

His Excellency Ambassador Winkler, Our Hosts from the Czech Republic, Ladies and Gentleman

I am privileged to share with you the South African scenario relating to the independence of the SA Military Ombud.

The Office of the Military Ombud has been created by an Act of Parliament and is one of five entities reporting to the Minister of Defence and Military Veterans along with the Department of Defence, Department of Military Veterans, the Armaments Corporation of South Africa (ARMSCOR), which is classified as a major Public Entity and The Castle Control Board, established as a juristic person.

Many scholars and academics have developed indices and criteria against which to measure the level of independence of an ombudsman. During this session I will focus on the Institutional, Operational and Financial aspects as it relates to independence.

## **INSTITUTIONAL INDEPENDENCE**

The long title of the Military Ombud Act provides for the establishment of an independent Office of the Military Ombud.

The Military Ombud is appointed by the President and must have knowledge of the Constitution, military and public administration experience gained over a period of 10 years, as well as possess legal knowledge.

The Military Ombud appoints his own staff in terms of the Military Ombud Act and their remuneration and other terms and conditions of service is determined by the Military Ombud.

The Military Ombud and his staff must in terms of the Act serve independently and impartially and must perform their functions in good faith and without fear, favour, bias or prejudice. The Minister is required in terms of the Act to afford the Ombud such assistance as may be reasonably required for the protection of the independence, impartiality and dignity of the Ombud.

I can report that my Office has since its inception received the highest levels of cooperation from the Minister and her staff and from an institutional perspective my Office is treated as independent. This level of cooperation is significant to safeguarding the independence of the Military Ombud in order to ensure continued impartiality and credibility in the eyes of the defence community and the public at large.

## **OPERATIONAL INDEPENDENCE**

The mandate of my office is focused on dealing with complaints from members and former members of the Defence Force regarding their conditions of service and from members of the public regarding the official conduct of a member. I am further required to promote the observance of the fundamental rights of the members of the Defence Force.

When I uphold a complaint I am to recommend the appropriate relief to the Minister for implementation. She thereafter communicates her acceptance of my recommendation. The Minister is on record for stating that she will direct the CSANDF to implement my recommendations as it is regarded as binding on the Department of Defence.

The Act further requires the Minister to make regulations on complaint finalisation and other matters requiring regulation. My Office has developed the Military Ombud Complaints Regulations, 2015 and the Minister has signed these for promulgation during last month. From the above it is clear that the South African Military Ombud has been empowered to execute his mandate and enjoys a high degree of Operational Independence.

### **FINANCIAL INDEPENDENCE**

Expenditure of the Office is funded from monies appropriated by Parliament for that purpose, as part of the budget vote for the Department of Defence.

The Ombud is required to submit an annual report to the Minister on the activities of the Office which she has to table in Parliament within a month of receipt.

The Secretary for Defence is the Accounting Officer for the Department of Defence and with the Chief Financial Officer has control over the Defence Budget. This may have a negative impact on the perceived operational and institutional independence of the office, as it creates the impression that the Military Ombud is accountable to the Secretary for Defence for the use of its finances. An institution of this nature should be independent in order for it to function without fear, favour or prejudice.

Even though the budget for my office is so called “ring fenced”, it means the department is responsible to pay the salaries of my staff and to pay my service providers.

I have to submit my planning instruments for the Medium Term Expenditure Framework and my Performance data to the Secretary for Defence in order to comply with the department’s requirements.

This leaves me caught between a rock and a hard place as the department of defence is the subject of my scrutiny.

In order to mitigate the risk this poses on the independence of my Office, I have signed a Memorandum of Understanding with the Secretary for Defence and the Chief of the Defence Force *inter alia* regulating the working relationship regarding this matter between my Office and the Department of Defence. The Secretary for Defence has furthermore issued me with a wide range of delegations that empowers me to effectively run my office without departmental interference on matters of procurement and payment of service providers.

I trust you now have a better understanding of the South African scenario and we would welcome any input and discussion on this topic in future.

I thank you.