



## **Military Ombud**

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### **MILITARY OMBUD SPEECH ON SHOWCASING SECTORAL OMBUDSMAN DELIVERED AT THE AORC WEBINAR ON TUESDAY 23 AUGUST 2022: PRESENTING THE CASE OF THE MILITARY OMBUD IN SOUTH AFRICA**

Programme Facilitator and Colleagues

I am very pleased to address this webinar on the establishment of sectoral ombudsman and to share my experience and insights on the model of the only Military Ombuds Office on the African continent.

As a point of departure the Office is established in terms of the Military Ombud Act No 4 of 2012 and was intended to be a mechanism independent of the Military command structure exercising oversight over the defence sector and assisting it with adhering to the principles and practices of good governance.

The objective of the Office is to investigate and ensure that complaints are resolved in a fair, economical and expeditious manner.

For the sake of time, I will only speak to the selected sections of the Military Ombud Act to give you all an understanding of how we operate as an organisation.

Driven by the uniqueness of the defence sector environment it was appreciated that the Military Ombud could play a major role in the governance of the armed forces and strengthening public confidence in the reputation of the armed forces without undermining the military chain of command.

The Military Ombud therefore investigates complaints about the manner in which the conditions of service of a member or former member has been administered. Complaints about the official conduct of members of the defence force from members of the public are also investigated.

Upon completion of an investigation and where a complaint is upheld the Ombud has a legislative obligation to make recommendations to the Minister on a suitable redress. The Office does not make policy or take decisions based on operational issues within the Defence Force. From this it can be seen that the bigger role of the Office is to enhance the efficiency and effectiveness of the Defence Force by redressing grievances and encouraging proper conduct of all soldiers.

The role of the Military Ombud is to advance the nature of the employment relationship between members of the SANDF and their employer.

It must be acknowledged that the military has internal complaints procedures which must be exhausted before complaints are lodged with the Office, although, in terms of legislation, I do have the discretion to accept complaints, where internal complaints procedures have not been followed. This usually occurs where there is, what the Act calls, "inherent deficiencies in the system", however, it also gives my Office an opportunity to identify systemic problems in the military and address them appropriately.

The Act does provide for limitations on the jurisdiction of the Office and this includes not investigating matters that are before a civilian or military court or that have been decided by same including not interfering with the chain of command.

I will now turn to focus on the critical characteristics required for my Office to function effectively and ensure it fulfils its objective, as provided for in the Act and in doing so I will also refer to identified gaps in the Military Ombud Act.

## **INDEPENDENCE**

The independence of my Office is significant for the very purpose for which this Office was created. The Act does provide that my staff and I must serve and function independently and impartially without fear, favour or prejudice and that the Minister must afford the Ombud such assistance as may be reasonably required for the protection of the independence, impartiality and dignity of the Office.

The Act goes further to provide that no person may hinder or obstruct the Ombud or members of his or her staff in the performance of his or her or their functions and members and employees of the Department must cooperate with the Ombud and Deputy Ombud in the performance of their functions, which includes providing them reasonable access to facilities, information or documents.

The independence of the Office is therefore guaranteed by law. These provisions provide for no interference from the Executive nor the Department.

In strengthening the institutional independence of this Office the Act provides for the Military Ombud and Deputy Ombud to be appointed by the President and there are clear procedures provided for their removal from Office including criteria that establish the circumstances under which this can be done.

The Military Ombud and Deputy Ombud are both appointed for a non-renewable term of seven years and this is crucial in ensuring the security of their positions and in preventing a conflict of interest that may arise with an extended or permanent tenure in Office.

## **OPERATIONAL INDEPENDENCE**

While the Ombud is provided with the legal authority to investigate complaints upon receipt of same the Act also provides he/she may appoint sufficient and qualified staff to assist him with his mandate and is obliged to determine the terms and conditions of service for his staff.

It is noted that the guarantee of independence for most Ombuds institutions is the capacity to investigate complaints on own initiative. My Office does not have these powers. This can be seen as an important characteristic of independence because if my Office is able to conduct own initiative investigation our investigations will not always be limited to the receipt of a complaint.

The Office is however, able to conduct what is often called a section 6(11) investigation. The Act provides at Section 6 (11) for the Minister to assign to the Ombud any other additional function which is not inconsistent with the Act.

We attempt to use this provision to investigate matters that have come to the attention of the Office through media or other means. These investigations are conducted without any interference from the Minister of the Defence and Military Veterans. In this way the Office is able to be proactive until the legislation is amended.

## **REPORTING**

The Act provides for the Military Ombud to make recommendations to the Minister for implementation. The recommendation route is a sharp contrast to the directive route that was taken in the Military Ombud Bill. The Minister usually indicates whether she accepts or rejects the recommendations and if accepted the CSANDF is instructed by her to implement same.

The Act, however does not make provision for the instances where the Minister does not respond to the recommendations neither for timeframes for the receipt of the response.

It is interesting to note that the Act does provide that should any person be aggrieved by the decision of the Military Ombud he/she can take such decision to the High Court on review. Complainants who are not satisfied do review my decisions and the Department of Defence although not ideal, has also taken a couple of my decisions on review sometimes where the Minister has accepted and sometimes when she has not accepted my recommendations.

This may have consequences for the independence and credibility of my Office, however, I will not go into the details of this issue as some of these matters are still pending before the court.

The Act further provides that the Military Ombud is required to report to the Minister annually through an Annual Activity Report and she will table this report before Parliament.

The question that has arisen is why the Military Ombud reports to the Minister when he/she is appointed by the President. In most military ombud institutions of other countries, such reporting is done directly to Parliament.

Further, in view of the civilian oversight provided by the Office it may be deemed appropriate that the Office report to an authority that is outside of the Defence sector. This will ensure that the recommendations of the Military Ombud will be complied with and it further creates a sense of credibility in the institution.

## **BUDGETORY INDEPENDENCE**

The budget for the Office is appropriated by Parliament as part of the budget vote of the Department and is ring-fenced. The Ombud is required to keep the required accounting records and to report on the administration of his budget in accordance with the Public Finance Management Act. The Military Ombud though is not the accounting officer and reports on finances through the Secretary for Defence.

The Office does not have its own Enterprise Resource System and is entirely dependent on the DOD for all support systems such as Payroll, Finance, Procurement/ Supply Chain and Information Technology. This poses a host of challenges for my Office and to this end a Ministerial Directive was drafted in order to ease these challenges and is currently in the process of being implemented.

## CONCLUSION

In conclusion ladies and gentlemen, I would like to mention that my Office is in the process of reviewing its legislation in order to address the challenges it faces and enhance its effectiveness and efficiency.

Having said that I would like to conclude by highlighting some of the steps we have taken, projects we have embarked on and measures we have put in place to strengthen the independence and mode of operation of my office.

- Networking with stakeholders such as AOMA-AORC, IOI, DCAF, etc. ensures benchmarking of good practises and fruitful innovation in the Office.
- Cooperating with the Defence Force on issues of mutual interest.
- Memoranda of Understanding (MoU's) have been signed with various organisations for mutual cooperation and benefit where jurisdiction may overlap.
- Oversight meetings with the Parliamentary Portfolio Committee to discuss challenges and report on performance of the Office.
- Outreach programmes together with the Annual Military Ombud Symposium ensure that the Office reach out to its stakeholders and create awareness about its existence and mandate.
- The Office introduced a robust quality assurance policy to objectively assess the quality of investigations and reports. As part of this policy reports are then internally reviewed by the Legal Services Directorate to minimise legal risks.
- In 2019-2020 financial year the Office partnered with SIGLA-Stellenbosch University to conduct the Stakeholder Perception Survey. The aim was to learn and better manage the perception of our stakeholders about the Office.
- The Office, in 2021-2022 financial year, conducted an internal Complainant Satisfaction Survey. The aim was to understand operational customer satisfaction levels and this helped the Office to address issues such as responsiveness, customer satisfaction and other identified service level gaps.

These are some of the significant areas in our work which have had tremendous impact on the manner in which we execute our business.

Ladies and Gentlemen I thank you for your time.