



**SPEECH DELIVERED BY MS C N PILLAY DIRECTOR LEGAL SERVICES AT THE 11 ICOAF IN SARAJEVO, BOSNIA & HERZEGOVINA FROM 27 TO 29 OCTOBER 2019**

**THE OFFICE OF THE MILITARY OMBUD - BECOMING A RESILIENT AND SUSTAINABLE INSTITUTION**

His Excellency Ambassador Thomas Geurber, The Parliamentary Military Commissioner of Bosnia and Herzegovina, Mr Bosko Siljegovic, members of DCAF and other host members of Bosnia and Herzegovina, Generals and other members of the Armed Forces of Bosnia & Herzegovina, Heads and members of all Ombuds Institutions present, Colleagues Representatives and Heads of other organisations present, Ladies and Gentleman

I feel privileged, to share with you our experiences on how we have attempted to overcome challenges over the past seven years during this, the first session of the Eleventh ICOAF. Challenges which are so real to an oversight institution, and even more real, to an institution that conducts oversight over the South African National Defence Force (SANDF).

I would like to begin by asking the question: “What is a resilient organisation “or “what is a resilient ombuds organisation”?

Andrea Ovan, a Harvard Law School Professor, says that “*organisational resilience is the ability to recover from setbacks, adapt well to change and keep going in the face of authority*”.

My intention with this paper is to demonstrate how we have attempted to recover from setbacks and adapt to change while still executing the mandate in terms of legislation.

As we reflect over the past seven years, since the establishment of the office in May 2012, we can say that we have come a long way and are doing much better in light of the experiences that has shaped us. We did indeed face some real challenges and grave criticism over the past years, however, we have recovered and implemented specific mechanisms in order to ensure that we not only become resilient but we sustain it.

The Office was established in terms of legislation, the Military Ombud Act, in May 2012 and its mandate is to investigate complaints from members and former members of the SANDF regarding conditions of service and from the public regarding the official conduct of members of the SANDF. The legislative mandate has been interpreted to incorporate oversight over the mechanisms employed by the Department to deal with grievances regarding conditions of service, which would relate to allegations of service failure. It also includes oversight over the conduct of members while executing their official duties.

The Act expands the oversight powers of the Military Ombud to include resolving complaints through Alternate Dispute Resolution (ADR) measures such as conciliation, mediation, negotiation and any other means expedient in the circumstances. (Early Resolution and Complex Investigations).

Seven years later, and at the end of term of the first Military Ombud in May 2019, the Office has made a significant impact regarding oversight over the administration of the SANDF by exacting accountability for decision making regarding the grievances of members through the utilisation of ADR mechanisms and identifying systemic problems for the Minister to address appropriately. We would like to see this continue with the onset of the appointment of the second Military Ombud, Retired General Masondo, who is due to assume Office this Friday, 1 November 2019.

More often than not, independence of the Office, a controversial issue that pops-up every so often, is usually associated with the process of appointment of the Military Ombud together with the powers of investigation and recommendations. However, the appointment process of the Military Ombud will either provide the Office with a strong

basis for being credible and independent, but it can also make it vulnerable to the politics of the day.

The Act provides that: the President must appoint the Military Ombud for a non-renewable seven-year term and further that the Ombud must possess adequate knowledge of the Constitution and must have legal knowledge; and have knowledge of or experience in military and public administration that was gained over a period of 10 years. What we have become accustomed to, with the appointment of the second Military Ombud, is that a retired Military General seems set for selection and appointment.

Although this may add credence to a perceived perception of a lack of independence, our experience is that having a former military General serving as the Ombud does have some positive spin-offs, as these incumbents are influential and are able to infiltrate the channels of command in the DOD, due to what we like to refer to as, “the old Boys network”. While this may be true for the organisation we still find ourselves having to defend the credibility of the Office due to this, more especially to members of the SANDF, by demonstrating how Retired General Matanzima, has used his previous life within the SANDF to the benefit of the Office and has strengthened relationships and trust within the SANDF.

There however, does, still seem to be a case to be made for the amendment of the appointment process of the Ombud to be open and transparent and go beyond the nomination and selection by the President and it is something to be considered during the legislative review process.

As an independent and impartial Military Ombud it had always been important to have credibility with and the trust of all stakeholders. The Office never purported to be a representative for the complainant or a defender of the Department of Defence, but has realised that we do not only have to be impartial and fair, but we have to be seen to be impartial and fair in order to bring about positive change.

While the Office does purport to be a last resort option in order to ensure complainants exhaust all internal remedies available to them and to respect the channel of command

within the Defence Force, the Ombud may use his discretion to accept complaints where it is apparent that there are internal problems in the grievance system that prevents a grievance from progressing to finalisation.

Our role as Ombudsman is to promote accountability, transparency and fairness in the administration of the Department and also to ensure that the rights and dignity of members and former members of the SANDF are protected. Building relationships became, therefore, a very important factor in ensuring resilience to perceptions and criticism and sustaining same.

The Office reports to the Minister of Defence through recommendations on the most appropriate solution to an unresolved dispute and through an annual report on the activities of the Office. In doing so we have come to realise that the key to sustaining the significant impact the Office makes is to ensure that we maintain a good, co-operative and strong relationship with the Minister. The Minister considers the findings and recommendations of the Military Ombud as binding unless she is of the view that there are cogent reasons why she cannot accept the findings and implement the recommendations.

As an executive Ombud, this relationship with the Minister has resulted in more than 90% of our recommendations being implemented by the Defence Force. Following the recommendations made to the Minister the Office monitors the implementation thereof in order to ensure the optimal functioning of the Office. The key to adding maximum value to the work we do is getting the recommendations accepted and implemented. We therefore strive to be flexible and recommend implementable and workable solutions for the SANDF.

The remaining 10% which have not been implemented can be attributed to the Chief of the SANDF or Chiefs of Services finding implementation to be challenging. We have developed mechanisms to try and curb this challenge through monthly meetings with the CSANDF and monthly forum meetings with Service and Divisional liaison officers appointed for this purpose by their relevant Chiefs. And of course, if all else fails, we can report the non-implementation of recommendations to Parliament as part

of the annual reporting and the visit with the Portfolio Committee on Defence on a quarterly basis.

The issue of budget seems to be a continuing challenge for all ombuds institutions and a lack of resources seems to be a big constraint on independence for all Ombuds institutions. Although the budget of the Office is appropriated by Parliament as part of the budget of the Department of Defence as a “ring fenced” line item and while the ability of the Ombud to administer its own funds has become a benchmark of independence, we have made genuine progress on manoeuvring with the funds of the Office without viewing it as a limitation to the functioning, independence and impartiality of the Office.

We have, through a Ministerial Directive, taken steps to find workable solutions for the manner in which the budget of the Office is administered without interference from the Department. The Minister has supported this by signing a Directive and instructing both the CSANDF and the Secretary for Defence to take steps to implement the Directive which addresses institutional issues such as resource systems for the Office. What is also worth mentioning, is that the Military Ombud appoints his own staff in terms of the Act and has promulgated Determinations on their remuneration and conditions of service in concurrence with the Minister of Defence and the Minister of Finance. The Directives also directs the Secretary for Defence to ensure the personnel systems used makes provision for the Ombud to implement these staff conditions accordingly.

Colleagues, it will not be appropriate for me to conclude without mentioning the contributions made by the Military Ombud team, which is made up of highly skilled and dedicated investigators lead by an equally highly skilled and dedicated management component who work so hard to ensure that the office stays relevant and is effective in the manner in which it deals with investigations. The team employs various techniques to ensure they develop healthy relationships with the Department for purposes of co-operation.

While the Office is given the power to subpoena any person to give evidence in an investigation, we have had to execute this power only once since inception. We also

write pre-liminary reports that gives both the Chief of the SANDF and the complainant an opportunity to respond to the findings of the Ombud prior to a final report. I mentioned earlier situations where the Chief refuses to implement recommendations, it's mainly in these cases where the Chief did not take up the opportunity to respond to the preliminary report that creates these challenges. We then implore on the Minister to take the necessary action in this regard bearing in mind that the Chief falls within her command channels. Further, we employ rigorous internal quality assurance measures to limit the legal risks that may be associated with findings and recommendations that may be contained in an investigation report. (Peer Review, Management and Executive Dashboards and Legal Reviews)

In conclusion, I am of the view that the Office has made great efforts to stay relevant by paying careful attention to awareness raising efforts that strengthen the institution through rigorous advocacy and outreach activities and by maintaining healthy debate among stakeholders through symposiums, work sessions, forums and other significant activities that assist in maintaining engagements with stakeholders.

It would be fair to say that we have recovered from some of our setbacks while still doing so and that we have adapted over the years to be of continuing relevance to the Department of Defence and the Government of South Africa. What can therefore be gleaned from our experience is the significance of building relationships, promoting trust, demonstrating value and impact while still operating independently with what we have been given.

I thank you for your attention.