An independent body
- Other institution (please specify): _____

6. How many members of staff does your office have?

- 0 - 5
- 6 - 20
- 21 - 50
- More than 50

7. (a) What is your approximate annual budget (in €)

€ _____

(b) Who allocates the budget for the ombudsman institution?

SECTION B: MANDATE & FUNCTIONS

8. Which of the following tasks is your ombudsman institution mandated to perform?

(Where applicable, please rank these functions in order of importance: 1 = most important, 9 = least important.)

- () To receive and investigate complaints
- () To monitor the armed forces' compliance with national military law
- () To monitor the armed forces' compliance with national and international human rights law
- () To monitor the armed forces' compliance with international humanitarian law
- () To comment on existing laws or proposed laws
- () To make recommendations to the armed forces on reforming practices/procedures
- () To make recommendations to government or parliament on new legislation
- () To educate the armed forces about the national or international legal standards
- () Other (please specify): _____

9. Which of the following institutions is your ombudsman institution mandated to oversee?

- The army
- The air force
- The navy
- The military police
- Paramilitary forces (such as the gendarmerie)

- The coastguard
- Civilians working for the armed forces
- The military judicial system
- Private contractors working for the armed forces

SECTION C: INVESTIGATION PROCESSES

10. Which of the following can trigger an investigation by your ombudsman institution?

- A complaint raised by a member of the armed forces
- A complaint raised by a family member of a current or former member of the armed forces
- A complaint raised by a member of the public
- The executive (e.g. the minister responsible for defence or the head of government)
- Parliament
- The military police
- The civilian police
- The judiciary
- An independent oversight body (e.g. a human rights commissioner)

11. Can your ombudsman institution initiate an investigation without a complaint or a request from any of the institutions mentioned in question 12?

- Yes. No.

12. Which of the following methods are used to conduct investigations?

(Where applicable, please rank the use of these methods in ascending order: 1 = most used, 6 = least used.)

- () Interviews with the individuals involved in a complaint
- () Scheduled visits to armed forces' installations
- () Unscheduled visits to armed forces' installations
- () Hearings attended by members of the executive and/or the armed forces
- () Review of documents or written correspondence
- () Visits to the armed forces deployed overseas
- () Other (please specify)

13. Which of the following investigatory powers does the ombudsman institution possess?

- The power to subpoena people
- The power to subpoena documents
- The power to access all premises relating to the work of the armed forces

14. Can the ombudsman institution access classified information as part of an investigation?

- Yes. No.

15. (a) Can the armed forces or members of the executive decline requests for information?

- Yes. No.

(b) If so, on what grounds can requests for information be denied?

- The protection of sensitive operational information
- The protection of national security/state secrets
- Functional or personal immunities
- No justification is required to decline a request for information from the ombudsman institution
- Other

(c) Have requests for information been denied?

- Yes. No.

16. What actions (if any) may the ombudsman institution take if officials decline to cooperate with its investigations?

17. In practice, is your institution able to access the information required to perform its functions?

- Yes. No.

18. Please list the main obstacles (if any) to acquiring information necessary to investigate complaints:

19. (a) Does your institution have the right to conduct visits to members of the armed forces and/or bases overseas?

Yes. No.

(b) If so, has this happened?

Yes. No.

20. (a) Is your ombudsman institution able to refer cases to the police or prosecutorial authorities?

(If yes, please tick whether this is the civilian or military police/prosecutors, or both.)

Yes. No.

Civilian police or prosecutorial authorities

Military police or judicial system

Both

(b) Is your ombudsman institution ever legally obliged to refer cases to the police or prosecutorial authorities?

Yes. No.

(c) If so, in what circumstances?

SECTION D: COMPLAINTS-HANDLING

21. Approximately how many complaints do you receive per year?

0 - 50

50 - 99

100 - 199

200 or more

22. Approximately what percentage of these complaints are found to merit further investigation?

_____ %

23. Which of the following categories of individuals may address complaints to your office?

(Where applicable, please write in brackets approximately what percentage of the total number of complaints you receive originate from each of the categories stated below.)

() Serving members of the armed forces

- () Former members of the armed forces
- () Family members of serving or former members of the armed forces
- () Civilians who are citizens or residents of your state
- () Civilians who are citizens or residents of another state
- () Other (please specify): _____

24. Does your office handle complaints arising from/during extraterritorial operations of the armed forces?

- Yes. No.

25. Approximately what percentage of the total number of complaints addressed to the ombudsman institution arise from the following (please write a percentage in the space provided):

a) Domestic functions (e.g. training, domestic deployments, or personnel on leave).
_____%

b) Deployments overseas .
_____%

26. Which of the following categories of complaints can be dealt with by your office?

(Please rank these categories in terms of the number of complaints received: 1 = the most complaints, 5= the least.)

- () Complaints arising from allegations of mistreatment or poor working conditions within the armed forces
- () Complaints relating to contractual issues, leave, or pensions
- () Complaints about health problems arising from service in the armed forces
- () Complaints about the armed forces' treatment of civilians in your state
- () Complaints about the armed forces' treatment of civilians or members of other armed forces overseas

27. Is there a requirement that armed forces personnel first direct their complaints to an authority within the military chain of command?

- Yes. No.

28. Is there a time limit on the actions/issues about which complaints can be addressed to your ombudsman institution? I.e. Is there a period of time after which issues can no longer be investigated?

(If yes, please tick which of the two options applies.)

- No. Yes.

Number of months/years_____

- Complaints arising from any actions which took place before the inception of the ombudsman institution

SECTION E: REPORTING FUNCTIONS

29. (a) Does your office issue periodic reports (e.g. annual reports)?

- Yes. No.

(b) If so, is this periodic reporting:

- voluntary
 required by law

30. Are these periodic reports made public?

- Yes. No.

31. Who does your institution report to in the following cases?

(a) Investigations pertaining to specific cases:
(Please tick one or more boxes as is applicable.)

- The complainant
 The head of government
 The minister of defence
 Parliament
 The senior leadership of the armed forces
 The leadership of the section of the armed forces within which a complaint arises
 Other (please specify): _____

(b) General/regular reporting functions:

- The head of government
 The minister of defence
 Parliament
 The senior leadership of the armed forces
 Other (please specify): _____

32. Are the ombudsman institution's reports censored or redacted?

- Yes. No.

33. If so, who has the final say on what can be published in these reports?

- The head of government
 The minister of defence
 Parliament
 The senior leadership of the armed forces

SECTION F: MONITORING AND ENFORCEMENT

34. Is your ombudsman institution empowered to issue:

- Binding orders
 Recommendations
 Compensation/Redress
 Other (please indicate)

35. (a) Does the ombudsman institution have the power to monitor the implementation of:

i) its orders

- Yes. No.

ii) its recommendations

- Yes. No.

(b) If so, which methods are used?

- Field or site visits
 Follow-up meetings with members of the armed forces
 Follow-up meetings with the executive
 Other (please specify):
-
-

36. Approximately what percentage of your office's recommendations are implemented by the relevant section of the armed forces?

_____ %

37. (a) Can the findings of your ombudsman institution be appealed?

Yes.

No.

(b) If so, which institution has the authority to adjudicate on these appeals?

38. Does the ombudsman institution have any powers to enforce its findings/recommendations?

Yes.

No.

If so, please specify:

39. Can your ombudsman institution impose penalties?

Yes.

No.

40. Can the ombudsman institution appeal to the judiciary to enforce its findings?

Yes.

No.

SECTION G: PUBLIC AWARENESS OF THE OMBUDSMAN INSTITUTION

41. Does the ombudsman institution take steps to make members of the armed forces and/or the general public aware its functions, and how to submit complaints?

Yes.

No.

42. If so, which of the following strategies are used?

Awareness-raising as part of armed forces training programmes

Awareness-raising through other public complaints-handling bodies (e.g. other ombudsman institutions, or the police)

Awareness-raising on the internet or through the media

Other (please specify): _____

SECTION H: INDEPENDENCE OF THE OMBUDSMAN INSTITUTION

43. How do you assess the independence of your ombudsman institution?

44. What measures are in place to ensure the independence of the ombudsman institution?

45. Which institution may remove the ombudsperson from office?

- Parliament
- The minister of defence
- The head of government/state
- An independent body
- The judiciary
- None
- Other institution (please specify): _____

46. (a) Is the ombudsperson's tenure of office fixed?

- Yes. No.

(b) If so, how long is this tenure of office?

_____ years

(c) Is this tenure of office renewable?

- Yes. No.

47. (a) Can the ombudsman institution's investigations be suspended or terminated by one or more of the following institutions?

- the government
- the judiciary
- the armed forces
- Other (please specify): _____

(b) If so, how many times has this happened?

48. Are the ombudsperson and their staff immune from prosecution or civil litigation for actions undertaken during the course of his/her duties?

Yes.

No.

49. Is the confidentiality of the records and correspondence of the ombudsman institution guaranteed?

Yes.

No.

50. Can any of the following institutions compel the disclosure (or subpoena) the ombudsman institution's records?

The government

The judiciary

The armed forces

Other (please specify): _____

51. What measures if any would strengthen the independence of your ombudsman institution?

SECTION J: CHALLENGES & STRENGTHENING THE WORK OF THE OMBUDSMAN INSTIUTION

52. Do any of the following issues present obstacles to the work of the ombudsman institution?

(Where appropriate, please rank these obstacles in ascending order: 1 = most significant; 6 = the least significant.)

() Insufficient resources (financial or human)

() Inadequate cooperation from the armed forces and/or the government

() Insufficient powers to investigate complaints

() Insufficient resources to monitor/follow-up the implementation of recommendations made by the ombudsman institution

() Insufficient powers to ensure the implementation of orders made by the ombudsman institution

() Other (please specify): _____

53. Please briefly outline two or three changes to your ombudsman institution or its mandate which would strengthen its capacity to perform its functions.

54. In your opinion, what are the three most significant factors in making an ombudsman institution effective?



Geneva Centre for the Democratic Control of Armed Forces (DCAF)

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