

Session 4: Border Security and Migration: Implications for Ombuds Institutions

The armed forces in border security and migration:

One of the main security problems faced by several countries today is protecting their borders from external threats and ensuring that trade and migration occur within acceptable legal frameworks. Whereas the terms *border security* and *border control* are frequently used interchangeably, they refer to distinct missions requiring different forces, training and equipment. On the one hand, border security includes measures to safeguard a State's land, air and water domains, by detecting threats along these borders, as well as securing all points of entry in order to oversee the legal entry and exit of persons and goods. On the other hand, border control refers to activities that are primarily concerned with those aspects that deal with the general application of legal and regulatory measures that apply to the control of the international movement of persons and goods. In essence, border security is not about lines or maps; it is about defending a territorially demarcated state and its citizens against external threats such as organised crime, terrorism, illegal immigration, drug trafficking, and money laundering.

Over the past few years, the armed forces have been placed at the forefront of border security in a number of countries, sparking discussion on what is considered to be their appropriate role in this field. The increasing demand for the deployment of the armed forces in border security has thus raised questions over how to balance its positive and negative implications, and which challenges and opportunities the armed forces can be expected to encounter.

Ombuds Institutions:

Threats to border security may create border conflict and irregular migration patterns with implications for the security of the state. The armed forces may be deployed in this context. This situation requires the intervention of ombuds institutions to ensure that the armed forces are properly equipped to undertake these evolving tasks and to oversight their work.

- ❖ *Legal mandates:* as the military begins taking on an increasing role in border control and migration, there are new legal domains that the military and ombuds institutions for the armed forces may be inexperienced in, such as national and international law governing refugees and asylum, that must be respected in these operations. Furthermore, border control requires considerable international cooperation, both with neighbouring countries, to coordinate action, but also beyond one's own borders, such as the European Union's Operation *Sophia* to control migration in the Mediterranean Sea, which has involved 11 EU member states. Ombuds institutions can ensure that legal mandates allow the military to engage effectively in these new domains.
- ❖ *Technical support:* In tasking the armed forces in controlling borders and migration, new challenges arise for the armed forces due to the fact that they may not have been properly trained for this type of 'crisis' work, and moreover that they are properly equipped with the right tools and equipment to fulfil their task.

- ❖ *Enabling dialogue:* Border control and security translates to how power dimensions in the borderland may interact with other dimensions of the border in as far as civic-military relations are concerned. Border security is not an isolated practise. On the contrary, it requires effective coordination between all security agencies and forces to be successful. Essential to any success is the structure of each co-operation intelligence agency and its organizational relations with other government, defence and non-government entities domestically, regionally and globally. Ombuds institutions are placed in a privileged position which enables them to facilitate constructive dialogue and cooperation between these institutions.
- ❖ *Complaints function:* Ombuds institutions have an important role to play in overseeing the armed forces' engagement in border security, as well as in rectifying noted problems affecting both the armed forces and civilians interacting with its personnel in the course of activities related to border security. Ombuds institutions' oversight in this challenging context can take the form of gathering data on a continuous basis in order to consistently study trends and patterns of border abuses. Of course, the methods and approaches undertaken by ombuds institutions in attempting to resolve issues regarding the involvement of the armed forces in border security are multi-pronged and the shaped by the nature of the complaints lodged by both civilians and the armed forces personnel in a specific context. The challenges are immense. First, ombuds institutions must be empowered with insight of an array of drivers such as political, historical, social, economic and geostrategic global issues. Second, to effectively oversee the gender aspects of civic-military relations in border security, ombuds institutions should promote the inclusion of women in border management activities, participation, development and implementation of policies. Third, ombuds institutions must interrogate and assess their capacity to oversee adequacy of border institutions, co-ordination and co-operation and the ability to identify various cross border challenges. Lastly, the central limitations of ombud institutions need to be revisited in order to determine that all, if not most, ombuds institutions have a mandate to receive, conduct own motion investigations and investigate complaints within or relating to security sector institutions in relation to border security.

Questions for discussion:

1. Has your office devised a mechanism to oversee protection of women within the armed forces at border areas?
2. What role can the ombuds institutions perform in border security and immigration enforcement and improvements to aid the armed forces secure the borders?
3. Does your office have the capacity to interrogate loopholes in the current border security and migration laws? How does your office communicate such to the armed forces?
4. To what extent does your office participate in the oversight of cooperative agreements concluded by the national armed forces of your country?
5. Does your office play an active role in protecting the rights of the armed forces during refugee resettlements processes?
6. How often does your office gather information and trends on the incentives of illegal migration? If so, how is the garnered information communicated to the armed forces agencies?
7. Has your office developed a legal oversight handbook on situational awareness at the Ports of Entry for the armed forces?