

International Conference
of Ombuds Institutions
For the Armed Forces

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International Conference of Ombuds Institutions for the Armed Forces

*The evolving roles and responsibilities
of the armed forces and the implications
for ombuds institutions*

*Johannesburg, South Africa
28-30 October 2018*

10th International Conference of Ombuds Institutions for the Armed Forces

Emperor's Palace Hotel, Johannesburg, South Africa

SUNDAY, 28 OCTOBER 2018

ALL DAY	Arrival of participants
18:00	Delegates meet at Emperor's Palace lobby
18:30 – 21:00	Aperitif and Welcome Dinner

MONDAY, 29 OCTOBER 2018

08:00 – 08:45	Conference Opening Ms. Nosiviwe Noluthando Mapisa-Nqakula Minister of Defence and Military Veterans, Republic of South Africa Ambassador Thomas Guerber Director, DCAF Adv. Busisiwe Mkhwebane, Public Protector of the Republic of South Africa Lt Gen (Ret.) T.T. Matanzima, South African Military Ombud
08:45 – 09:15	Group photo
09:15 – 09:45	Coffee break and media opportunities
09:45 – 11:00	Session 1: The evolving roles and responsibilities of the armed forces and the implications for ombuds institutions
11:00 – 13:00	Session 2: Domestic security: implications for ombuds institutions
13:00 – 14:00	Lunch
14:00 – 15:30	Session 3: Crisis response: implications for ombuds institutions
15:30 – 16:30	Free time
16:30 – 22:00	Cultural activity

TUESDAY, 30 OCTOBER 2018

09:30 – 12:00	Session 4: Border security and migration: implications for ombuds institutions
12:00 – 13:00	Lunch
13:00 – 15:30	Session 5: The armed forces as peacekeepers and peace-enforcers: implications for ombuds institutions
15:30 – 15:45	Coffee break
15:45 – 16:15	Adoption of the conference statement
16:15 – 16:30	Announcement of the 11th ICOAF in October 2019
16:30	Closing remarks

The evolving roles and responsibilities of the armed forces and the implications for ombuds institutions

Introduction

As the nature of conflict has evolved over the previous decades, from interstate conflict to far more intrastate and internationalized intrastate conflict, the expected roles and responsibilities of soldiers has evolved too. Soldiers are no longer expected to stay in their barracks until a war breaks out and then be deployed to the front. Instead, they serve a multitude of different functions: from war-fighter to peacekeeper, from soldier to police officer, from disaster responder to health provider. The armed forces have become a blunt tool for politicians to ensure domestic order, but in manners previously thought to be uncondusive to the responsibilities of the armed forces, which is primarily to protect the state from foreign invasions. Often these new responsibilities raise a number of challenges for the armed forces, who are unprepared or ill-equipped, both in training, technical expertise and legal mandate. These new responsibilities often given rise to problems and complaints.

As the responsibilities and roles of the armed forces, what are the consequences for accountability and oversight? Ombuds institutions for the armed forces may find themselves ill equipped to respond to these new responsibilities. When confronted with new legal paradigms, ombuds institutions must quickly adapt to provide recommendations to rectify these problems. However, accomplishing this can be easier said than done.

Fortunately, these new roles and responsibilities typically have affected all countries around the world, and ombuds institutions have developed considerable expertise on how to respond to these challenges. Additionally, general ombuds institutions, which have always been mandated to oversee other security providers, such as the police, border security, health, etc., have a wealth of expertise to share with their peers. Additionally, specialized ombuds institutions for other security providers may also valuable insight of considerable relevance for ombuds institutions for the armed forces to apply in their work.

Objectives and Methodology

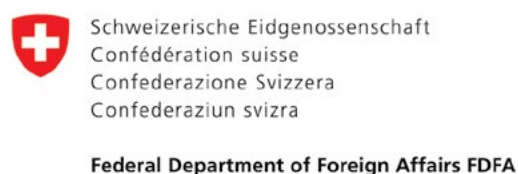
This conference hopes to draw upon lessons learned from previous ICOAFs and continue fostering a dynamic and participatory environment conducive to generating insight into these topics. A questionnaire was circulated to all past and present ICOAF participants in advance of 10ICOAF. The results of this questionnaire have contributed to the drafting of the programme, think pieces and related research material. The structure of the conference sessions will range from panels, interactive group work and breakout groups. Participants possess vast experiences in handling and responding to complaints, and participants are expected and encouraged to share their experiences – both positive practices and gaps in capacity – to draw out good practices and areas of need that may prove to be informative to their peers.

The objective of IOCOAF is for ombuds institutions to share their knowledge and learn from their peers in how they can contribute to providing oversight of the armed forces, particularly within the context of the armed forces role in untraditional activities, such as domestic security, crisis response, border security and migration, and peacekeeping. Good practices shared during the conference will be compiled and endorsed by participants in a non-binding Conference Statement.

The conference will be public and open to the press on Monday morning, including Session 1. After lunch on Monday, the conference will then operate under Chatham House Rules unless otherwise noted.

Sponsors and Supporters

This conference was made possible with the support of:



Monday, 29 October 2018

08:00-08:45

Conference Opening

Speaker 1: Ms. Nosiviwe Noluthando Mapisa-Nqakula, Minister of Defence and Military Veterans, Republic of South Africa

Speaker 2: Ambassador Thomas Guerber, Director, DCAF

Speaker 3: Adv. Busisiwe Mkhwebane, Public Protector of the Republic of South Africa

Speaker 4: Lt Gen (Ret.) T.T. Matanzima, South African Military Ombud

Speakers to be introduced by Lt Gen (Ret.) T.T. Matanzima

09:45-11:00

Session 1: The evolving roles and responsibilities of the armed forces and the implications for ombuds institutions

PANEL

25 years after the end of the Cold War, the nature of conflict has markedly evolved. Conflict is now amorphous, the adversary often faceless, and fighting is no longer spatially or temporally bound. Hostilities are concentrated within and beyond land borders – rather than across them – defusing national boundaries and rendering them insignificant. Intrinsic in this emerging security environment is a paradigm shift concerning the source of conflict: rather than owing to conventional inter-state rivalries, new security challenges are the product of economic, demographic, and intra-societal tensions.

In unison with the changing face of conflict, conventional notions of the armed forces, their respective roles and responsibilities, as well as their legitimacy and mandate are being challenged and undergoing significant transformation. Traditionally conceived as an institution primarily tasked with external defence against militant threats, armed forces activities have now expanded into realms of domestic policing and law enforcement, crisis response, and peacekeeping, subsuming a variety of civilian roles and duties. Predominantly responsible for this paradigm shift is an enlarged peace dividend due to the changing nature of conflict and an overstraining of public agencies as they struggle to cope with rising public crises. As such, the armed forces increasingly perform their newfound duties under military command, and to a degree that these have transformed from a source of last resort to established standard operating procedures.

This operational paradigm shift is reflected in a substantive refocus on issues of human security, such as human trafficking, environmental degradation, and the abuse of human rights. Thus, questions arise pertaining to the suitability of the armed forces and under which conditions to engage in these roles, whether this development has led to a profound shift in their core values and technical expertise, and in regards to the organization and structuring of the security sector to maintain good security sector governance and oversight.

Four cross-cutting issues apply to all new realms of security sector involvement. This include concerns regarding (i) the proper legal mandate and policy support of the armed forces required for engagement in these new realms, (ii) sufficient technical support (i.e. training, equipment and knowledge) for the armed forces to undertake these new tasks, (iii) the potential of ombuds institutions to provide a unique platform for mutual and inclusive dialogue on security issues and a clear delineation of roles and responsibilities for various public bodies, as well as (iv) adequate complaint mechanisms of ombuds institutions that are receptive and adapted to said new security environment.

Speaker: Lt Gen B.M.N Hlatshwayo Chief of Joint Operations – SANDF

Speaker: Georges Nakseu-Nguefang, OIF

Speaker: Dr. Hans-Peter Bartels, German Parliamentary Commissioner

Speaker: Tinko Weibezahl, Konrad Adenauer Foundation

Questions for discussion:

- *Which long term trends do you witness with regards to changing roles and responsibilities in your country? Are the changes related to changing external threats or internal threats?*

- *Are these changing roles and responsibilities reflected in changing laws, strategies and policies of the armed forces?*

- *How have these trends change the way in which armed forces recruit, train and retain their personnel?*

- *How is your office affected by the changing roles and responsibilities of the armed forces?*

MONDAY, 29 OCTOBER

11:00-13:00

Session 2: Domestic security: implications for ombuds institutions

BREAKOUT GROUPS

The armed forces have increasingly become involved in maintaining domestic security, by providing services to maintain public order, provide counterterrorism support, general law enforcement, crime investigation, and support at large public events, among other activities. In many countries, the armed forces are bound by different penal codes and justice systems than their civilian law enforcement counterparts. Moreover, their training is often not designed to interact with civilians in their own country but hostile forces. This may imbue armed forces personnel with inadequate or inappropriate training, and when mistakes occur, it may have the unfortunate consequence of eroding the public's trust in the armed forces. Furthermore, by using the armed forces for domestic law enforcement, it may have the effect of militarizing existing civilian law enforcement structures, or undermining and weakening these same civilian institutions in favour of the armed forces, harming the separation between civilian and military tasks and authority.

As a result, ombuds institutions must also carefully navigate through these complex legal, technical and ethical questions. Ombuds institutions, as overseers of the armed forces, must ensure that appropriate policies and procedures are in place to support armed forces personnel in new tasks, especially in particularly chaotic times of emergency. Ombuds institutions should also be mindful to alert defence officials and parliament when boundaries are overstepped.

Additionally, as the armed forces engages more frequently with civilians, ombuds institutions should reconsider their mandates, and whether they are appropriate to meet these new roles and responsibilities, and whether they too must adapt with new powers and expanded mandates. Considerable lessons can be learned from specialized law enforcement oversight mechanisms that already exist in many countries. General ombuds institutions, too, have a wealth of experience to share and will not be constrained by limits in mandates.

Breakout groups based on law-enforcement tasks

Breakout group 1: Public order

Breakout group 2: Counter-terrorism

Breakout group 3: Intelligence gathering

Breakout group 4: Support for major public events

Breakout group 5: Crime investigation

Breakout group 6: Drug enforcement

Questions for discussion:

- *Are armed forces personnel permitted to conduct domestic security or law enforcement activities in your country? Under what circumstances?*

- *Are armed forces personnel currently engaging in domestic security or law enforcement activities in your country?*

- *Can your office receive complaints from civilians about armed forces personnel? Has your office received such complaints?*

- *Has your office received complaints from armed forces personnel engaging in a domestic law enforcement capacity?*

- *What are common problems faced by armed forces personnel?*

- *Did your office investigate the cooperation/interface between the law enforcement and the armed forces?*

- *Has your office developed cooperative mechanisms with civilian law enforcement?*

- *What is the biggest problem your office faces with regards to exerting oversight of the armed forces in domestic law enforcement activities?*

MONDAY, 29 OCTOBER

14:00-15:30

Session 3: Crisis response: implications for ombuds institutions

BREAKOUT GROUPS

Of the many roles and responsibilities the armed forces are entrusted with and discussed at this conference, the realm of crisis response is typically the least controversial and, increasingly, the most commonly authorized and utilized. As such, internal security provision and assistance by the armed forces is often the case prior, during and after natural and humanitarian catastrophes, including man-made incidents, such as industrial accidents, large-scale transportation accidents (e.g. train or plane crashes), health crises or natural disasters. It may also include search and rescue tasks, environmental protection services, or medical support for poor communities. What distinguishes this topic from Session 2, for example, is the absence, at least initially, of intentional violence.

Within such crisis contexts, the needs of an ailing public often exceed response capacities of civilian and hybrid security organizations and the comparative technical and resource advantage of the armed forces allow for the necessary continuity of services and government. Furthermore, in times of crisis, the armed forces may act as a national unifying mechanism, transcending all communities and classes of society. However, employing the armed forces in a consistent manner may also have its downsides. As crisis response and interaction between the armed forces and the public is normalized, the armed forces may feel ill-prepared and ill-equipped in dealing with the multitude of challenges that may emerge within a crisis context.

As such, ombuds institutions should ensure that when the armed forces are deployed to respond to crises personnel are given clear and legal instructions. Ombuds institutions should pay special attention to whether armed forces personnel are equipped with the necessary training and skills to undertake these tasks, especially as the scale and frequency of natural disasters is expected to rise due to climate change. Ombuds institutions should also ensure that they, themselves, are endowed with the appropriate resources and mandate to oversee and receive complaints from armed forces personnel and, if necessary, other individuals.

Introductory remarks provided by: Mr. Muneon Park, Korea Institute for Defence Analyses, Ministry of National Defense of the Republic of Korea

Breakout groups based on types of crises

Breakout group 1: Natural disasters

Breakout group 2: Health crises

Breakout group 3: Man-made disasters (nuclear, oil spills, large scale transportation accidents, etc.)

Questions for discussion:

- *Is crisis response becoming a higher priority for armed forces due to natural disasters evoked by climate change as well as global health threats?*

- *To what extent has crisis response tasks impacted on the work of the armed forces in terms of legal mandate, strategies, operations, budget and personnel management?*

- *How has crisis response of armed forces impacted on the work of your office?*

- *What would be lessons learned for the future and other offices?*

TUESDAY, 30 OCTOBER 2018

09:30-12:00

Session 4: Border security and migration: implications for ombuds institutions

BREAKOUT GROUPS

In many countries around the world, the armed forces is generally not tasked with border security and controlling the flows of migration. This responsibility has been handed over to professional border security, customs or immigration personnel, who have been provided with technical expertise in managing the security of the state's borders and those that pass through them. However, in cases of emergency, the armed forces are regularly deployed to its borders, especially in threats of armed aggression from neighbouring countries. In recent years, the movement of large numbers of people attempting to cross borders has again risen in prominence, and has often been described as a "crisis". Migrants fleeing conflict and economic depression have risen dramatically in a number of countries, and this is not confined to one region in the world; Africa, Central America, the Middle East, Southeast Asia and Western Europe have witnessed significant movements of people. Professional border guards have been overwhelmed, and the armed forces have been deployed to augment and ensure control.

This has, however, placed armed forces personnel into new roles and responsibilities, aiding in border surveillance and management, immigration processing and customs controls. Being deployed domestically (albeit at the border) assigned to tasks that one may have little expertise and training in may likely lead to problems for these personnel. Ombuds institutions have an important role to play in overseeing the armed forces' engagement in border security, and to act to rectify noted problems, both to armed forces personnel and those affected by armed forces personnel.

Introductory remarks provided by: Reinier van Zutphen, National Ombudsman of the Netherlands

Breakout groups based on orientation of border guard

Breakout group 1: countries with border guard that is within the Minister of Defence

Breakout group 2: countries with border guard that is exclusively civilian

Breakout group 3: countries with civilian border guard, but the military is deployed to assist at the borders

Questions for discussion:

- *Is migration and/or border security currently an issue of importance in your country?*

- *Has the armed forces' involvement in border control/customs/immigration led to new types of complaints?*

- *Has the armed forces' involvement in border control/customs/immigration led to complaints or problems from new sources, such as civilians that have encountered problems with armed forces personnel at the border, or foreign non-residents that encountered problems when seeking to enter your country?*

- *What role do ombuds institutions have in ensuring that the armed forces has the appropriate legal mandate and technical capacity to carry out their tasks?*

- *Can your office question the legality of directives issued to the armed forces, particularly within the context of border security and/or migration? Has your office done so?*

- *Can your office make recommendations to improve the quality or type of training and support issued to armed forces personnel, particularly within the context of border security and/or migration? Has your office done so?*

- *Has your office identified new barriers or obstacles with regards to border control/customs/immigration that has made it more difficult for personnel to file complaints?*

- *What can your office do to ensure armed forces personnel are better equipped, their working conditions are adequate, and their rights are protected?*

- *What can your office do to ensure civilians are treated fairly and their rights are protected when interacting with armed forces personnel?*

TUESDAY, 30 OCTOBER

13:00-15:30

Session 5: The armed forces as peacekeepers and peace-enforcers: implications for ombuds institutions

BREAKOUT GROUPS

Military interventions under the guise of maintaining or keeping peace have risen both in number of missions and the number of soldiers deployed to these missions. The number of personnel deployed in UN missions is currently over 115,000 soldiers, with tens of thousands of personnel are currently participating in regional peacekeeping or training missions, such as the African Union and European Union, as well as countless others deployed on an ad hoc or bilateral basis for training or advising purposes.

While many of these missions entail reasonably traditional warfighting mandates of engaging in force with the adversary, the mandates of these missions has expanded considerably into other areas that the armed forces may not have prior experience in. For example, contributing to institution building by supporting and providing training to state security providers, establishing disarmament, demobilization and reintegration programmes, providing support to political and peace processes, providing humanitarian assistance and creating and fostering an environment for the return of refugees and internally displaced persons, coordinating activities with UN or other aid agencies and partners in delivering aid, supporting the participation of women in conflict prevention, among a multitude of other things.

These new mandates and expectations placed on the armed forces may find itself in a position where it is unable to deliver results due to inadequate expertise and support, both legally and technically. Ombuds institutions for the armed forces should monitor the armed forces' ability to carry out these new mandates, and intervene to ensure that individual personnel are not placed into roles that they cannot fulfil, but also to ensure that the armed forces, on the whole, is able to fulfil its mandate.

This session will draw upon lessons learned at the 8th and 9th ICOAFs, where participants endorsed the important need for ombuds institutions to provide oversight in international missions, to be able to receive complaints in these missions, and how to overcome challenges stemming from the international nature of peacekeeping missions.

Introductory remarks provided by: Ilene Cohn, Chief of the Security Sector Reform Unit, Office of Rule of Law and Security Institutions, Department of Peacekeeping Operations, United Nations

Breakout groups based on international security alliance

Breakout group 1: African Union

Breakout group 2: ECOWAS

Breakout group 3: NATO

Breakout group 4: United Nations

Questions for discussion:

- *Is the armed forces provided with adequate legal support to engage in peacekeeping missions?*

- *How are armed forces personnel trained before being deployed to peacekeeping missions?*

- *Is such training monitored to ensure that it meets the needs of personnel on the ground?*

- *What sort of special technical training or equipment is provided to armed forces personnel?*

- *Can your office remark on inadequate supplies or training to personnel deployed abroad?*

- *Can individuals from outside your country's armed forces (either local civilians or armed forces personnel from another country) file complaints with your office?*

- *If yes, have you ever received complaints of this nature?*

- *If no, have you rejected such complaints? What course of action did you take?*

TUESDAY, 30 OCTOBER

15:45-16:30

Conference Closing

Before closing the conference, the conference statement will be discussed and adopted by the participants. Subsequently, the Eleventh International Conference of Ombuds Institutions for the Armed Forces (11ICOAF) will be announced which will be hosted in October 2019. Finally, the conference will be officially concluded with closing remarks by the hosts.

Chair: Lt Gen (Ret.) T.T. Matanzima, South African Military Ombud

ADOPTION OF THE CONFERENCE STATEMENT

Moderator: William McDermott, Project Officer, DCAF

ANNOUNCEMENT OF NEW INITIATIVE BY OSCE/ODIHR

Speaker: Graziella Pavone, Human Rights Officer, OSCE/ODIHR

ANNOUNCEMENT OF THE 11TH ICOAF

Speaker: Bosko Siljegovic, Parliamentary Military Commissioner of Bosnia and Herzegovina

