

OMBUDS INSTITUTIONS FOR THE ARMED FORCES

Roles and responsibilities in good security
sector governance

ABOUT THIS SSR BACKGROUNDER

This SSR Backgrounder explains what ombuds institutions for the armed forces are, what they do and how they contribute to good governance of the security sector. These institutions provide oversight of the armed forces by receiving and investigating complaints, thereby improving the accountability, transparency, effectiveness and efficiency of the armed forces. They are an essential feature of democratic security sector governance that ensures respect for the rule of law and human rights.

THIS SSR BACKGROUNDER ANSWERS THE FOLLOWING QUESTIONS:

What are ombuds institutions for the armed forces?	2
What are the different types of ombuds institutions?	3
How do ombuds institutions contribute to good SSG?	4
How do ombuds institutions handle complaints?	5
Why should complaints be encouraged?	6
What kinds of investigations can ombuds institutions conduct?	6
Are ombuds institutions part of the justice sector?	6
How do ombuds institutions ensure the enforcement of their recommendations?	6

ABOUT THIS SERIES

The SSR Backgrounders provide concise introductions to topics and concepts in good security sector governance (SSG) and security sector reform (SSR). The series summarizes current debates, explains key terms and exposes central tensions based on a broad range of international experiences. The SSR Backgrounders do not promote specific models, policies or proposals for good governance or reform but do provide further resources that will allow readers to extend their knowledge on each topic.

The SSR Backgrounders are a resource for security governance and reform stakeholders seeking to understand and also to critically assess current approaches to good SSG and SSR.

DCAF – Geneva Centre for Security Sector

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WHAT ARE OMBUDS INSTITUTIONS FOR THE ARMED FORCES?

Ombuds institutions for the armed forces (hereafter, “ombuds institutions”) are independent oversight bodies that receive complaints and investigate matters pertaining to the protection of human rights and prevention of maladministration within and by the armed forces. Through their investigations, reports and recommendations, ombuds institutions improve the good governance and effectiveness of the armed forces. Ombuds institutions are a type of oversight institution that helps to ensure that the armed forces fulfil their missions in a fair, transparent and accountable way.

There are various forms of ombuds institutions, ranging from national human rights institutions mandated to oversee and address complaints and concerns relating to all government bodies, to independent bodies mandated to oversee only the armed forces. Although they have varying mandates and powers, **all ombuds institutions aim to prevent and respond to both maladministration and human rights abuses within and by the armed forces.** By receiving and investigating complaints, and reporting on thematic questions and systemic problems, ombuds institutions can improve security provision, management and oversight.

For an ombuds institution to be effective, it must be independent from both the body it is mandated to oversee and the government that has provided its mandate. Without independence, conflicts of interest and a lack of confidence in the institution will undermine the credibility of its work. Independence cannot be guaranteed simply by setting up the office outside the chain of command. **An ombuds institution must also be granted operational independence,** which should include an independent budget and the ability to make its own staffing decisions and to operate without undue interference or instruction, including being free to conduct investigations. It is especially important that the head of office and staff are personally beyond political influence, because even if financial, legal and operational independence is guaranteed, all this can be undone if the institution’s personnel are perceived to lack independence. If they are perceived to be too friendly or close to senior security officials, or they themselves have served in the security service, this may undermine trust. For this reason, **the effectiveness of an ombuds institution depends on the personal independence and impartiality of its leader and staff.** Achieving the institutional, operational and personal independence of the ombuds institution is a significant challenge, difficult to accomplish and sustain.

WHAT ARE THE DIFFERENT TYPES OF OMBUDS INSTITUTIONS?

There are general ombuds institutions and specialized military ombuds institutions.

General ombuds institutions: In many countries, the armed forces' oversight function is subsumed within the mandate of a broader civilian oversight mechanism, such as a national human rights institution or ombudsperson. These mechanisms are usually mandated to contribute to the protection of the rights and freedoms of all members of society and to address complaints and concerns relating to all branches of government. Such institutions can hold a powerful position within the political system.

General ombuds institutions with a broad mandate have several advantages:

- A broad mandate can bring political importance that makes their recommendations difficult for decision-makers to ignore;
- Their prominent status means that the public (including armed forces personnel) are more likely to know about and understand their role and come forward with problems or concerns;
- Civilians and armed forces personnel are more likely to be treated equally and their interests balanced in any recommendations;
- Concentrating oversight functions in one office can be less costly than having several specialized offices.

General ombuds institutions can be disadvantaged by lacking specific military knowledge and credibility within the armed forces. A broad mandate can also distract attention from the particular problems facing armed forces personnel. Insufficient resources devoted to specifically military cases can cause significant delays in the resolution of complaints. These problems might be resolved by introducing specialized roles within the ombuds institution's office, such as a deputy to deal specifically with military affairs.

Specialized military ombuds institutions: Several countries provide for an independent ombuds institution that has jurisdiction only over the armed forces but is a civilian office, independent of the military chain of command. Such an independent mechanism has the advantage of being able to devote its attention exclusively to military matters, and thus develop specialized knowledge in the field. Its ability to issue public reports strengthens the oversight capacity of other democratic institutions, such as the legislature, and ensures greater transparency and accountability of the armed forces. Its independent status and specialist knowledge give it credibility in the eyes of complainants, the legislature and the public. The main disadvantage is that independent oversight institutions can be costly and, especially in States with a small or inactive military, there may be insufficient complaints to justify a stand-alone oversight institution.

INTERNAL OVERSIGHT

Independent Inspectors General (IGs) are often not considered ombuds institutions because they are integrated within the armed forces and are therefore not institutionally independent. However, some IGs are granted such a high degree of independence and impartiality that they fulfil all criteria to be considered ombuds institutions for the armed forces. IGs are usually (though not always) serving armed forces personnel situated within the chain of command, reporting to and/or taking direction from superior officers.

Integrating oversight within the armed forces has advantages:

- More attention is given to command and control issues affecting operational effectiveness;
- The overseer has specialist knowledge of military life, making them more receptive to military-specific issues;
- The overseer is more accessible to personnel with whom they may be deployed, for example, in remote or overseas postings.

The main drawback of integrated oversight is that its position within the armed forces can reduce its ability to address controversial issues or pursue investigations that run counter to the interests of the military hierarchy. This can undermine confidence in the complaint mechanism in the eyes of complainants or the public and reduce the credibility of the institution and the armed forces. Having IGs report directly to the Minister of Defence alleviates this problem by giving them direct access to the most senior defence official while also removing potential conflicts of interest within the military hierarchy. Another solution is to authorize IGs to report to the legislature while remaining operationally within the Ministry of Defence.

HOW DO OMBUDS INSTITUTIONS CONTRIBUTE TO GOOD SSG?

The filing of formal complaints through ombuds institutions has several advantages for the functioning of the armed forces and their relations with society. In particular, ombuds institutions help realise the principles of good SSG (see box below):

- **Effectiveness and efficiency:** Ombuds institutions make armed forces more effective and efficient by recommending ways to rectify systemic deficiencies and verifying that personnel are acting appropriately and professionally.
- **Accountability and transparency:** Ombuds institutions investigate human rights abuses, injustice or maladministration and call individuals and institutions to account for their behaviour. By issuing public reports and recommendations, ombuds institutions improve the transparency of security provision and management. These reports can draw attention to issues previously concealed or neglected by the armed forces.
- **Participation and responsiveness:** Ombuds institutions make it easier to seek redress for wrongdoing. Anyone in the armed forces – regardless of rank, connections, wealth, gender, identity or importance – can file a complaint. Because all complaints are of equal importance, ombuds institutions encourage everyone to participate in good governance of the security sector. In issuing recommendations, ombuds institutions also help the armed forces fulfil their mission in a way that is more responsive to public concerns.
- **Rule of law:** Ombuds institutions are responsible for investigating complaints of inappropriately applied or dysfunctional laws or policies. They are a means to rectify maladministration that could not or would not be resolved by other grievance systems; their recommendations contribute to respect for the rule of law.

GOOD SECURITY SECTOR GOVERNANCE (SSG) AND SECURITY SECTOR REFORM (SSR)

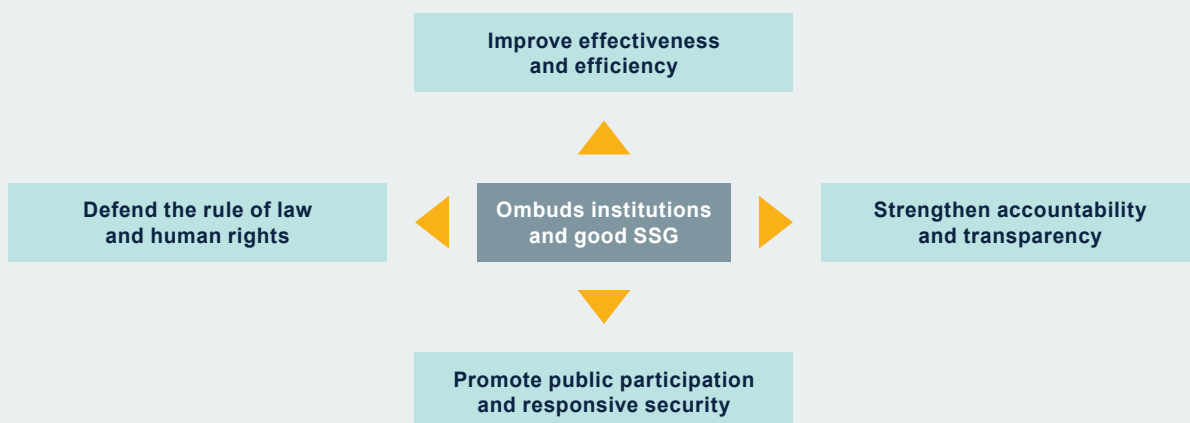
Good SSG describes how the principles of good governance apply to public security provision, management and oversight. The principles of good SSG are accountability, transparency, the rule of law, participation, responsiveness, effectiveness and efficiency.

The **security sector** is not just security providers: it includes all the institutions and personnel responsible for security management and oversight at both national and local levels.

Establishing good SSG is the goal of security sector reform. SSR is the political and technical process of improving state and human security by making security provision, management and oversight more effective and more accountable, within a framework of democratic civilian control, the rule of law and respect for human rights. SSR may focus on only one part of public security provision or the way the entire system functions, as long as the goal is always to improve both effectiveness and accountability.

→ For more information on these core definitions, please refer to the SSR Backgrounders on “Security Sector Governance”, “Security Sector Reform” and “The Security Sector”.

FIGURE 1 OMBUDS INSTITUTIONS CONTRIBUTE TO GOOD SSG IN A NUMBER OF WAYS



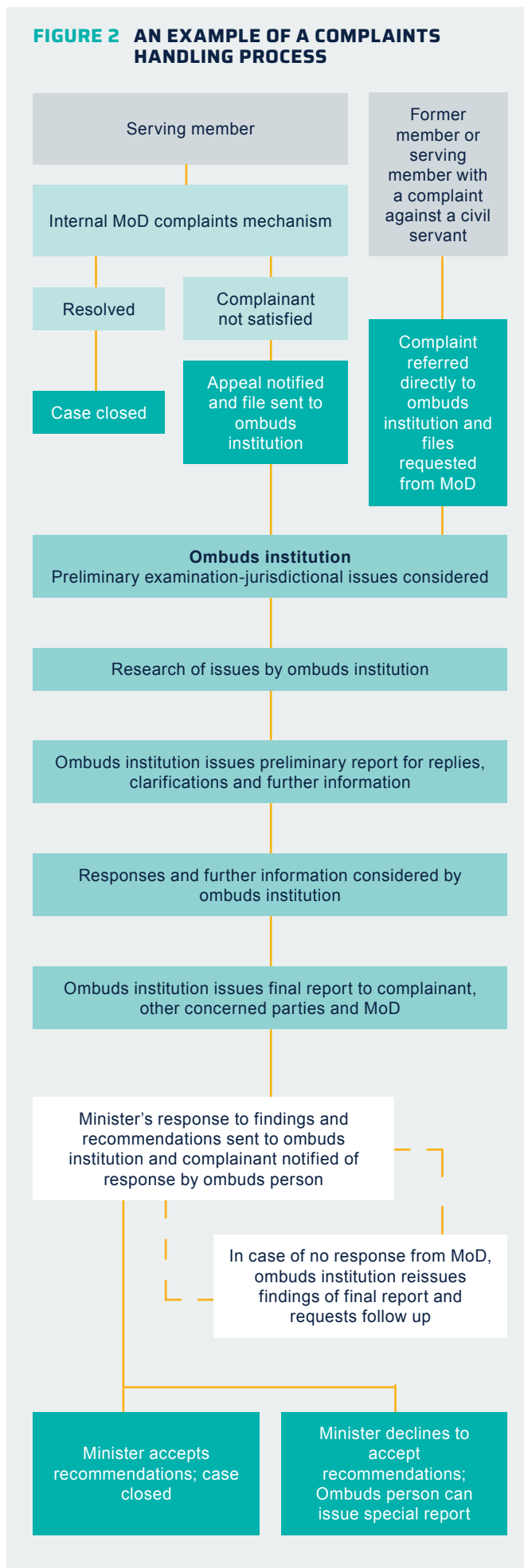
HOW DO OMBUDS INSTITUTIONS HANDLE COMPLAINTS?

Ombuds institutions deal with a wide variety of complaints but most concern human rights, misconduct or maladministration, which is the failure of an institution to respect the rule of law or the principles of legal and efficient administration. **Many issues identified by ombuds institutions are only confined to individual cases**, but some problems concern the whole system (e.g. bullying, gender-based violence and discrimination, inadequate equipment) or laws and regulations that are either non-existent, harmful or misleading.

Ombuds institutions can receive complaints from a wide variety of persons, including currently serving armed forces personnel, military and civilian staff, and, sometimes, non-professional armed forces personnel, such as conscripts. Other groups are also likely to benefit from the existence of an ombuds institution (e.g. families of armed forces personnel or civilians negatively affected by the armed forces), even though not all are permitted to file complaints in all jurisdictions.

The right to file a complaint should be advertised as widely as possible and the process should be as simple as possible and tailored to the needs of the complainant. Formal complaints might be filed by telephone hotline, online form, email or in person. Complainants should receive advice, service and accurate appraisals of their situation as quickly as possible.

FIGURE 2 AN EXAMPLE OF A COMPLAINTS HANDLING PROCESS



WHY SHOULD COMPLAINTS BE ENCOURAGED?

Complaints indicate that people are using the system and trust that the ombuds institution is able to address their concerns. **Though it may seem counter-intuitive, if an ombuds institution is receiving complaints, it suggests not that the system is broken but, rather, that the institution is working as it was designed to do.** Ombuds institutions commonly experience the underreporting of problems. If someone with a problem does not raise a formal complaint, it may be a positive sign that they have managed to resolve the problem informally; conversely, it may mean they decided not to complain. A person might hesitate to file a complaint for negative reasons, such as a fear of retaliation or being labelled a troublemaker, a lack of faith in the ombuds institution to resolve the problem, or not understanding that they have a right to file a complaint.

WHAT KINDS OF INVESTIGATIONS CAN OMBUDS INSTITUTIONS CONDUCT?

Complaints are the main source of investigations for ombuds institutions and in some countries investigations can only be triggered by an individual complaint. Sometimes individual complaints can give rise to the investigation of systemic issues, when numerous complaints are received on a similar subject or from a similar demographic or geographic context. In contrast, **own-motion investigations** are those an ombuds institution can launch on its own initiative without the need for a specific complaint or incident. They are particularly useful for the investigation of systemic problems or thematic issues and problems such as bullying, gender-based violence and discrimination or harassment, where victims may be deterred or inhibited from coming forward. This type of proactive approach can also help to raise the profile of ombuds institutions when they make site visits and have closer contact with service personnel. Own-motion investigations ensure ombuds institutions can investigate **all possible issues** that come to their attention, regardless of whether or not the source is permitted to make an official complaint. Such investigations can be triggered, for example, by the media, NGOs or other organizations, or friends or family of an affected person, or by requests from members of the legislature or other government agencies.

It is essential that ombuds institutions have access to all information necessary to carry out an investigation. Any limitation on their access to information must be clearly and narrowly defined in law.

ARE OMBUDS INSTITUTIONS PART OF THE JUSTICE SECTOR?

Ombuds institutions are not meant to be a substitute for judicial bodies, including those that make up the military justice system, but, rather, to complement them. **While the justice system is concerned with the application of existing law, ombuds institutions are often concerned with identifying deficiencies in laws or policies that prevent justice.** Ombuds institutions, therefore, seek to supplement judicial institutions, as they generally deal with non-criminal matters and typically offer comparatively easier access to justice. The costs of pursuing a complaint in court can be high and the process formal, whereas ombuds institutions' services are free of charge and far more informal than a typical court proceeding. While criminal investigators focus on a specific crime at hand, ombuds institutions can review multiple related cases of repeated abuse or systemic issues.

HOW DO OMBUDS INSTITUTIONS ENSURE THE ENFORCEMENT OF THEIR RECOMMENDATIONS?

Ombuds institutions for the armed forces may complement the justice system and uphold the rule of law, but they have no enforcement capacity. Thus, they must rely on making recommendations and persuading the armed forces to comply with the findings of their investigations.

There are several ways that ombuds institutions can ensure their recommendations are implemented:

- **Moral authority:** High levels of public trust in and respect for ombuds institutions may grant them a degree of moral authority that can persuade public institutions to comply with their recommendations.
- **Public pressure:** They can draw public attention to non-compliance with their recommendations through special reports, engaging with the media and/or releasing public statements.
- **Political escalation:** They can increase the pressure to implement their recommendations by approaching relevant authorities.
- **Legal appeal:** Some ombuds institutions have a right of appeal to the judiciary in cases of non-compliance. Similarly, some may initiate proceedings in court where the legality of an act or regulation is in question.

WHAT TO READ NEXT

For further details on ombuds institutions for the armed forces

- Benjamin S. Buckland and William McDermott
Ombuds Institutions for the Armed Forces: A Handbook
(Geneva: DCAF, 2012).
- Megan Bastick
Gender and Complaints Mechanisms: A Handbook for Armed Forces and Ombuds Institutions to Prevent and Respond to Gender-Related Discrimination, Harassment, Bullying and Abuse
(Geneva: DCAF, 2015).

For further details on different models of ombuds institutions

- William McDermott and Kim Piaget (eds.)
Ombuds Institutions for the Armed Forces: Selected Case Studies
(Geneva: DCAF, 2017).
- Office of the United Nations High Commissioner for Human Rights
National Human Rights Institutions: History, Principles, Roles and Responsibilities Professional Training Series No. 4 (Rev. 1)
(New York and Geneva: United Nations, 2010).
- Shirin Sinnar
Protecting Rights from Within? Inspectors General and National Security Oversight
(Stanford Law Review, 65, 2013: 1027–1086).

For further details on key standards and characteristics of ombuds institutions

- United Nations General Assembly
Principles relating to the status of national institutions (The Paris Principles) (A/RES/48/134)
(United Nations, 20 December 1993).

For further details on the main responsibilities of ombuds institutions

- United Nations Development Programme
Guide for Ombudsman Institutions: How to Conduct Investigations
Bratislava: United Nations Development Programme (Bratislava Regional Centre, 2006).
- Asia Pacific Forum of National Human Rights Institutions
Undertaking Effective Investigations: A Guide for National Human Rights Institutions
(Sydney: Asia Pacific Forum of National Human Rights Institutions, 2013).

MORE DCAF RESOURCES

DCAF publishes a wide variety of tools, handbooks and guidance on all aspects of SSR and good SSG, available free-for-download at www.dcaf.ch. Many resources are also available in languages other than English.

The DCAF-ISSAT Community of Practice website makes available a range of online learning resources for SSR practitioners at <http://issat.dcaf.ch>

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