

THE CONTRIBUTION OF OMBUDS INSTITUTES TO SUSTAINABLE DEVELOPMENT GOAL 16 THROUGH SECURITY SECTOR GOVERNANCE AND REFORM

A SELECTION OF CASE STUDIES

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The Contribution of Ombuds Institutes to Sustainable Development Goal 16 Through Security Sector Governance and Reform

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Edited by Alice Alunni and Richard Steyne

DCAF Geneva Centre
for Security Sector
Governance



About this publication

This case study compilation was developed as part of DCAF's programme 'Linking Good Security Sector Governance and SDG 16'. Sustainable Development Goal (SDG) 16 aims to develop peaceful and just societies by building strong institutions, with SDG targets 16.6 and 16.7 focusing on good governance and the accountability of public institutions. To achieve the ambitions of SDG 16, all states will need to redouble their efforts to ensure that their national security sectors are both effective and accountable and operate within a framework of democratic civilian oversight, rule of law, and respect for human rights. However, there is currently limited guidance on how security sector governance and reform (SSG/R) policies can contribute to achieving SDG 16, especially targets 16.6 and 16.7. DCAF's SDG 16 programme aims to fill this knowledge gap by generating evidence on how three security sector oversight actors – parliaments, civil society, and independent oversight institutions – contribute to SDG 16 through SSG/R activities. In this publication series, good practices and lessons learned are examined and discussed with the aim to provide SDG 16-specific guidance that supports security sector oversight actors in implementing SSR in the context of the 2030 Agenda.

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The views expressed do not necessarily reflect the views of the institutions referred to or represented within this publication.

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List of Abbreviations

ABL	Administrative Boundary Line
ACU	Anti-Crime Unit (ACU) of The Gambia Police
AMISOM	African Union Mission to Somalia
CAJ	Commission on Administrative Justice of Kenya (Office of the Ombudsman)
CCSS	Costa Rican Social Security Fund
CRC	Constitutional Review Commission of The Gambia
CSOs	Civil Society Organizations
DCAF	Geneva Centre for Security Sector Governance
EU	European Union
GANHRI	Global Alliance of National Human Rights Institutions
GIMS	Gender Information Management System of the Gambia
GPF	The Gambia Police Force
IDEA	International Institute for Democracy and Electoral Assistance
IDPs	Internally Displaced Persons
IGP	Inspector General of The Gambia Police Force
IPOA	Independent Policing Oversight Authority of Kenya
KDF	Kenya Defence Forces
KNCHR	Kenya National Commission on Human Rights
KPS	Kenya Prisons Service
KWS	Kenya Wildlife Service
NATO	North Atlantic Treaty Organization
NDLEA	National Drug Law Enforcement Agency of The Gambia
NHRC	National Human Rights Commission of The Gambia
NIS	National Intelligence Service of Kenya
NPM	National Preventive Mechanism against Torture
NPS	Kenya National Police Service
NPSC	Kenya National Police Service Commission
OHCHR	Office of the United Nations High Commissioner for Human Rights
OPCAT	United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
PDO	Public Defender's Office of Georgia
PIU	Police Intervention Unit of the Gambia

SDG	Sustainable Development Goals
SGBV	Sexual and Gender-Based Violence
SOP	Standard Operating Procedures
SSG	Security Sector Governance
SSG/R	Security Sector Governance/Reform
SSR	Security Sector Reform
TAP	Transparency, Accountability and Participation Network
TRRC	Reconciliation and Reparations Commission of the Gambia
UN	United Nations
UNCRPD	UN Convention on the Rights of Persons with Disabilities
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNODC	United Nations Office on Drugs and Crime
WFUNA	World Federation of United Nations Associations

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Figure 1. A comprehensive definition of the security sector


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Executive Summary

This publication presents a series of case studies that examine how ombuds institutes and national human rights institutions operating in Costa Rica, Georgia, Kenya, and The Gambia contribute to strengthening security sector governance and reform (SSG/R) and improving human security, thereby advancing progress towards Sustainable Development Goal (SDG) 16 on peaceful, just, and inclusive societies.

Ombuds institutes are central to sustainable development efforts, particularly in the context of SDG 16, as they play a key role in facilitating access to justice, promoting the rule of law, and holding justice and justice providers accountable. Such efforts are fundamental to achieving the 2030 Agenda, given the broad consensus that peace and security can only be realized and sustained when the rule of law is upheld, equal access to justice ensured, and effective, accountable, and transparent institutions developed. And yet, the role of ombuds institutes in contributing to SDG 16 through security sector oversight has hitherto received scant attention both from academics and policymakers. The case studies in this series are intended to fill this knowledge and policy gap by demonstrating how ombuds institutes from Costa Rica, Georgia, Kenya, and The Gambia have contributed to achieving SDG 16 through activities extending from their security sector oversight mandate and functions. In addition, these cases also explore how the concept of human security can be used to enhance the potential of SSG/R to realize SDG 16, for example by emphasizing bottom-up approaches and people-centred approaches to justice and security.



With the available data showing minimal progress on SDG 16 since the launch of the 2030 Agenda in 2015, and against the recent deterioration of peace and security worldwide, it is more important than ever to refocus on the critical contributions made by ombuds institutes in achieving SDG 16, and to provide policy guidance aimed at leveraging this role of ombuds institutes. The four case studies presented here, co-authored by academics and practitioners who previously or currently serve within ombuds institutes, are intended to offer guidance and inspiration to practitioners working at the intersection of SSG/R and SDG 16. They describe good practices and effective models of security sector oversight by ombuds institutes and provide recommendations designed to enhance the role of ombuds institutes in achieving the SDGs. This makes them indispensable reading for anyone seeking to better understand how independent security sector oversight actors, in this case ombuds institutes and national human rights institutions, can contribute in meaningful and tangible ways to realizing the aspirations of SDG 16 for a more peaceful, just, and inclusive world.



Key findings and lessons learned

From the analysis of these case studies, two central themes emerge regarding the functions of ombuds institutes, SDG 16, SSG, and human security. First, the key functions of ombuds institutes – the receipt and investigation of complaints, monitoring and advising, and mediation and dispute resolution – tend to be mutually reinforcing, meaning that any one of these functions and its associated practices are likely to influence or strengthen the others. Second, through the lens of SDG 16, it is clear that these functions often impact several SDG 16 targets simultaneously or sequentially, either due to the cross-cutting nature of a given practice or because progress towards one target advances progress on another. This means that any intervention across these functions and targets has a potential multiplier effect resulting in a more significant impact than the initial change itself vis-à-vis SDG 16.

In addition, three main findings emerged from this series. First, the practices they highlight point towards a strong nexus between SDG 16, SSG/R, and human security, reinforcing the evidence base for this relationship. In other words, whether the interventions of the ombuds institutes featured in these studies directly addressed deficits in SSG or sought to improve the human security of individuals and communities, in most cases, the practices they employed had a positive impact on SSG and human security alike. Second, the broad impact of these practices supports the hypothesis that engagement in one area of SSG can positively impact multiple SDG 16 targets or even other SDGs. Yet, the third finding is that, despite these case studies demonstrating a correlation between the work of ombuds institutes and the realization of SDG 16, evidence of the direct contribution of ombuds institutes to achieving SDG 16 is more tenuous. This is primarily due to the fact that ombuds institutes themselves rarely make this link with SDG 16 explicit, and therefore fail to track how their work impacts progress towards SDG 16 targets.

To help practitioners to operationalize their work on SDG 16 by leveraging the role of ombuds institutes, some lessons can be drawn from the case studies in this series as well as from the analysis offered here of the practices and impact of ombuds institutes. These lessons can especially help practitioners enhance the capacity of ombuds institutes to contribute to achieving SDG 16, articulate these contributions better at the national and international levels, and make these contributions more apparent. Four of the most important overarching lessons are:

1. Use SDG 16 as an analytical framework to guide the strategic positioning of an ombuds institute, to identify gaps, needs, and areas for intervention, and to monitor and evaluate progress and impact.
2. Strategically combine initiatives that address the human security of individuals with systemic approaches and interventions.
3. Encourage the relationship between the functions and interventions of ombuds institutes to optimize their consistency and impact.
4. Cooperate with local, national, and international stakeholders to enhance outreach and impact.



INTRODUCTION

DR. ALICE ALUNNI AND RICHARD STEYNE



When *La Defensoría de los Habitantes*, the Costa Rican ombuds institute, found that 40 percent of the complaints it received in 2021 were related to the country's prison system, it worked to hold that system and the Ministry of Justice accountable by facilitating the submission of complaints by prison inmates and staff, and by investigating issues like overcrowding, the provision of healthcare to inmates, and workplace conditions for staff. In Georgia, when the Abkhazian and South Ossetian conflicts and the Russo-Georgian War led to the displacement of more than 290,000 people and significantly impacted the lives of those remaining in disputed areas, the Public Defender (Ombudsman) of Georgia acted to advance the human rights and wellbeing of this conflict-affected population. And, in The Gambia and in Kenya, when the National Human Rights Commission and the Commission of Administrative Justice, respectively, saw that citizens commonly complained about the use of force by security actors as well as arbitrary and prolonged detentions and prison conditions, these ombuds institutes stepped up their efforts to investigate alleged human rights abuses in the security sector.

As this compilation of case studies demonstrates, interventions by ombuds institutes and national human rights institutions (NHRIs) directly contribute to strengthening security sector governance, improving human security, and realizing Sustainable Development Goal (SDG) 16; and to reinforcing the nexus between these. Notably, the term *nexus* is used here in a way that expands the traditional understanding of the 'security-development nexus' by focusing on the role of human security as a tool that can boost the potential of security actors to foster development and improve outcomes. In other words, a human security perspective increases the likelihood that security sector governance and reform (SSG/R) will facilitate the achievement of SDG 16, making it both an ends and a means to more peaceful, just, and inclusive societies, in line with the aspirations of SDG 16.

Ombuds institutes are independent bodies mandated to oversee the public administration (including security sector institutions) of a state, and many have the dual function of protecting and promoting human rights.¹ NHRIs are also independent bodies, with a constitutional and/or legislative mandate to protect and promote human rights in a state, and some are tasked with overseeing public administration through complaints-handling.² Since the ombuds institutes and NHRIs highlighted in the case studies in this series all 'receive complaints *and* investigate matters pertaining to the protection and promotion of human rights and/or maladministration', as a matter of simplicity, both will be referred to as ombuds institutes throughout.³ These case studies underscore the key role played by ombuds institutes in national efforts to achieve the SDGs, and particularly SDG 16 on peaceful, just, and inclusive societies, in Costa Rica, Georgia, Kenya, and The Gambia. By facilitating access to justice and holding security and justice providers accountable, these ombuds institutes have directly contributed to meeting SDG 16 targets, most notably targets 16.3 on the promotion of the rule of law and equal access to justice for all, and 16.6 on developing effective, accountable, and transparent institutions.⁴

The contribution of ombuds institutes is central to sustainable development efforts given the broad consensus that peace and security can only be achieved and sustained when the rule of law is upheld, equal access to justice is ensured, and effective, accountable, and transparent institutions are developed.⁵ This is reflected in the 2030 Agenda for Sustainable Development, which envisions peace and security as enablers of development, and good governance principles as imperative to the realization of SDG 16. Nevertheless, and despite considerable overlaps between SSG/R and the SDGs and an emerging body of literature on links between the two, especially between SSG/R and SDG 16,⁶ the role of ombuds institutes in contributing to SDG 16 through

1 Luka Glušac, *Leaving No One Behind, Leaving No One Unaccountable: Ombuds Institutions, Good (Security Sector) Governance and Sustainable Development Goal 16* (Ubiquity Press, 2023), p. xvii, <https://www.dcaf.ch/leaving-no-one-behind-leaving-no-one-unaccountable> (accessed 3 November 2023).

2 See: 'National Human Rights Institutions', Global Alliance of National Human Rights Institutions, <https://ganhri.org/nhri/> (accessed 3 November 2023).

3 Glušac, *Leaving No One Behind*, p. xvii.

4 Maaïke de Langen, 'Eight Ways Ombuds Institutes can contribute to the SDGs', IISD SDG Knowledge Hub, 19 May 2021, <https://sdg.iisd.org/commentary/guest-articles/eight-ways-ombuds-institutes-can-contribute-to-the-sdgs/> (accessed 3 November 2023); and Maaïke de Langen, 'The Role of Ombuds Institutes in Providing Equal Access to Justice for All' in *The Ombudsman in the Modern State*, edited by Matthew Groves and Anita Stuhmcke (Oxford: Hart Publishing, 2022).

5 United Nations, 'Sustainable Development Goal 16', <https://www.un.org/ruleoflaw/sdg-16/> (accessed 3 November 2023).

6 Merle Jasper, 'Sustainable Development Goal 16: The importance of good security sector governance for the achievement of the 2030 Agenda', SSR Backgrounder Series, DCAF, 2021, <https://www.dcaf.ch/sustainable-development-goal-16> (accessed 3 November 2023); Oya Dursun-Özkanca, 'The Nexus Between Security Sector Governance/Reform and Sustainable Development Goal-16: An Examination of Conceptual Linkages and Policy Recommendations', DCAF SSR Paper 20 (Ubiquity Press and DCAF, 2021), <https://www.dcaf.ch/nexus-between-ssgr-and-sdg-16> (accessed 3 November 2023); and Jasper Linke, 'Urban Safety and Security: Security sector governance for inclusive, safe and resilient cities', SSR Backgrounder Series, DCAF, 2019, <https://www.dcaf.ch/urban-safety-and-security-security-sector-governance-inclusive-safe-and-resilient-cities> (accessed 3 November 2023).

security sector oversight has received little attention.⁷ With the available data showing minimal progress on SDG 16 since the launch of the 2030 Agenda in 2015, it is more important than ever to refocus on the critical contributions made by ombuds institutes in achieving this goal, as well as how these contributions support the broader developmental aspirations of the 2030 Agenda, and to provide policy guidance aimed at leveraging this role of ombuds institutes.⁸

The case studies in this series are intended to fill this policy gap, providing empirical evidence of the ways that ombuds institutes in Costa Rica, Georgia, Kenya, and The Gambia have contributed to achieving SDG 16 through activities extending from their security sector oversight mandate and functions. In addition, each of these cases illustrates how the concept of human security can be used to enhance the potential of SSG/R to realize SDG 16, for example by emphasizing bottom-up approaches and individual-level interventions rather than concentrating exclusively on strengthening justice and security institutions – which, in many contexts, do not exist, are difficult to access, or do not provide services in an efficient and fair manner. At the same time, improved human security is an *outcome* of such efforts, making human security both an enabler and product of SSG/R and SDG 16 activities, and by extension, of sustainable development.

This compilation of case studies, co-authored by academics and practitioners who previously served or are currently serving within ombuds institutes, is intended to offer guidance and inspiration to practitioners working at the intersection of SSG/R and SDG 16. It presents good practices and effective models of security sector oversight by ombuds institutes and provides recommendations designed to enhance the role of ombuds institutes in achieving peaceful, just, and inclusive societies. But first, this introduction outlines the policy and research gap that the case studies in this series seek to fill, as well as the conceptual framework and research questions underpinning these studies, and their methodology and limitations.

The link between SSG/R and SDG 16: A gap in research and policymaking

This case study series was commissioned under the DCAF programme, 'Linking Good Security Sector Governance to SDG 16', which was launched in 2019.⁹ The purpose of the programme is to demonstrate how SSG/R contributes to achieving the SDGs and the 2030 Agenda more broadly, but particularly SDG 16, through publications that explore the work of security sector oversight actors – namely, parliaments, civil society, and ombuds institutes. These evidence-based publications then inform interventions conducted on the ground within the scope of the project, and aim to influence policymaking at the national and international levels.

The 2030 Agenda for Sustainable Development, adopted in 2015, is a global action plan that represents a key priority for the United Nations (UN) and its member states, with strong and established ties to other global agendas and frameworks, such as the Sustaining Peace Agenda. It has galvanized international structures and states to converge around the common goal of sustainable development and the SDGs, such as SDG 16 on peace, justice, and strong institutions, which is composed of 12 targets. These targets are a map to achieving SDG 16 and, among others, they include: significantly reducing all forms of violence and related death (16.1); promoting the rule of law and ensuring access to justice for all (SDG 16.3); developing effective, accountable, and transparent institutions (16.6); and ensuring responsive, inclusive, participatory, and representative decision making (16.7).

These targets, and others within SDG 16, closely align with the objectives of SSG/R, but until recently, scant attention has been given to the value of SSG/R as a tool for realizing SDG 16. Indeed, while research produced as part of the 'Linking Good Security Sector Governance to SDG 16' programme has demonstrated the conceptual relevance of the relationship between SSG/R and SDG 16,¹⁰ empirical evidence on this link is still lacking. As a result, there is little practical guidance on how the SSG/R policies of national actors can contribute to achieving SDG 16 targets. This reflects a similar deficit observed in literature tackling the

7 Notable exceptions include: Glušac, *Leaving No One Behind*; DCAF – Geneva Centre for Security Sector Governance, 'Ombuds Institutions, SDG 16, and Security Sector Governance: Towards Peaceful, Just, And Inclusive Societies in Sub-Saharan Africa', Workshop Report, Oslo, 5–6 October 2022, <https://www.dcaf.ch/ombuds-institutions-sdg-16-and-security-sector-governance> (accessed 3 November 2023); and Maaik de Langen, 'African Ombuds Institutes Working for Peace, Security, and Development', IISD SDG Knowledge Hub, 13 October 2022, <https://sdg.iisd.org/commentary/guest-articles/african-ombuds-institutes-working-for-peace-security-and-development/> (accessed 3 November 2023).

8 UNODC, OHCHR, and UNDP, *Global progress report on Sustainable Development Goal 16 indicators: A wake-up call for action on peace, justice and inclusion* (2023), <https://www.undp.org/publications/global-progress-report-sustainable-development-goal-16-indicators-wake-call-action-peace-justice-and-inclusion> (accessed 3 November 2023); and TAP Network, *Halfway to 2030 Report on SDG 16+: A civil society assessment of progress towards peaceful, just and inclusive societies* (2023), <https://www.sdg16now.org/wp-content/uploads/2023/05/Halfway-to-2030-Report-Digital.pdf> (accessed 3 November 2023).

9 For more information, see the project website at: <https://www.dcaf.ch/sustainable-development-ssg> (accessed 3 November 2023).

10 Dursun-Özkanca, *The Nexus Between Security Sector Governance/Reform and Sustainable Development Goal-16*.

relationship between security and development. In fact, despite a scholarly focus on the nexus between security and development since long before the formulation of the SDGs and a growing recognition by scholars and international organizations since the 1990s that development, peace, and security are interconnected, security and development literature and policymaking have continued to develop in silos.

In truth, the challenges facing security and development are inextricably linked, as the inclusion of SDG 16 in the 2030 Agenda acknowledges.¹¹ Its adoption formally marked the institutionalization of an axiom articulated at the UN for a decade prior, that ‘without security there is no development, and without development there is no security’.¹² This integration of security and peace as embodied in SDG 16 was the product of a hard-fought and contentious decision-making process, as many stakeholders, particularly within the development sector, remained concerned about a potential ‘securitization’ of the development agenda.¹³ In the ensuing years, the role of SDG 16 as both an enabler of and precondition for achieving the 2030 Agenda has resulted in substantial efforts to map out a feasible path to ‘peaceful, just, and inclusive societies’, both within SDG 16 and across the Agenda, generating a growing body of literature.

The 2018 report *Pathways for Peace*, by the UN and the World Bank, is among the most influential publications on this subject, and stresses the importance of the security-development nexus while examining how domestic development processes interact with security, justice, human rights, and diplomacy to prevent violent conflicts.¹⁴ It discusses ‘arenas of contestation’, including ‘the arena of security and justice’, where the security sector plays a role in sustaining peace vis-à-vis SDG 16 targets.¹⁵ *Pathways for Peace* thus presents security sector reform (SSR) as a means of building ‘the credibility, legitimacy, and effectiveness of a society’, on the premise that a professional, accountable, effective, representative, and

diverse security sector ‘is critical to consolidating peace and stability and to preventing countries from lapsing or relapsing into conflict’.¹⁶ To that end, oversight of the security sector, whether by statutory bodies such as parliaments or ombuds institutes, or non-statutory bodies such as civil society organizations (CSOs), is crucial to holding security institutions accountable and reducing the risk of conflict. However, there is no mention of ombuds institutes in this context in *Pathways for Peace*, which offers just one relevant example of the work of the ombuds institute in Peru to counter corruption and mitigate hydrocarbon conflicts.¹⁷

In 2017, the launch of the Pathfinders for Peaceful, Just and Inclusive Societies initiative represented an effort to accelerate the delivery of SDG 16 by bringing together 46 UN member states and over 100 partners from international organizations, civil society, and the private sector.¹⁸ The initiative gave rise to development of *The Roadmap for Peaceful, Just and Inclusive Societies*, which identifies SDG targets that directly contribute to achieving SDG 16, and the part each plays in building peaceful societies, just societies, and/or inclusive societies.¹⁹ It was this analysis that generated the concept of SDG 16+ that is now operational, encompassing 36 targets spread across 8 goals, reflecting the integrated and indivisible nature of the 2030 Agenda. The need to reform security and justice institutions so that they are representative, non-discriminatory, accountable, inclusive, transparent, effective, and able to protect human rights is highlighted in *The Roadmap*.²⁰ It also aptly illustrates the catalytic function of SDG 16 and the cross-cutting nature of peace, justice, and inclusion in the 2030 Agenda. Yet, it does not provide practical guidance on how states can leverage SSG/R as a tool to achieve SDG 16, and the role of security sector oversight actors therein. Subsequent work by the Pathfinders’ Task Force on Justice honed in on the aim of SDG 16 to provide access to justice for all, leading to the conceptualization

11 Ibid., p. 4.

12 Helen Clark, former head of UNDP, ‘The Future We Want – Can We Make it a Reality?’, 2014 Dag Hammarskjöld Lecture, Dag Hammarskjöld Foundation, Uppsala, Sweden, 4 November 2014, https://www.daghammarskjold.se/wp-content/uploads/2015/02/HelenClark_webb.pdf (accessed 3 November 2023).

13 Johan Bergenas and Ariella Knight, ‘Development’s New Best Friend: the Global Security Complex’, Security Watch (blog), Center for Security Studies, 12 December 2014, <https://css.ethz.ch/content/specialinterest/gess/cis/center-for-security-studies/en/services/digital-library/articles/article.html/186396> (accessed 3 November 2023).

14 United Nations and World Bank, *Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict* (Washington, DC: World Bank, 2018), <https://www.worldbank.org/en/topic/fragilityconflictviolence/publication/pathways-for-peace-inclusive-approaches-to-preventing-violent-conflict> (accessed 3 November 2023).

15 Ibid., p. 161.

16 Ibid., p. 163.

17 Ibid., p. 157.

18 For more information, see the website of the initiative at: <https://cic.nyu.edu/program/pathfinders-for-peaceful-just-and-inclusive-societies/> (accessed 3 November 2023).

19 Pathfinders for Peaceful, Just and Inclusive Societies, *The Roadmap for Peaceful, Just and Inclusive Societies – A Call to Action to Change our World* (New York: Center on International Cooperation, 2020), <https://www.sdg16.plus/resources/the-roadmap-for-peaceful-just-and-inclusive-societies/> (accessed 3 November 2023).

20 Ibid.

and operationalization of people-centred justice and the recognition that people must be at the centre of efforts to achieve SDG 16.²¹ A 2019 report by the Task Force, *Justice for All*, names ombuds institutes as key actors in this context, and notes that in many countries they have been pioneers in the delivery of people-centred justice.²²

A report by the Global Alliance for Reporting Progress on Peaceful, Just and Inclusive Societies – a cross-sectoral coordinating platform that supports governments in monitoring and reporting progress on SDG 16 – was also published in 2019, and showcased examples of policy relating to SDG 16 implementation and the security sector.²³ These included reforms in Lebanon to internal security forces; Jordanian strategies to recruit and involve more women in security sector institutions; and an advocacy campaign to eliminate gender discrimination in the security sector in Ukraine that informed legislative changes.²⁴ The Global Alliance also worked with the Danish Institute for Human Rights to compile good practices and helpful resources for the monitoring of progress towards SDG 16+.²⁵ The 16+ Forum, created by the World Federation of United Nations Associations (WFUNA) in 2016, has provided another platform by which best practices can be shared.²⁶

More recently, the International Institute for Democracy and Electoral Assistance (IDEA) published the *SDG 16 Data Initiative Report 2022*, which emphasized the connection between democracy, peace, and sustainable development as well as the importance of identifying interlinkages among the SDGs to ensure their successful implementation. However, it did not examine the role of good security sector governance

(SSG).²⁷ The same is true for two reports published in 2023, the *Global progress report on Sustainable Development Goal 16 indicators*, jointly authored by UNODC, UNDP, and OHCHR,²⁸ as well as the *Halfway to 2030 Report on SDG 16+* by the TAP Network.²⁹ While both of these publications significantly advanced our understanding of progress on SDG 16 by providing data to report against *all* official SDG 16 indicators for the first time, neither directly addresses or measures the impact of SSG/R policies on SDG 16.³⁰ The July 2023 Pathfinders report, *Rising to the Challenge*, similarly omits an SSG/R perspective in its assessment, though it provides an overview of the state-of-play on SDG 16+ globally and highlights solutions in policy and practice across contexts.³¹

Importantly, these initiatives and publications all recognize the interdependent nature of security and development, and reflect the growing consensus that SDG 16 is foundational to achieving the 2030 Agenda. Yet, they fail to provide policymakers with practical guidance on how to link security and development, and almost completely overlook the role of ombuds institutes in doing so. This compilation of case studies is therefore intended to help fill this gap.

Conceptual framework and research questions

Knowledge products developed by DCAF as part of its 'Linking Good Security Sector Governance to SDG 16' programme – including the SSR Backgrounder on SDG 16 by Merle Jasper,³² and SSR Papers by Oya Dursun-Özkanca,³³ and by Luka Glušac³⁴ – have already

21 Task Force on Justice, *Justice for All – Final Report* (New York: Center on International Cooperation, 2019), <https://cic.nyu.edu/resources/justice-for-all-report-of-the-task-force-on-justice/> (accessed 3 November 2023).

22 de Langen, 'The Role of Ombuds Institutes in Providing Equal Access to Justice for All'.

23 The Global Alliance for Reporting Progress on Peaceful, Just and Inclusive Societies, *Enabling the implementation of the 2030 Agenda through SDG 16+: Anchoring peace, justice and inclusion* (New York: United Nations, 2019), <https://www.sdg16hub.org/topic/global-alliance-enabling-implementation-2030-agenda-through-sdg-16-anchoring-peace-justice> (accessed 3 November 2023).

24 Ibid.

25 The Global Alliance for Reporting Progress on Peaceful, Just and Inclusive Societies and the Danish Institute for Human Rights, 'Ways Forward on Monitoring SDG 16+', Workshop Report, Copenhagen, Denmark, 5–7 February 2020, https://www.sdg16hub.org/system/files/2020-09/Monitoring%20and%20Reporting%20Progress%20on%20Peaceful%2C%20Just%2C%20and%20Inclusive%20Societies_0.pdf (accessed 3 November 2023).

26 For more information, see the website of the World Federation of United Nations Associations at: <https://wfuna.org/sixteenplusforum> (accessed 4 November 2023).

27 SDG 16 Data Initiative, *SDG 16 Data Initiative Report 2022: Are we on track to meeting the 2030 agenda?* (2022), <https://www.idea.int/news/sdg16-data-initiative-global-report-2022-are-we-track-meeting-2030-agenda> (accessed 3 November 2023).

28 UNODC, OHCHR, and UNDP, *Global progress report on Sustainable Development Goal 16 indicators*.

29 TAP Network, *Halfway to 2030 Report on SDG 16+*.

30 Ibid., p. 28; and UNODC, OHCHR, and UNDP, *Global progress report on Sustainable Development Goal 16 indicators*.

31 Pathfinders for Peaceful, Just and Inclusive Societies, *Rising to the Challenge: building peaceful, just, equal and inclusive societies in a divided world* (New York: Center on International Cooperation, 2023), <https://www.sdg16.plus/resources/rising-to-the-challenge-building-peaceful-just-equal-and-inclusive-societies-in-a-divided-world/> (accessed 3 November 2023).

32 Jasper, *Sustainable Development Goal 16*.

33 Dursun-Özkanca, *The Nexus Between Security Sector Governance/Reform and Sustainable Development Goal-16*.

34 Glušac, *Leaving No One Behind*.

begun the work of filling this research gap by identifying and linking key theoretical and conceptual frameworks. These publications have directly informed the scope of the case studies in this series, by defining central concepts and demonstrating their interconnectedness. The most important of these concepts and the way they interrelate are discussed below.

Ombuds institutes

For our purposes here, any independent statutory body that receives complaints and is mandated to oversee public administration, including in the security sector, and which may also be empowered to investigate matters pertaining to the protection of human rights, is an ombuds institute. As Glušac has noted, this definition embraces the modern notion of an ombuds institute, by moving beyond the model of an independent public authority that oversees only the work of public administration, to commonly include the scope of NHRIs through the right to advise governments on matters of human rights and on related administrative policy and legislation.³⁵ Such a definition is particularly suitable for the ombuds institutes highlighted in the case studies in this series, all of which are funded by a national budget, grounded in national legislation, and mandated to oversee public administration *and* to protect and promote human rights.³⁶ These and other ombuds institutes play a crucial role in contributing to peace and development and to achieving the SDGs, especially SDG 16.³⁷ In fact, SDG target 16.A explicitly recognizes this (though, in accordance with terminology used in the Paris Principles, refers to NHRIs rather than ombuds institutes).³⁸ Yet, six out of ten countries worldwide still lack independent bodies mandated to protect human rights, in compliance with the Paris Principles, suggesting the need to place a renewed focus on the role and relevance of ombuds institutes.³⁹

Subject to the exact mandate of each ombuds institute, these bodies are typically empowered to resolve grievances and deliver accountability to actors in the security sector. They also have a critical role to play in realizing various SDG 16 targets that concern the security and justice sector, including by working to ensure equal access to justice for all (16.3); reducing corruption in the provision and management of security and justice (16.5); strengthening the effectiveness, accountability, and transparency of security providers (16.6); ensuring responsive and participatory decision making in the security and justice sector (16.7); providing access to security-related information and protecting fundamental freedoms (16.10); and promoting and enforcing non-discriminatory laws and policies related to security and justice provision (16.B).⁴⁰ The case studies in this compilation offer empirical data that illustrates how ombuds institutes can, through their mandated functions: carry out effective oversight of the security sector and improve security sector governance; draw attention to human rights violations, and resolve grievances; and ultimately contribute to achieving SDG 16, and by extension the broader 2030 Agenda.

The security sector and SSG/R

The term 'security sector' refers to all the structures, institutions, and personnel responsible for security and justice provision, management, and oversight at national and local levels. DCAF has put forth a comprehensive conception of the security sector that includes any state or non-state security providers which employ the use of force as well as any actors in security management and oversight who are responsible for controlling how the use of force is applied. While security provision is most often associated with institutions authorized to use force on behalf of the state, this broader definition incorporates all state and non-state justice and security providers insofar as they contribute in some way to state and human security (see Figure 1).⁴¹

35 Ibid.

36 For these reasons, and as noted in the Introduction, in this compilation of case studies, NHRIs are classified as ombuds institutes. NB: All NHRIs chosen for inclusion in this research hold an A-status with the Global Alliance of National Human Rights Institutions, and all ombuds institutes chosen for inclusion are voting members of the International Ombudsman Institute.

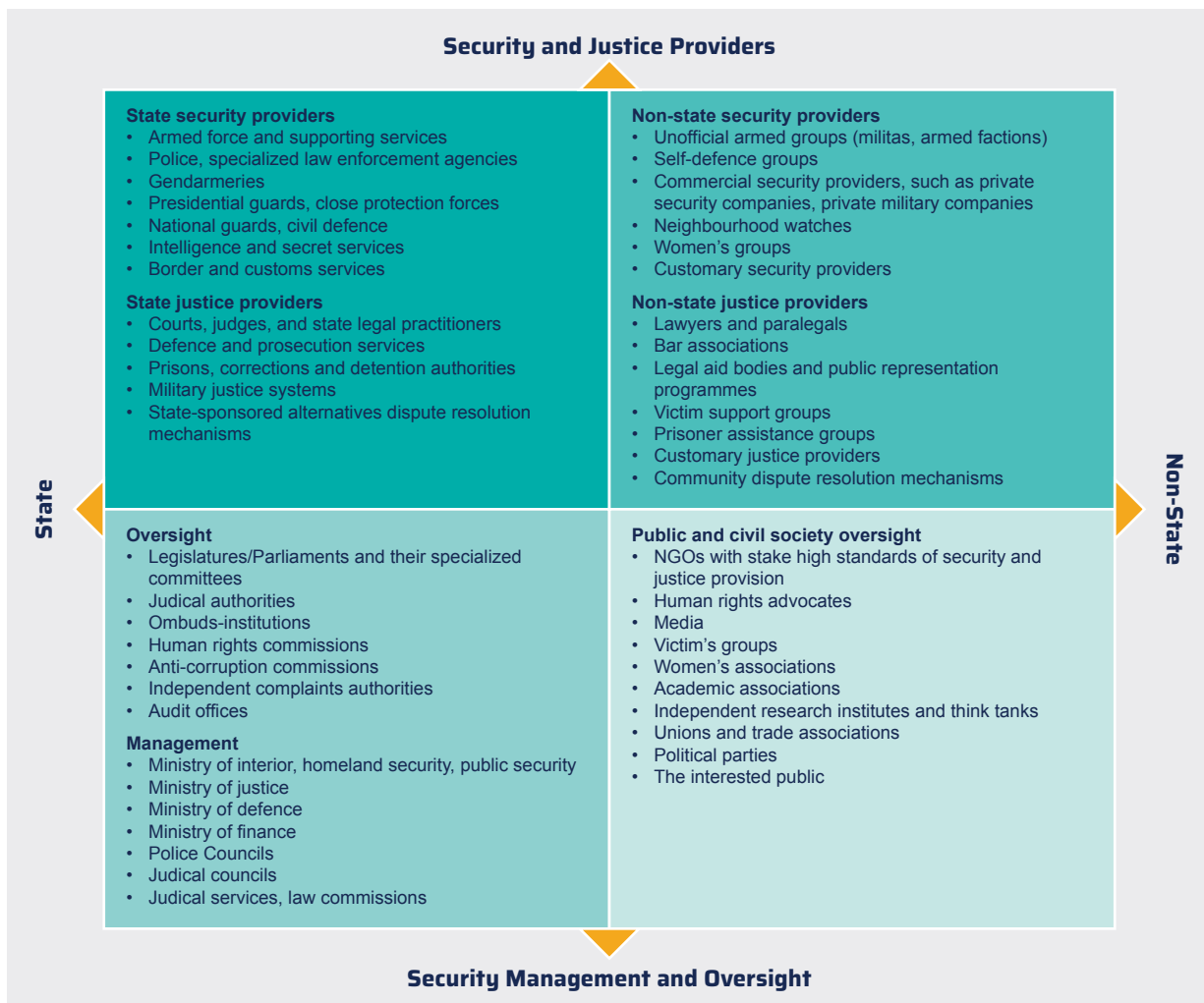
37 See: de Langen, 'Eight Ways Ombuds Institutes Can Contribute to the SDGs'; and International Ombudsman Institute, Dublin Declaration, 25 May 2021.

38 For more on the Paris Principles, see: GANHRI, 'Paris Principles', <https://ganhri.org/paris-principles/> (accessed 3 November 2023).

39 UNODC, OHCHR, and UNDP, *Global progress report on Sustainable Development Goal 16 indicators*, p. 19; TAP Network, *Halfway to 2030 Report on SDG 16+*, p. 52.

40 Glušac, *Leaving No One Behind*.

41 For a comprehensive list of security sector actors, see: DCAF – Geneva Centre for Security Sector Governance, 'The Security Sector: Roles and Responsibilities in Security Provision, Management and Oversight', SSR Backgrounder Series, 2015, https://www.dcaf.ch/sites/default/files/publications/documents/DCAF_BG_03_TheSecuritySector_EN_Jul2022.pdf (accessed 3 November 2023).

Figure 1. A comprehensive definition of the security sector

Source: DCAF – Geneva Centre for Security Sector Governance, 'The Security Sector: Roles and Responsibilities in Security Provision, Management and Oversight', SSR Backgrounder Series, 2015.

How a security sector operates is a reflection of how it is governed, and good security sector governance (SSG) is characterized by security provision that is managed and overseen within a framework of democratic civilian control, rule of law, and respect for human rights. Good SSG is thus based on the following normative standards and general principles, which describe how the security sector should work at international, national, and local levels:

› **Accountability** – the expectations for service provision are clear, and independent authorities monitor whether these expectations are met and can impose sanctions if they are not.

› **Transparency** – information is freely available and accessible to anyone impacted by decisions affecting the sector, or by their implementation.

› **Rule of law** – all persons and institutions, including the state, are subject to laws that are known publicly, enforced impartially, and consistent with international and national human rights norms and standards.

› **Participation** – all persons, regardless of background, are free to participate in decision making and service provision on an equitable and inclusive basis, either directly or through legitimate representative institutions.

- › **Responsiveness** – institutions are sensitive to the different security needs of all of the population and operate in the spirit of a culture of service.
- › **Effectiveness** – institutions meet a high standard of professionalism in fulfilling their roles and responsibilities.
- › **Efficiency** – institutions make the best possible use of public resources in fulfilling their roles and responsibilities.⁴²

Applying these principles of good governance to the security sector is the goal of security sector reform (SSR). Hence, SSR can be understood as the process of improving the way security is provided, managed, and overseen, and ultimately, as a means of achieving good SSG.⁴³ This translates into accountability that is provided through internal and external oversight, complaint-handling mechanisms, and other regulatory tools, and is grounded in clear responsibilities, a transparent process, and a responsiveness to public security needs. This not only ensures that security institutions fulfil their mandate in an effective and efficient manner, in accordance with the principles of good governance, but protects security actors from political interference while preventing them from interfering in politics themselves.⁴⁴

Ombuds institutes and security sector oversight

To conceptualize the role of ombuds institutes in advancing peace, security, and justice within the framework of the SDGs, particularly SDG 16, it is imperative to understand how their functions drive transparent and accountable security provision. The case studies in this compilation thus shine a light on the three functions of ombuds institutes that have been identified as most relevant to security sector oversight: investigation, in response to complaints and as own-motion initiatives; monitoring and advising on human rights, and on the compliance of existing or draft laws with international standards and their own recommendations; and mediation and dispute resolution

between two or more parties. It should be noted that these functions are often mutually reinforcing in practice. For example, mediation and dispute resolution are central to complaint handling and are typically a part of the work process of ombuds institutes as they resolve complaints or address issues that have prompted own-motion investigations.

Ombuds institutes can contribute through these functions to localizing both SSG/R and SDG implementation, while at the same time building partnerships with key international, national, and local stakeholders.⁴⁵ Their oversight of security provision and management means that ombuds institutes not only investigate alleged abuses by security sector actors, but report the findings to relevant state authorities along with recommendations for corrective action. Therefore, by working with ombuds institutes, other oversight actors, including CSOs and parliaments, can help to broaden the reach and capacity of oversight.⁴⁶

The SSG/R-human security-SDG 16 nexus

Good SSG is achieved when a security sector provides security as a public good within a framework of democratic civilian control, rule of law, and respect for human rights. Practically speaking, this is important because evidence indicates that poor SSG can play a role in triggering political instability, economic weakness, the harassment or abuse of certain groups or communities, and increased criminality, which can undermine state and human security and even drive violent conflict.⁴⁷ Indeed, human security – which concerns threats associated with the violation of the rights of individuals⁴⁸ – is considered as freedom from fear and from want; meaning, ‘first, safety from such chronic threats as hunger, disease and repression,’ and ‘second... protection from sudden and hurtful disruptions in the patterns of daily life—whether in homes, in jobs or in communities’.⁴⁹

As a 2021 DCAF study authored by Oya Dursun-Özkanca demonstrated, the human security concept acts as a useful bridge between SDG 16 and SSG/R,

42 DCAF – Geneva Centre for Security Sector Governance, ‘Security Sector Governance: Applying the principles of good governance to the security sector’, SSR Backgrounder Series, 2015, https://www.dcaf.ch/sites/default/files/publications/documents/DCAF_BG_1_Security_Sector_Governance_EN.pdf (accessed 3 November 2023).

43 Ibid.

44 Ibid.

45 Ibid.

46 For a list of state and non-state actors that perform security sector oversight, see: DCAF – Geneva Centre for Security Sector Governance, ‘The Security Sector’.

47 DCAF – Geneva Centre for Security Sector Governance, ‘Security Sector Governance’.

48 Artem Sergeev and Jen Lee, ‘From State Security to Human Security: The Evolving Nature of the United Nations Security Council’s Jurisdiction’, *Inter Gentes*, Vol. 2, No. 2 (2020), pp. 44–63.

49 United Nations Development Programme, *Human Development Report 1994* (Oxford University Press, 1994), p. 23, <https://hdr.undp.org/content/human-development-report-1994> (accessed 3 November 2023).

by teaching the security and development silos ‘how to dance together’.⁵⁰ In this sense, human security is both a tool for boosting the potential of SSG/R to achieve SDG 16 as well an outcome of these efforts, making it an ends and a means to achieving more peaceful, just, and inclusive societies. This is because human security acknowledges the ways that different threats to the realization of freedom from want and fear are intertwined, while emphasizing individual dignity and the significance of tangible results at the local level.⁵¹

Despite aiming to improve both human and state security, SSR has historically relied on technical solutions implemented through ‘top-down’ programming meant to institutionalize state-centric and technocratic reforms. And in recent years, the introduction of the concept of people-centred security, which has superseded human security, has narrowed the definition of security and has positioned the state as part of the solution, rather than an obstacle, to achieving security for individuals and communities.⁵² But practitioners in the security field have long recognized the value of bottom-up approaches, particularly in contexts where state institutions do not exist, are difficult to access, or struggle to provide security in an effective, accountable, and inclusive manner. For that reason, this series of case studies is grounded in the concept of human security, with its focus on local ownership and participation, and bottom-up approaches. In fact, these case studies show how ombuds institutes can enhance the potential of SSG/R to achieve SDG 16 and strengthen human security when they are guided by the principles of human security itself.⁵³ This constitutes *the SSG/R-human security-SDG 16 nexus* that the case studies in this compilation intend to unpack.

Research questions

To demonstrate how ombuds institutes can contribute to achieving SDG 16 through the exercise of their security sector oversight mandate, and how the concept of human security can empower SSG/R to improve both state *and* human security, boosting the potential of SSG/R to achieve SDG 16, the case studies in this series aim to answer the following research questions:

1. How do ombuds institutes contribute to making societies more just, peaceful, and inclusive through oversight of the security sector?
2. Which good practices by ombuds institutes relate directly to SDG 16 and to oversight of the security sector?
3. What is the impact of these good practices on SSG and on the human security of individuals and communities?

Each case study thus presents empirical data derived from the everyday work of ombuds institutes, showcasing how they have contributed to the realization of SDG 16 by exercising security sector oversight, and have in turn enhanced state and human security. To meet the goals of promoting exchange and learning across borders, and strengthening the position and effectiveness of these bodies, recommendations offered at the end of each study and in the Conclusion rearticulate the role and contributions of ombuds institutes. With a special focus on the universal aspiration of the SDGs to ‘leave no one behind’, these case studies also incorporate important evidence-based analysis of equality, diversity, and inclusion. As a result, this compilation of case studies not only fills a gap in the scholarly literature and contributes to relevant academic debate, but it serves as policy guidance for practitioners in ombuds institutes as well as for professionals working across the fields of security, development, and human rights.

Research methodology and limitations

The case studies in this series are grounded in an inductive and qualitative approach to research and in qualitative methods of data collection and analysis, in order to provide empirical examples of the relationship between ombuds institutes, SSG/R, SDG 16, and human security. In doing so, the objective is to answer fundamental questions about the nature of this relationship, to stimulate further research on this subject, and to spark reflections among policymakers working in this field and provide them with guidance on how to boost the potential of ombuds institutes to contribute to SDG 16 through their SSG/R functions. These case studies, their authors, and the co-editors of this compilation were all selected based on work done previously under the auspices of DCAF’s SDG 16 programme, including workshops and high-level policy events targeting ombuds institutes, through which DCAF secured the participation of several ombuds institutes, former and current practitioners, academics who

50 Dursun-Özkanca, *The Nexus Between Security Sector Governance/Reform and Sustainable Development Goal-16*, p. 49.

51 Dursun-Özkanca, *The Nexus Between Security Sector Governance/Reform and Sustainable Development Goal-16*.

52 Mark Sedra, *A People-Centred Approach to Security: seeking conceptual clarity to guide UN policy development* (UNDP and the Folke Bernadotte Academy, 2022), <https://www.undp.org/publications/people-centered-approach-security> (accessed 3 November 2023).

53 Dursun-Özkanca, *The Nexus Between Security Sector Governance/Reform and Sustainable Development Goal-16*.

specialize in the justice and security-related functions of ombuds institutes and could co-design the research. The diversity of these participants facilitated a particularly rich analysis.

The early research design (i.e., the conceptual framework, research questions, and methodology) for the case studies in this series was formulated by DCAF, though feedback from the authors informed adjustments where necessary. This entailed initial desk research that analysed country-specific literature and reviewed existing data on ombuds institutes, SDG 16, and the security sector, to better define the scope of research within the context of each country. The intent was to develop a research methodology that was as flexible and participatory as possible, so that it could speak to the interests and needs of practitioners from ombuds institutes worldwide, as well as to professionals in the fields of security, development, and human rights.

Following the research design process, the authors set the scope and content of their own case studies by identifying security sector oversight practices of the ombuds institute at the centre of their research that had contributed explicitly or otherwise to strengthening SSG, advancing SDG 16, improving human security, and ultimately fostering conditions conducive to sustainable development. On the basis of primary and secondary data, the authors then undertook an analysis and drafted the case studies in this series over a period of seven months, during which DCAF offered coordinating activities including several webinars and regular consultations. Each case study also benefited from three internal reviews by DCAF, as well as another by the authors of the case studies themselves, each of whom offered essential insight and feedback based on their backgrounds as practitioners and academics in the field of ombuds institutes, development, and human rights.

Nevertheless, the case studies in this series and the accompanying recommendations should not be viewed as universally applicable or transferrable, but as illustrations of how ombuds institutes in specific contexts have exercised oversight of the security sector in ways that have led to positive outcomes for human security, therefore contributing to the advancement of SDG 16. Moreover, it is important to be mindful of the contexts in which the practices discussed in these cases emerged; that is, either in countries with an established democratic system of government or those in transition towards democratic governance. Indeed, the ability of ombuds institutes to fulfil their oversight function vis-à-vis the security sector is dependent on several key factors, such

as whether a framework for democratic governance exists in a country (or at least a shared political ambition to create one), along with a basic level of respect for the rule of law and human rights. This is worth noting, given recent research that points to democratic backsliding around the world.⁵⁴

Contents of the study

The case studies in this series focus on ombuds institutes in Costa Rica, Georgia, Kenya, and The Gambia. They provide concrete, contextual, and in-depth examples of how interventions by these bodies have strengthened SSG and improved human security, thereby contributing to SDG 16. In each study, the authors describe how these ombuds institutes became aware, through their mandated functions, of systemic issues relating to governance of the security sector and the human security of specific demographic groups and individuals, and how they addressed these issues in a way that enhanced SSG and human security and helped advance SDG 16.

The case study authored by Catalina Crespo Sancho (National Ombudsperson of Costa Rica, 2018–2022) and Maaïke de Langen explores the work of *La Defensoría de los Habitantes*, the Costa Rican ombuds institute, to improve prison conditions and prevent crime. This study provides a view into how an ombuds institute can move towards institutionalizing both the management of complaints related to prisons as well as a preventive approach throughout its work, with a focus on crime prevention. It also details how *La Defensoría* has framed its work and its reporting around SDG 16.

The case study authored by Meri Kochlamazashvili (Senior Adviser to the Ombudsman of Georgia on Human Rights issues of Conflict Affected Population) and Luka Glušac examines how the Public Defender (Ombudsman) of Georgia has worked to promote and protect the rights and wellbeing of the country's conflict-affected population. This has improved the human security of this vulnerable group while boosting the ability of SSG/R to serve as a tool for realizing progress towards SDG 16. As disputes over territorial integrity are on the rise globally, this study offers insight into how ombuds institutes can support citizens faced with internal displacement and occupation.

In the case study written by Mary Kimari (Director, Advisory Unit at the Commission on Administrative Justice-Office of the Ombudsman in Kenya) and

⁵⁴ For example, see: 'Global democratic backsliding seems real, even if it is hard to measure', *The Economist*, 12 September 2023; and International Institute for Democracy and Electoral Assistance, *The Global State of Democracy 2023: The New Checks and Balances* (Stockholm: International IDEA, 2023).

Luka Glušac, the authors shed light on the work of the Commission on Administrative Justice in Kenya to perform security sector oversight by promoting transparency and accountability in police recruitment and by monitoring prison conditions. The work of this ombuds institute to reduce prison overcrowding and pre-trial detention rates is widely relevant, considering that unsentenced prisoners account for some 30 percent of the current global prison population, and almost 50 percent of prisons worldwide are reporting overcrowding.⁵⁵ Hence, this study presents ways in which ombuds institutes and other security sector oversight actors can address issues of prison systems, can promote increased access to justice, and can ensure a legal defence for people deprived of their liberty.

The case study by Commissioner Halimatou Dibba (National Human Rights Commission, The Gambia) and Maaïke de Langen discusses the work of the National Human Rights Commission (NHRC) of The Gambia to develop and strengthen its monitoring and advisory activities, on the basis of complaints concerning human rights abuses by security sector actors, including police brutality, torture, and arbitrary and prolonged detentions. This led to, among others,

improved protocols for the policing of protests and crowd control, and catalysed efforts to tackle sexual and gender-based violence (SGBV), by the NHRC. These interventions – which may be illustrative for ombuds institutes and other security sector oversight actors working on transitional justice, SGBV and abuse of power by security actors – contributed to strengthening SSG in The Gambia and driving the systemic reforms needed to further SDG 16 in the country.

Finally, in the Conclusion, Alice Alunni presents a qualitative content analysis of these case studies, using SDG 16 targets as an analytical framework. This facilitates an examination of good practices by ombuds institutes in relation to their key functions, SSG/R, human security, and SDG 16, and an assessment of the impact of these factors and processes on SSG and the human security of individuals and communities. By identifying key trends and patterns across the case studies in this series, Alunni formulates policy guidance for practitioners working in or with ombuds institutes as well as for the local, national, and international partners that support and share their vision of a more peaceful, just, and inclusive world.

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1. LA DEFENSORÍA DE LOS HABITANTES DE LA REPÚBLICA DE COSTA RICA: CONTRIBUTING TO SDG 16 THROUGH OMBUDS WORK IN THE PRISON SYSTEM

DR. CATALINA CRESPO-SANCHO AND MAAIKE DE LANGEN





1.1. Introduction

This chapter delves into the role of the Costa Rican ombuds institute, *La Defensoría de los Habitantes de la República* (hereinafter, *La Defensoría*) in building a more peaceful, just, and inclusive society through its oversight of the security sector and its engagement to improve security sector governance. In particular, we will direct our focus towards *La Defensoría's* work related to prison conditions and crime prevention, as these initiatives contribute directly to the realization of Sustainable Development Goal 16 (SDG 16).⁵⁶ As we will see, this work furthers specific targets under SDG 16, including the reduction of all forms of violence (SDG 16.1), ensuring equal access to justice for all (SDG 16.3), the mitigation of corruption and bribery (SDG 16.5), and the development of effective, accountable, and transparent institutions (SDG 16.6). Through an examination of *La Defensoría's* activities and impact in the security sector, this chapter seeks to elucidate its role in promoting a safer, fairer, and more equitable society in Costa Rica.

According to the Costa Rican legal framework, *La Defensoría* is mandated to 'protect the rights and interests of the inhabitants against threats, disturbances, restrictions or violations caused by actions or omissions of public sector entities' and to 'ensure that the operation of the public sector conforms to what is prescribed by morality, justice and the legal system'.⁵⁷ It oversees the security sector through complaint handling, investigations, and its advisory and monitoring roles, affording it access to the inner workings of the Costa Rican public sector. Along with its independence and legitimacy, this makes *La Defensoría* uniquely placed to exercise effective security sector oversight and contribute to the achievement of SDG 16.

The structure of Costa Rica's security sector stands in stark contrast to that of most nations worldwide, as it lacks a standing military. In 1948, Costa Rica made the historic decision to abolish its army, channelling the resources once allocated to the military towards social welfare and education. Responsibility for the security sector in Costa Rica is shared between two ministries and the Judicial branch: the Ministry of Justice and Peace, which manages the penitentiary system; the Ministry of Public Security, responsible for all other facets of security, including the coordination of multiple security entities, such as the Public Force, the Border Police, amongst others; and the Judicial branch which is in charge of the justice system. The Ministry of Public Security also collaborates closely with various government agencies and international organizations to address the country's security challenges.

⁵⁶ For a broader overview of how ombuds institutes can contribute to the achievement of the SDGs, see: Maaïke de Langen, 'Eight Ways Ombuds Institutes can contribute to the SDGs', IISD SDG Knowledge Hub, 19 May 2021, <https://sdg.iisd.org/commentary/guest-articles/eight-ways-ombuds-institutes-can-contribute-to-the-sdgs/>; Maaïke de Langen, 'The Role of Ombuds Institutes in Providing Equal Access to Justice for All' in *The Ombudsman in the Modern State*, edited by Matthew Groves and Anita Stuhmcke (Oxford: Hart Publishing, 2022); and Luka Glušac, 'Leaving No One Behind, Leaving No One Unaccountable: Ombuds Institutions, Good (Security Sector) Governance and Sustainable Development Goal 16' (London: Ubiquity Press, 2023), <https://www.dcaf.ch/leaving-no-one-behind-leaving-no-one-unaccountable>.

⁵⁷ Legislative Assembly of Costa Rica, Ley de la Defensoría de los Habitantes de la República, Law No.7319, Official Gazette No. 237 (10 December 1992) and its regulations.

To uphold law and order and ensure the safety of its citizens, Costa Rica relies on the Public Force – a civilian police force that encompasses regular police units and a number of specialty units – as well as the Drug Control Police, the Migration Police, and, since 2008, the Border Police. The Costa Rican prison system, which is comprised of four distinct types of detention (institutional, semi-open, open, and juvenile), places detainees in six different kinds of penal facilities, known as ‘care centres’ or ‘care units’: Institutional Care Centres, Semi-institutional Care Centres, Community Care Centres, Juvenile Care Centres, Women’s Care Centres, and Comprehensive Care Units.

Over many years, the highest number of complaints received by *La Defensoría* have related to conditions in the prison system. The case studies presented here therefore revolve around these grievances, shedding light on the intricacies of and challenges within this crucial part of the Costa Rican security sector. First, section two introduces *La Defensoría*, emphasizing its significance within the framework of security sector governance and its contributions to the realization of SDG 16. It includes a discussion of how it has used its annual report to focus on SDG 16 and reframe its political approach to and thinking about the security sector. Following that, the Costa Rican prison system and four specific interventions carried out by *La Defensoría* are described in section three, which also presents the direct impact of these interventions on various dimensions of SDG 16 and the preventative role of *La Defensoría* in addressing prison overcrowding and criminality. Throughout, our narrative is enriched by insights and recommendations stemming from our practical experience. These insights are shared with the intention of fostering cross-border learning and facilitating knowledge exchange. The concluding section draws upon our findings to offer some overarching conclusions and recommendations that may help enhance the effectiveness of ombuds institutes worldwide.



1.2. La Defensoría, Security Sector Governance/Reform, and SDG 16

La Defensoría is an autonomous entity established in 1993. It is responsible for upholding and advancing human rights and for instituting mechanisms for public sector oversight and accountability. Its work is grounded in the examination of complaints that people bring to its attention, stemming from infringements on human rights to lapses in public sector conduct. Currently, it has approximately 180 staff members and an annual budget of roughly 10 million USD.

The mandate and functions of La Defensoría

La Defensoría is divided into two entities, the Defence Division and Administrative Division. The former works on complaint handling, own-motion investigations, and monitoring, and is composed of eight departments with distinct areas of expertise: Equality and non-discrimination, Childhood and youth, Public governance, Women, Economic development, Labour rights, and Quality of life, as well as a cross-cutting department that decides on the admissibility of complaints. Advisory roles, mediation, and dispute resolution fall under the Administrative Division, which is also responsible for efficient operations and management, administrative matters, as well as leadership and institutional strategy. It is composed of the Office of the Ombudsperson and the departments of: International relations, Legal and policy analysis, Planning and institutional development, and Administration and finance. The two divisions collaborate to fulfil the mission of *La Defensoría* to safeguard and promote human rights, investigate complaints, and advocate for transparency and accountability in Costa Rican government and public institutions.

The overarching objective of *La Defensoría* is to ensure that public institutions function with efficacy, accountability, and respect for human rights. It has a mandate to receive and process complaints about any entity or employee that receives public funding, which means that all key actors in the security sector fall under its oversight, including the prison system, police, and others.⁵⁸

Operating under Costa Rican Law No. 7319, *La Defensoría* carries out a multifaceted mandate involving various checks and balances within the State. These include safeguarding the rights and interests of individuals against encroachments, interruptions, and limitations, and addressing violations that arise from actions or inactions within the public sector. Additionally, it is responsible for ensuring that the public sector conduct adheres to ethical, just, and legal norms, fostering efficiency and effectiveness in public service delivery.

La Defensoría actively engages in promoting and protecting human rights. It conducts comprehensive assessments of legislation to identify potential threats to the rights and interests of individuals, and enforces regulations and programmes outlined in national and international legal instruments to protect and advance human rights. In coordination with the relevant authorities, it also undertakes initiatives to integrate human rights education into the public educational curricula. And, alongside producing reports and publications, it develops various activities, conducts research, and carries out awareness campaigns, which collectively aim to heighten awareness of these rights across diverse segments of the population.

Since its establishment, *La Defensoría* has investigated and resolved numerous cases of human rights violations in the security sector, as well as cases related to discrimination and environmental protection. In addition to its investigative and advocacy work, *La Defensoría* has contributed to transparency and accountability in government (SDG 16.6) by promoting access to information and civil society participation and by ensuring that public officials are accountable for their actions.

⁵⁸ This chapter uses the definition of the security sector put forth by DCAF: 'the institutions and organizations responsible for maintaining peace, security, and public order in a country. That includes the military, police, intelligence agencies, border control agencies, parliaments, ombuds institutions, as well as the judicial and correctional systems'. *La Defensoría* is a public sector entity, and private entities and companies are excluded from its purview.

To deliver on its mandate, *La Defensoría* has broad investigative powers.⁵⁹ This includes the authority to request any entity or civil servant to produce information and provide relevant documents within a specified timeframe. Moreover, civil servants are required to appear when summoned, and to submit to interviews or otherwise cooperate with investigations. If necessary, this obligation can be enforced by the police. Lastly, *La Defensoría* can conduct on-site investigations and its staff is empowered by the law to access any relevant government location, including prisons, police stations, office buildings, and more.

These sweeping investigative powers are balanced by the fact that recommendations issued by *La Defensoría* are non-binding; although social pressure and the media can compel institutions and officials to comply. And there are some exclusions from the mandate of *La Defensoría*, most prominently a prohibition on intervening in any way in resolutions of the Supreme Court of Elections on electoral matters. Nor can *La Defensoría* receive complaints on matters which are before the courts, and it must suspend its complaint handling when complainants file a suit or an appeal on the subject of their complaint. Further, if *La Defensoría* becomes aware of an illegal action in the exercise of its functions, it must inform the responsible entity, and if a crime has possibly been committed, it must report this to the prosecutor's office and supply relevant information uncovered during its investigations to the judicial authorities.

Complaint handling is the primary mechanism through which *La Defensoría* exercises its investigative function. In 2020, 2021, and 2022, the Ombuds Institute received roughly 34,000 individual complaints per year,⁶⁰ an increase of approximately 30 percent compared to previous years.⁶¹ Of these complaints, some 1,500-2,000 led to formal investigations in each of those years. The remainder is addressed by rapid responses, an informal means of quickly resolving complaints that can include phone calls or emails or may redirect complainants to the responsible public offices. While some complaints are rejected, the Institute always provides advice to complainants on how their issue might be addressed and explains the criteria by which it determines whether it can handle complaints. That said, there is an appeals process for rejected complaints as well as for investigation results, which allows interested parties to request a review of *La Defensoría's* decision

within ten days. The option to appeal is open to both the complainant and the public body or civil servant about which the complaint is brought.

In addition to complaint handling, *La Defensoría* investigates structural issues, based on either a complaint or on its own motion, and carries out monitoring and advisory functions. Annually, it conducts around ten larger investigations based on an analysis of complaint patterns or the broader effects of government actions. A recent example of such a structural investigation, discussed in more detail below, related to the security sector and focused on access to health care for incarcerated populations.⁶² This was triggered by a pattern of complaints from prisoners, related to health services, that alleged limited access, a lack of protocols, insufficient staffing, equipment shortages, organizational problems, and technical and operational control deficiencies. The investigation resulted in recommendations made by *La Defensoría* to develop healthcare protocols and to create a Comprehensive Care Standard for Incarcerated Populations (see section 3).

La Defensoría undertakes a wide range of other activities to fulfil its mandate, including the development of legal criteria for draft legislation considered by Congress, media interviews, and public information campaigns. It also conducts inspections of public institutions, makes community visits, and in some cases acts as a mediator between the government and various stakeholders. Once a year, *La Defensoría* presents a report to parliament that summarizes administrative issues and offers details about the work conducted that year. Importantly, it also provides an analysis of the state of human rights in Costa Rica, an assessment of government services, and recommendations for improvement. For instance, recent complaints of prison overcrowding and its effects on inmates and prison staff have resulted not only in an investigation of the causes, which include funding shortages and increased violence in the country, but also a systematic follow-up on recommendations made by *La Defensoría* in its yearly report to Congress.⁶³

59 Ley de la Defensoría de los Habitantes de la República, Law No. 7319.

60 All annual reports (*Informe Anual de Labores* or *Informe Anual*) of the Defensoría are available on the institute's website, at: <https://www.dhr.go.cr/index.php/transparencia/informes-anales> (accessed 10 November 2023).

61 Though the cause of this significant rise in complaints has not been investigated independently, it correlates with the start of the four-year elected term of Catalina Crespo-Sancho (one of the authors of this chapter) as the Head of the Defensoría in 2018. She attributes this increase to the proactive stance she took in fighting corruption cases from the outset of her mandate, which increased the visibility and recognition of the Defensoría.

62 La Defensoría de los Habitantes de la República, *Informe Anual 2022–2023* (San José: DHR, 2023).

63 The topic of overcrowded prisons is raised in the annual reports of the Defensoría going back to the early 2000s.

La Defensoría, SSG/R, and SDG 16

Improving security sector governance and contributing to the achievement of SDG 16 are at the very heart of the work of *La Defensoría*. Inspired by the vision set forth in the 2030 Agenda, *La Defensoría* focused its 2018–2019 Annual Report on the implementation of SDG 16, which is to promote peaceful and inclusive societies for sustainable development, provide access to justice for all, and build effective, accountable, and inclusive institutions at all levels.⁶⁴ This Annual Report emphasized the progress made in achieving SDG 16 and presented conclusions based on its contribution to peace, justice, and inclusion, the three pillars of SDG 16. To this end, *La Defensoría* applies the broad understanding of SDG 16+ developed by the Pathfinders,⁶⁵ which is grounded in the conviction that SDG 16 should not be seen in isolation but is integrated into the larger 2030 Agenda, of which 36 targets directly measure some aspect of peace, inclusion, or justice.⁶⁶

The 2018–2019 Annual Report included a special emphasis on the security sector and highlighted the importance of addressing security challenges in order to achieve sustainable development and promote peace and justice in Costa Rica. It identified organized crime as a major challenge to security in the country, specifically related to drug trafficking, and analysed other key security sector issues, such as gender-based violence, prison conditions, and labour conditions for the police. Moreover, it discussed broader challenges related to governance and institutional effectiveness, both in the security sector and the judicial system, calling for increased transparency, participation, and accountability in decision-making processes related to security and justice, as well as greater communication and cooperation between different sectors and levels of government.

The report underscored advancements made in Costa Rica in realizing SDG 16, exemplified by the establishment, for instance, of the National Council for Citizen Security and Conviviality and the formulation of a comprehensive National Plan for Citizen Security and Peaceful Coexistence. Yet it also illuminated critical challenges that persist within the security sector, from elevated levels of crime and violence to a prevailing sense of impunity. Among the recommendations put forth, *La Defensoría* highlighted the necessity to implement policies and programmes geared towards

the prevention and reduction of violence. Additionally, it noted that these initiatives should actively promote citizen engagement and participation while enhancing access to justice. Recognizing the fundamental role of institutions within the security domain, the report underscored the imperative to strengthen the entities responsible for security, such as the police and the justice system.

In contrast to ombuds institutes in other countries, *La Defensoría* receives almost no complaints about police brutality or excessive use of force, including during protests. One possible reason for this is that people who experience such issues in Costa Rica tend to go to the main police station or to the prosecutor's office. The only exception to this trend occurred during the initial months of the Covid-19 pandemic, when justice and security sector actors suddenly found themselves on the frontlines of the pandemic response.⁶⁷ At that time, there was a notable increase in complaints about how the police enforced public health regulations and the closure of businesses.

A majority of the complaints received by *La Defensoría* with respect to the security sector relate to prisons. For prisons to effectively fulfil their role within the security sector and make meaningful contributions to the promotion of a peaceful and just society, it is imperative that their organizational structure facilitates full adherence to human rights principles by all parties.⁶⁸ This is crucial to addressing a range of objectives, including the reduction of violence (SDG 16.1), the guarantee of access to justice (SDG 16.3), and the prevention of bribery and corruption (SDG 16.5), as well as others that are integral to the pursuit of SDG 16.

64 La Defensoría de los Habitantes de la República, *Informe Anual de Labores 2018-2019* (San José: DHR, 2019).

65 The Pathfinders for Peaceful, Just and Inclusive Societies is a group comprised of UN member states, international organizations, and representatives from civil society and the private sector that develop SDG 16 targets.

66 Pathfinders for Peaceful, Just and Inclusive Societies, *The Roadmap for Peaceful, Just and Inclusive Societies – A Call to Action to Change our World* (New York: Center on International Cooperation, 2017).

67 Pathfinders for Peaceful, Just and Inclusive Societies, *Justice in a Pandemic – Briefing One: Justice for All and the Public Health Emergency* (New York: Center on International Cooperation, 2020).

68 Article 10 of the International Covenant on Civil and Political Rights, for example, specifies such obligations.

1.3. Improving the prison system and preventing crime and violence

Given the high volume of complaints *La Defensoría* receives about prisons, it has dedicated a significant portion of its work to addressing these grievances. For example, in 2021, security sector concerns topped the list of complaints it received, with most originating from inmates. Approximately 14,000 complaints related to the prison system were filed that year, accounting for roughly 40 percent of the total complaints received.

The Costa Rican prison system faces several challenges, mostly related to overcrowding, violence, and inadequate resourcing. These problems are partly due to an increase in crime, but also from the adoption of laws that fail to prioritize crime prevention. Hence, overcrowding is one of the main challenges facing Costa Rican prisons today, with many operating at or above their maximum capacity, which can lead to unsanitary conditions and an increased risk of prison violence. According to the Ministry of Justice and Peace, by the end of 2021, the prison system in Costa Rica was operating at 131 percent of its maximum capacity, housing almost 15,000 inmates in a system designed to hold just over 11,500.⁶⁹

Another challenge to the prison system stems from an inadequate allocation of resources, including shortages of staff, medical care, and the food needed to provide adequate and balanced nutrition. There is also relatively little emphasis on rehabilitation in the Costa Rican legal system,⁷⁰ and there are concerns that inmates do not receive adequate education, job training, or mental health services making it difficult for them to successfully reintegrate into society once they are released.

La Defensoría has undertaken various initiatives aimed at ensuring accountability both within the prison system and in the institutions that oversee it, particularly the Ministry of Justice. Four of these initiatives are detailed below, illuminating the many ways in which *La Defensoría* contributes to achieving SDG 16 through improving security sector governance in Costa Rica. These are: the establishment of a dedicated phone line directly connecting prisoners to *La Defensoría*, an own-motion investigation into healthcare provision within correctional facilities, efforts to promote equal treatment of incarcerated women, and measures to enhance working conditions for prison personnel.

Direct phone line for prisoners to file complaints

An important service available to inmates in Costa Rican prisons is a dedicated telephone line connecting them directly to *La Defensoría*. To access this service, inmates simply press #4 on the telephone keypad, and are then connected to a secure three-minute call with staff of *La Defensoría*. Many of the complaints lodged by inmates in this way concern detention conditions, including sleeping arrangements, insufficient access to prescribed medications or medical attention, and limitations on visitation rights.

While these concerns may seem mundane, the fact that recourse exists for inmates plays a pivotal role

in safeguarding them from potential abuse by prison staff or fellow inmates, and also goes some way to reducing opportunities to extort bribes. The provision of this easily accessible telephone line has yielded other benefits as well, not only by helping individual inmates resolve specific issues – often through a prompt and tailored response – but also by illuminating systemic challenges. When a pattern of recurring individual grievances is observed, *La Defensoría* undertakes a broader analysis and may decide to seek structural solutions to these issues.

Importantly, by offering prisoners this phone line, the power dynamics between prisoners and prison guards are shifted, which can be argued to contribute to the accountability of the prison system overall (SDG 16.6).

69 Ministry of Justice and Peace of Costa Rica, *Anuario Estadístico Año 2021: Compendio de Estadísticas del Sistema Penitenciario Costarricense*. All annual statistical reports of the Ministry of Justice and Peace are available on the ministry's website, at: https://www.mjp.go.cr/Documento/Catalogo_DOCU/64 (accessed 10 November 2023).

70 *La Defensoría de los Habitantes de la República, Informe Anual de Labores 2018-2019*.

Furthermore, the direct phone line is itself an avenue for access to justice (SDG 16.3) and decreases both the vulnerability of prisoners to violence (SDG 16.1) and the risk of corruption in the prison system (SDG 16.5).

Providing health care to prisoners

When persistent complaints regarding access to and quality of healthcare emerged from prisoners, a structural investigation was initiated by *La Defensoría* in 2022 to scrutinize the provision of healthcare services within the national penitentiary system.⁷¹ The investigation uncovered significant shortcomings in management practices, staffing, equipment, organizational and administrative capabilities, and technical and operational oversight. Collectively, these deficiencies were found to limit the ability of incarcerated people to fully exercise their right to health care as guaranteed by both Executive Decree 22139-J and 33876-J, both of which refer specifically to the right to health of those deprived of liberty.

La Defensoría presented its findings to the relevant authorities and continues to provide ongoing progress reports on the identified issues. One of its key recommendations was to implement standardized procedures and protocols in the healthcare model used across the prison system, including in the scheduling and rescheduling of appointments within the Social Security Fund (CCSS) – which is charged with overseeing the national health system in Costa Rica – the management of referrals and counter-referrals, medication administration, the initial assessment of inmates upon entry into the system, healthcare provision beyond regular operating hours, improved coordination with the CCSS, and the provision of suitable conditions for the post-surgical recovery of incarcerated patients.

Additionally, *La Defensoría* recommended that a comprehensive management plan for healthcare services within penitentiary facilities be developed, which should encompass short-, medium-, and long-term needs and corresponding solutions. This plan should integrate all procedures, records, programmes, and protocols into a computerized system for efficient management and monitoring. Other recommendations included the establishment of training programmes for healthcare and police personnel on issues related to human rights, patient rights, and empathy, as well as the enhancement of healthcare management through the promotion of consistent, timely, and comprehensive coordination among the leadership of the medical services, nursing, and pharmacy divisions

within the Ministry of Justice. These recommendations were aimed at facilitating effective supervision, monitoring, and evaluation of healthcare services within correctional facilities.

Follow-up by *La Defensoría* on the implementation of these recommendations is still ongoing. Yet, with the mediation of *La Defensoría*, the CCSS agreed in 2022 to provide and pay for more medical personnel in prisons, allowing the Ministry of Justice to utilize its budget allocations for other medical costs. The positive impact of this intervention went beyond security sector governance and SDG 16, as it also related to SDG 3 on ensuring healthy lives and promoting wellbeing for all.

Equal treatment of incarcerated women

The issue of gender within the prison system is of critical concern, especially when considering the disparities and challenges faced by incarcerated women. The Department of Women at *La Defensoría* conducts periodic inspections of women's prisons, and dedicated a section of its 2021–2022 Annual Report to the issue of gender discrimination within the Costa Rican prison system.⁷² This emerged from extensive investigations and analyses conducted by *La Defensoría*, which shed light on the unique challenges and discriminatory conditions that women prisoners often experience. As a result, a set of recommendations were formulated and communicated to the relevant authorities. One of the key disparities highlighted was the imbalance in prison facilities for women in Costa Rica, which has only two regional prisons for women, compared to 14 for men. This gender-based inequality leads to a range of significant consequences, particularly in the context of family visitation. Additionally, only one of these two prisons has a nursery that allows incarcerated women to keep their children under three years of age with them.

Therefore, *La Defensoría* recommended creating more regional facilities for women, and that nursery care should be available in all of them. It also recommended a guarantee of gynaecological services, access to contraception, additional work opportunities, and female surveillance personnel. The follow-up activities of *La Defensoría* in this context have included a combination of monitoring and evaluation to track progress and assess the implementation of these recommendations. It also includes maintaining ongoing communication with the Ministry of Peace and Justice to inquire about progress made.

71 See: *La Defensoría de los Habitantes de la República, Informe Anual 2022–2023*.

72 *La Defensoría de los Habitantes de la República, Informe Anual de Labores 2021-2022* (San José: DHR, 2022).

Ensuring the equal treatment of prisoners, regardless of gender, is important for realizing good security sector governance and contributes to enforcing non-discriminatory laws and policies in the prison system (SDG 16.b). SDG 5, which calls for equality between men and women, clearly also applies to prisoners. It is also important to note the intergenerational dimension of such discrimination, with children affected by their mothers being imprisoned (SDG 16.2). There is a larger question of justice at play as well, given that incarcerated women are frequently survivors of physical, sexual, and/or emotional abuse (SDG 16.1).

Working conditions for prison personnel

In 2019, *La Defensoría* received complaints from a group of prison staff at the Jorge Arturo Montero Castro Comprehensive Care Centre, who complained about their working conditions, specifically in the maximum-security administrative area. The primary issue they raised was that staff offices had been relocated from the main office building to the maximum-security building, which was not designed for this purpose. Changes had been made to the layout, and the administration converted cells into office spaces, but they were exposed to constant noise from prisoners, making it practically and psychologically difficult for prison personnel to do their jobs.

La Defensoría conducted a visit to the prison to appraise these conditions, and confirmed the difficult working environment cited by prison personnel. In a subsequent report, *La Defensoría* made a series of recommendations to the prison administration and the Ministry of Labor related to safety and health conditions for personnel. This prompted the occupational office of the prison to conduct its own assessment and make changes, including by moving the location of staff offices and soundproofing them.

Proper working conditions for prison staff are a critical part of a well-organized security sector, and a condition for effective institutions (SDG 16.6). They also serve to promote a safe and secure working environment for all workers (SDG 8.8).

Reducing prison overcrowding

As crime rates in Costa Rica have increased, overcrowding has become a key challenge facing the prison system and one that poses serious consequences for both inmates and prison personnel. By 2020, during the Covid-19 pandemic, the prison system was 31 percent above capacity, according to the Ministry of Justice and Peace.⁷³ Since then, the Costa Rican government has made significant efforts, specifically in building new infrastructure, to reduce overcrowding, which decreased this rate to 6 percent above capacity by the end of 2022.⁷⁴ Regular follow-up by *La Defensoría* on the issue of prison overcrowding may have influenced government efforts to reduce overcrowding.

Overcrowding also leads to an increased risk of unsanitary living conditions and the spread of infectious diseases in prisons.⁷⁵ It can also result in higher rates of mental health problems among inmates, such as depression and anxiety.⁷⁶ In fact, the Costa Rican Ministry of Health found that 34 percent of inmates in the prison system have some kind of mental health issue.⁷⁷

La Defensoría has approached the problem of prison overcrowding in multiple ways over recent years, in response to a large number of complaints received from prisoners that are directly or indirectly related to overcrowding issues. While responding to individual complaints, *La Defensoría* also conducted the structural investigation mentioned above, to address shortages of medical staff and resources, poor healthcare services, and long waiting lists for medical attention, all of which were caused or exacerbated by overcrowding.

Since *La Defensoría* is mandated to provide recommendations on draft legislation, it has also worked closely with Congress to provide technical expertise during the drafting of laws, particularly those that stipulate prison terms. This has served as an opportunity to provide Congress with suggestions on alternatives to incarceration and to highlight the issue of overcrowding in prisons. For instance, when the Ministry of Justice and Peace reported that a high rate of inmates were being held in pre-trial detention,⁷⁸ and that a small percentage are imprisoned for being unwilling or unable to pay child support, *La Defensoría* recommended the evaluation of different options for

73 Ministry of Justice and Peace of Costa Rica, 'Justicia y Paz Reduce en 9% Hacinamiento Penitenciario al Construir 2000 Nuevos Espacios', Comunicado 002-2020, 13 January 2020, <https://www.mjp.go.cr/Comunicacion/Nota?nom=Justicia-y-Paz-reduce-en-9-hacinamiento-penitenciario-al-construir-2000-nuevos-espacios> (accessed 10 November 2023).

74 Presidency of Costa Rica, 'Eliminación de Hacinamiento Penitenciario Es Un Hito Histórico', 12 April 2022, <https://www.presidencia.go.cr/comunicados/2022/04/eliminacion-de-hacinamiento-penitenciario-es-un-hito-historico/> (accessed 10 November 2023).

75 Stefan Enggist, et al., *Prisons and Health* (World Health Organization, 2014).

76 J. García-Guerrero and A. Marco, 'Sobreocupación en los Centros Penitenciarios y su impacto en la salud', *Revista española de sanidad penitenciaria*, vol. 14, no. 3 (2012), 106–113.

77 For health purposes, the Costa Rican authorities prohibited in-person prison visitations for over a year during the Covid-19 pandemic. Although some implemented virtual visits with family members, these measures likely caused or exacerbated mental health issues among detainees.

78 The pre-trial detention rate is one of the indicators of SDG 16: SDG 16.3.2 measures unsentenced detainees as a proportion of overall prison population.

people awaiting trial or imprisoned for minor felonies.⁷⁹ These recommendations influenced the decision of the Costa Rican government to conduct an assessment on these two groups to consider alternatives to detention. In 2019, the government thus launched a programme to pilot alternatives to pre-trial detention, including electronic monitoring and house arrest.

The impacts of overcrowding in prisons include violations of prisoners' rights, as various services suffer – including medical care, technical support, and educational and work programmes – and it becomes difficult to uphold other rights outlined in national and international penitentiary regulations safeguarding human rights.⁸⁰ A structural solution to the problem of overcrowding requires the adoption of a preventive approach in policymaking that views incarceration only as a last resort and focuses on alternative measures such as restorative justice or alternative dispute resolution mechanisms. This kind of evidence-based policymaking aligns with the vision of people-centred justice as inspired by SDG 16.⁸¹

Preventing crime and violence

Central to SDG 16 is the vision of a peaceful, just, and inclusive society. In a peaceful society, there is very little crime and violence, and disputes are resolved peacefully. Costa Rica has a relatively low crime rate and is one of the safest countries in the region, though it has faced security challenges that include drug trafficking, organized crime, petty crime, and as described above, prison overcrowding.

However, in recent years, there has been an increase in crime and insecurity, particularly in urban areas. In 2021, there were 588 homicides in Costa Rica, which marked a slight increase over the previous year, and in 2022, this rate rose to 656, the highest number in the country's history.⁸² The Ministry of Security attributes this increase in violence to factors such as income inequality, exclusion, unemployment (especially youth unemployment in rural areas), and disputes between drug traffickers for control of markets.⁸³

La Defensoría has also identified the high level of debt among police officers as a significant problem, due to the fact that this makes them susceptible to corruption and extortion. In partnership with police unions, *La Defensoría* found through additional research that there are no legal restrictions on directly deducting officers' salaries for personal debt. This lack of limitations allows officers to accumulate debt to a degree that often leaves them with insufficient income to support themselves and their families. *La Defensoría* raised awareness of this issue to Congress, particularly to the Commission on Drug Trafficking. It argued that efforts to improve the financial stability of police officers and other public servants could play a crucial role in reducing corruption (SDG 16.5) and would therefore make it harder for drug trafficking to thrive.



79 La Defensoría de los Habitantes de la República, *Informe Anual de Labores 2019-2020* (San José: DHR, 2020).

80 See: Olivia Rope and Francis Sheahan, *Global Prison Trends 2018* (Penal Reform International and the Thailand Institute of Justice, 2018), p. 8.

81 Task Force on Justice, *Justice for All – Final Report* (New York: Center on International Cooperation, 2019).

82 Ileana Fernandez, 'Costa Rica's Homicide Rate Soars to Record High', *Tico Times*, 27 July 2023, <https://ticotimes.net/2023/07/27/costa-ricas-homicide-rate-soars-to-record-high> (accessed 10 November 2023).

83 National Council of Rectors of Costa Rica, *Estado de la Nación 2022/Programa Estado de la Nación* (San José, 2022).

1.4. Lessons learned and recommendations

La Defensoría plays a crucial role in advancing the country's efforts to build a peaceful, just, and inclusive society. As this chapter has elucidated, in the context of the Costa Rican prison system, its strategies and methods to improve security sector governance have included a range of interventions aimed at protecting the rights of individual prisoners and addressing structural problems in the system overall, with the goal of achieving full adherence to human rights principles. *La Defensoría* has also promoted a preventative response to prison overcrowding and increased crime. These efforts have been instrumental to enhancing security sector governance and have directly contributed to achieving the Sustainable Development Goals, particularly SDG 16.

One lesson that can be drawn from the work of *La Defensoría* is that *ombuds institutes can make strategic choices to fulfil their mandates and use their powers in a wide variety of ways*. As we have described here, *La Defensoría* has produced a range of remedies and recommendations, from improving the everyday workings of the prison system to raising important structural questions around prison overcrowding and crime prevention, and also addressing systemic problems that make people vulnerable to corruption and create an environment conducive to criminal activity.

This interplay between efforts to solve individual problems and those addressing structural issues is a second lesson to take from this case study, *namely that the handling of individual complaints and the advisory and monitoring functions of La Defensoría continually inform and reinforce one another*. Complaints offer detailed information about day-to-day interactions in the security sector that inform the analysis and monitoring of different entities and enable ombuds institutes to identify bottlenecks, and like the canary in the coalmine, serve as an early warning of structural problems. In turn, by understanding (the challenges of) the security sector as a whole, *La Defensoría* is better able to respond to individuals whose rights have been violated. This strengthens accountability in the sector and helps create feedback loops for learning and improvement.

A third lesson is that *an explicit focus on SDG 16 can deliver concrete results*, as it did when *La Defensoría* organized its 2018–2019 Annual Report entirely along

the lines of the SDG 16+ framework. The report, which highlighted the importance of addressing security challenges in order to achieve sustainable development and promote peace and justice in Costa Rica, influenced the creation of a National Council for Citizen Security and Conviviality as well as a comprehensive National Plan for Citizen Security and Peaceful Coexistence. This also helped provide an overall narrative for *La Defensoría* and its staff, making its interventions more coherent and clarifying its role and vision.

A final lesson, and one that has hopefully been evident here, is that *ombuds institutes can serve as a vital source of checks and balances in democratic systems*. In Costa Rica, *La Defensoría* does this by scrutinizing and addressing issues within the security sector, reinforcing democratic principles, and ensuring accountability, transparency, and justice in the governance of security institutions. This dual mandate to promote democratic stability and engage in security sector reform underscores the significance of *La Defensoría* in fostering a robust and well-functioning democracy in Costa Rica.

In general, it is safe to say that ombuds institutes around the world have unique powers that make them important to achieving social justice. Their work is grounded in the lived experiences of people, reflected in individual complaints. This is complemented by the ability of these institutes to conduct own-motion investigations in response to information they receive – whether through the media, from professionals in the field, or from relevant organizations – and trends they discover through complaint handling. To make the most of the powers afforded to ombuds institutes, they should work towards structural solutions based on individual cases, by leveraging their unique ability to collect data and information on the challenges faced by people via their complaint-handling function; thereby producing a beneficial feedback loop for the security sector that contributes to better governance and better outcomes for both individuals and society as a whole.

We also recommend that *ombuds institutes use the full range of powers and tools at their disposal to achieve results in line with the 2030 Agenda*, from complaint handling and own-motion investigations, to monitoring and advising, to mediation and dispute resolution. The

effectiveness of national ombuds institutes depends on their ability to operate strategically and use the right mix of interventions given the context and political dynamics in their country.

Finally, *the ambition of the 2030 Agenda to build peaceful, just, and inclusive societies, and the goals, indicators, and targets of SDG 16 specifically, can*

provide a valuable framework for ombuds institutes. By analysing complaints and identifying structural issues through the lens of sustainable development, and reporting to parliaments, ombuds institutes can not only articulate their own contribution to achieving the Sustainable Development Goals but can also move their countries towards realization of the 2030 Agenda in practical ways that positively impact the lives of citizens.

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2. THE PUBLIC DEFENDER (OMBUDSMAN) OF GEORGIA: REACHING THOSE FURTHEST BEHIND BY PROTECTING CONFLICT-AFFECTED POPULATIONS

DR. MERI KOCHLAMAZASHVILI AND DR. LUKA GLUŠAČ





2.1. Introduction

This chapter examines how the Public Defender's Office of Georgia (PDO) – the country's ombuds institute – contributes to achieving SDG 16 through its security sector governance and reform (SSG/R) activities, with a particular focus on its work to promote and protect the rights and wellbeing of conflict-affected populations. In Georgia, this includes people who have been affected by one of several conflicts, many of whom are internally displaced. By improving the human security of this vulnerable demographic, this chapter shows how the PDO has boosted the capacity of SSG/R to serve as a tool for advancing the progress of Georgia towards several SDG 16 targets.

The conflict-affected population of Georgia has emerged from the Abkhazian conflict, the Georgian-Ossetian conflict, and the Russo-Georgian War – all of which escalated or began after the collapse of the Soviet Union, the subsequent Georgian declaration of independence, and the 1992 election of Eduard Shevardnadze as the country's first democratic leader. In the post-Cold War climate of self-determination, these events fed the secessionist ambitions of ethnic Abkhazians in the northwest and Ossetians in the north, who both found support for their separatist aims from the Russian Federation. In 1992, this led to violent clashes, when Russian-backed Abkhaz and Ossetian militias fought Georgian government and allied forces. Though several ceasefire agreements were reached, none endured, nor did they resolve the statuses of Abkhazia and South Ossetia within the state of Georgia.

Violence erupted again in 2008, five years after the Rose Revolution brought the reformist and pro-Western Mikheil Saakashvili to power.⁸⁴ Under Saakashvili's leadership, Georgia had implemented a series of democratic and economic reforms aimed at modernizing the country and integrating it with Western institutions. However, his government was accused of exhibiting authoritarian tendencies and committing human rights abuses, and its attempts at democratic consolidation were hindered by continued Russian involvement in the Abkhazia and South Ossetia regions. This triggered periodic tension and violence, which culminated into the five-day Russo-Georgian War in August 2008.

⁸⁴ See more on the Rose Revolution in: Alexander Khodunov, 'The Rose Revolution in Georgia', in *Handbook of Revolutions in the 21st Century: The New Waves of Revolutions, and the Causes and Effects of Disruptive Political Change*, edited by Jack A. Goldstone, Leonid Grinin, and Andrey Korotayev (Springer, 2022).

Despite agreement on a ceasefire on 16 August 2008, the hostilities did not end immediately, and the Russo-Georgian War remains unsettled to this day. Indeed, unresolved conflict – with the Russian Federation, and with the breakaway regions of Abkhazia and South Ossetia – remains the most significant human rights and security challenge Georgia faces, and is identified in the country's national security policy document as the principal threat to Georgian national security.⁸⁵ Further, these conflicts have resulted in the forcible displacement of many people residing in or near Abkhazia and South Ossetia, as well as other gross violations of their human rights, making this population among the most vulnerable in Georgia.

Nearly 300,000 internally displaced persons (IDPs) were registered in Georgia as a result of the armed conflicts of the 1990s and 2008, about 90 percent of whom were displaced before the Russo-Georgian War.⁸⁶ Fifteen years after the end of that conflict, its consequences are still acutely felt by IDPs, and the same is true for the Abkhazian and Ossetian populations that continue to live near the Administrative Boundary Line (ABL) which separates Georgian government-controlled territory from these regions. Where the Georgian government does not control this territory, it is controlled by the Russian Federation, which is responsible for any human rights violations committed there, as confirmed in a January 2021 judgement of the European Court of Human Rights.⁸⁷

IDPs who reside in the occupied regions of Abkhazia and South Ossetia and people living in settlements near the ABL remain especially vulnerable to human rights abuses, including violence and forced displacement, and they face discrimination, lack of access to basic services, and limited economic opportunities. While the 2012 parliamentary elections ushered in a peaceful transition of power to Bidzina Ivanishvili's Georgian Dream coalition, followed by several peaceful elections as well as efforts to strengthen ties with the EU and NATO, the political situation in Georgia remains somewhat volatile. Ongoing debates centre around issues such as democratic reform and corruption, but also the country's relationship with the Russian Federation.

The challenges faced by the conflict-affected population in Georgia are both a cause and a consequence of the country's lack of progress towards SDG 16, and they impede progress towards the fulfilment of other SDGs, most notably SDG 1 on poverty, SDG 2 on hunger, and SDG 10 on reducing inequalities. If Georgia wishes to achieve the SDGs, and particularly SDG 16, it will have to include conflict-affected people from Abkhazia and South Ossetia in national development plans, and ensure they can access security and basic services and participate in the Georgian economy and society. This is the only way to meet the goals of protecting the rights of all individuals, promoting the rule of law, and developing effective and accountable institutions. In this context, the Georgian ombuds institute, the PDO, has a crucial role to play.

The PDO is an independent institution created to protect and promote human rights and freedoms in Georgia, established by the 1995 Georgian Constitution and regulated by the 1996 Organic Law on the Public Defender of Georgia.⁸⁸ It operates under the mandate of parliament and is led by a Public Defender, who is appointed for a six-year term and is tasked with ensuring that the government and other authorities respect and protect the rights of all individuals within the country. This makes the PDO the primary institution responsible for protecting the rights of the conflict-affected population in Georgia, and therefore key to furthering progress towards SDG 16.

As this chapter shows, the PDO has already contributed to advancing SDG 16 in Georgia by working to address the root causes of conflict and by promoting the rights and wellbeing of the conflict-affected population. This has improved the human security of the conflict-affected population, which enhances the capacity of SSG/R to facilitate the realization of various SDG 16 targets, including 16.1 on reducing violence, 16.3 on rule of law and access to justice, 16.6 on developing effective, accountable, and transparent institutions, 16.9 on identity for all, and 16.10 on access to information and protection of fundamental freedoms. And as this case illustrates, progress towards SDG 16, which is an enabler of the broader 2030 Agenda, supports the fulfilment of other SDGs.

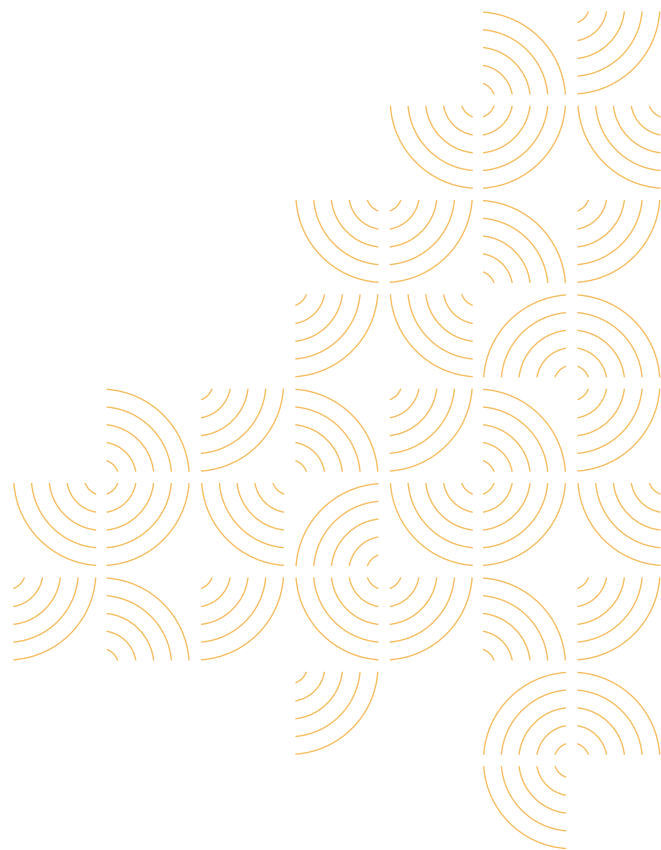
85 Government of Georgia, *National Security Concept of Georgia* (2018), especially pp. 7–9.

86 Public Defender (Ombudsman) of Georgia, 'Public Defender's Statement on 15th Anniversary of August War', 7 August 2023, <https://ombudsman.ge/eng/akhali-ambebi/sakhalkho-damtsvelis-gantskhadeba-agvistos-omis-15-tslistavtan-dakavshirebit>. At the time this statement was published, the total number of registered IDPs was 292,946, of whom 27,582 were registered as a result of the 2008 Russo-Georgian War. NB: The Law of Georgia on Internally Displaced Persons from the Occupied Territories of Georgia defines IDPs as having been 'forced or obliged to flee or to leave their homes or places of habitual residence, due to the armed conflict, and... either (1) living in compact settlements, including state-owned hotels or abandoned public buildings; or (2) living in a private accommodation, that is, they found their shelter with relatives or rented places on their own'. See: Government of Georgia, Law of Georgia on Internally Displaced Persons from the Occupied Territories of Georgia (6 February 2014).

87 The Court decided that Russia maintains continued effective control in occupied territory in the Tskhinvali region and in occupied Abkhazia, and held Russia responsible for human rights violations committed in these locations. See: European Court of Human Rights, *Georgia v. Russia (II)*, No. 38263/08, Judgment (21 January 2021).

88 Government of Georgia, Constitution of Georgia (24 August 1995) and amendments; Government of Georgia, Organic Law of Georgia on the Public Defender of Georgia (16 May 1996) and amendments.

The following examination of how the PDO, the security sector, and SDG 16 interrelate brings a particular emphasis to how the ability of SSG/R to contribute to SDG 16 is strengthened by improvements to human security. The focus of the chapter then moves to efforts by the PDO to protect the rights of the conflict-affected population in Georgia and highlights activities that have sought to address systemic problems, such as by monitoring human rights violations and advising government bodies on corrective action. The chapter closes with conclusions and recommendations that aim to inform the work of other security sector oversight bodies, including ombuds institutes and national human rights institutions, working to fulfil the promises of SDG 16 for conflict-affected and other marginalized and vulnerable groups.



2.2. The Public Defender (Ombudsman) of Georgia, Security Sector Governance/Reform, and SDG 16

The following section describes the mandate and functions of the Public Defender's Office of Georgia (PDO) as it pertains to improving security sector governance and contributing to SDG 16 in Georgia.

The mandate and functions of the PDO

One of the main functions of the PDO is to monitor and report on human rights violations. According to the Organic Law on the Public Defender of Georgia, the institute 'shall monitor activities of administrative, state and local self-government authorities, public institutions and officials, also, physical and legal persons [...]'.⁸⁹ No public authority is excluded from the mandate of the PDO, which means that the entire security sector falls under its jurisdiction. It thus monitors and reports on a range of issues, including police brutality, discrimination, and violations of the rights of vulnerable groups such as refugees and IDPs. Monitoring is essential to protecting individual rights because it serves to systematically track the activities and actions of government as they relate to its responsibility to respect, protect, and fulfil human rights, over a protracted period of time.⁹⁰ Among other things, the PDO uses this information to hold authorities accountable and make the public aware when human rights violations occur.

To carry out its functions effectively, the PDO has been granted a number of significant powers.⁹¹ It can access information and documents belonging to the government and other authorities, request assistance from other bodies and organizations, and issue recommendations and opinions to the government and other authorities. The PDO also has the power to investigate complaints it receives and to initiate own-motion investigations into alleged human rights violations. It can launch more generalized investigations to probe larger-scale or systemic concerns by introducing legislative amendments, submitting constitutional complaints to request normative control by the Constitutional Court, or

requesting that parliament establish special investigation commissions for specific violations. When the PDO finds that the human rights of individuals have been violated, it has the power to initiate legal proceedings on their behalf, including by bringing cases before the courts and other legal bodies and by representing those individuals in administrative proceedings. In addition, the PDO can act as an *amicus curiae* in cases involving questions of human rights.⁹²

Another key function of the PDO is to raise awareness of human rights issues through education initiatives directed at the public, so that all people in Georgia have knowledge of their rights and freedoms. The PDO does this by organizing public events, publishing reports and other materials on human rights, and engaging with civil society organizations and other stakeholders to promote human rights education and awareness. In some cases, the PDO works to bring security and human rights issues inside Georgia to the attention of relevant external actors in the international community as well.

Importantly, the PDO also cooperates with international and regional organizations in performing the function of the National Preventive Mechanism under the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). Likewise, the PDO is designated as a national monitoring mechanism under the UN Convention on the Rights of Persons with Disabilities (UNCRPD). Hence, the PDO regularly assesses the conditions and treatment of detainees, prisoners, or individuals whose liberty has been otherwise restricted, as well as the inmates of psychiatric institutions, residents of homes for the elderly, and children in orphanages.

⁸⁹ Government of Georgia, Organic Law of Georgia on the Public Defender of Georgia.

⁹⁰ Office of the High Commissioner for Human Rights, 'Training Manual on Human Rights Monitoring', Professional Training Series No. 7, United Nations, 2001.

⁹¹ Government of Georgia, Organic Law of Georgia on the Public Defender of Georgia, Art. 20.

⁹² *Ibid.*, Art. 21. An *amicus* (or *amici*) *curiae* is an individual or organization that is not a party to a litigation but is permitted by the court to advise it in respect to some matter of law that directly affects the case in question.

Every year, the PDO is obliged to submit an annual report to the Parliament of Georgia on human rights and freedoms in the country.⁹³ These comprehensive reports describe successes, failures, and trends, and name the state and local self-government bodies and officials who have violated human rights or have disregarded recommendations made by the PDO. Parliamentarians review the annual report of the PDO during their spring sessions and issue decrees or resolutions, using its findings and suggestions to set goals for various public authorities to improve human rights and freedoms in the country.⁹⁴

Since 2007, the PDO has held an 'A' status accreditation from the Global Alliance of National Human Rights Institutions (GANHRI), recognizing its full compliance with the Paris Principles, adopted by the UN General Assembly in 1993.⁹⁵ The PDO has twice been re-accredited at this highest status, in 2013 and 2018. As a result, the PDO has the right to act independently of the state with regional and international human rights mechanisms, including by participating in the work of the UN Human Rights Council and communicating directly with the UN treaty bodies.⁹⁶

The PDO, SSG/R, and SDG 16

The security sector of Georgia is made up of several different agencies and organizations – most notably the Ministry of Internal Affairs, the State Security Service, and the Ministry of Defense – which are responsible for maintaining law and order, protecting national security, and defending the country against external threats. The Ministry of Internal Affairs oversees law enforcement agencies, the Ministry of Defense oversees the military, and the State Security Service is tasked with intelligence gathering and counterintelligence activities. In 2015, the State Security Service was split from the Ministry of Internal Affairs as a means of dispersing the power of the Ministry, which had grown to the extent that it was difficult to control and oversee.⁹⁷ This came as part of

a series of reforms that have been implemented over the last decade or so, aimed at improving the efficiency, transparency, and accountability of the Georgian security sector.⁹⁸ These have included measures to strengthen civilian oversight of security forces, enhance training and education for security personnel, and increase public trust in law enforcement.

Nevertheless, human rights abuses involving security actors still occur, and in some cases affect the lives of many citizen victims, such as when a massive leak of personal data occurred in 2021 and was linked to an illicit large-scale wiretapping operation conducted by state agencies.⁹⁹ The role of the PDO in overseeing the security sector, particularly to ensure that the rights of citizens are respected and protected by security institutions, is therefore vital. In doing so, the work of the PDO directly contributes to several SDG 16 targets, including 16.3 on promoting the rule of law and equal access to justice, 16.6 on developing effective, accountable, and transparent institutions, and 16.10 on access to information and protecting fundamental freedoms. The PDO also provides training and education to law enforcement personnel on topics such as human rights, non-discrimination, and gender equality; monitors the activities of law enforcement agencies and other security institutions; investigates any reports of human rights abuses by these institutions or by security actors; and advocates for systemic changes to address any issues it identifies.

Still, even as progress is made in achieving these targets, the question of security in Georgia hinges largely on the welfare of its conflict-affected population and the resolution of the frozen conflicts that continue to shape their lives. That population and how the PDO works to address its needs will be the focus of this chapter, both because Georgia's conflicts with Russia over the occupied regions of Abkhazia and South Ossetia remain the country's primary security concern and because these conflicts have produced a number of human rights issues. Through waves of migration,

93 All annual reports of the PDO are available on the institution's website, at: <https://ombudsman.ge/eng/saparlameto-angarishebi> (accessed 1 December 2023).

94 An example of such a resolution (in local language) is one passed recently, in 2022, in response to the 2021 Annual Report. See: Legislative Herald of Georgia, '2021 წელს საქართველოში ადამიანის უფლებათა და თავისუფლებათა დაცვის მდგომარეობის შესახებ' საქართველოს სახალხო დამცველის ანგარიშის თაობაზე' ('Regarding the report of the Public Defender of Georgia on the state of protection of human rights and freedoms in Georgia in (2021) (20 October 2022).

95 For more on the Paris Principles, see: GANHRI, 'Paris Principles', <https://ganhri.org/paris-principles/> (accessed 1 December 2023).

96 See more in: Luka Glušac, 'Universal Periodic Review and Policy Change: The Case of National Human Rights Institutions', *Journal of Human Rights Practice*, Vol. 14, No. 1 (2022), pp. 285–304.

97 See: Lika Sajaia, et al., *Reform of the Security Service in Georgia: Results and Best Practices* (DCAF, 2018), p. 12.

98 See: Liam O'Shea, 'Democratic police reform, security sector reform, anticorruption and spoilers: lessons from Georgia', *Conflict, Security & Development*, Vol. 22, No. 4 (2022), pp. 387–409; and David Darchiashvili and Ronald Scott Mangum, 'Georgian civil-military relations: hostage to confrontational politics', *Caucasus Survey*, Vol. 7, No. 1 (2019), pp. 79–93.

99 See: Public Defender (Ombudsman) of Georgia, 'Public Defender Addresses UN Special Rapporteur on the Right to Privacy and Parliament of Georgia', 18 October 2021, <https://ombudsman.ge/eng/akhali-ambebi/sakartvelos-sakhalkho-damtsvelma-piradi-tskhovrebis-uflebis-sakitkhebsi-gaeros-spetsialur-momkhsenebels-da-sakartvelos-parlaments-mimarta>; and Venice Commission, 'Urgent Opinion on the Draft Law on the Amendments to the Criminal Procedure Code Adopted by the Parliament of Georgia on 7 June 2022', No. CDL-PI(2022)028, 16 August 2022, para. 64.

the many challenges associated with displacement have undermined the ability of IDPs to enjoy security as a public good. To address this, the PDO provides legal aid, monitors the conditions in which the conflict-affected population is living, and investigates reports of human rights abuses or discrimination. Moreover, the PDO approaches this on a national and an international level, including by raising awareness about the situation of people living in conflict-affected areas and urging governments, particularly the Georgian government, to act to address the needs of this population, including its security needs.

This work is grounded in the strong link between human rights and security, which is captured in the notion of human security, understood here as the freedom from fear and from want, encompassing ‘first, safety from such chronic threats as hunger, disease and repression,’ and ‘second, ...protection from sudden and hurtful disruptions in the patterns of daily life – whether in homes, in jobs or in communities’.¹⁰⁰ Human security is particularly relevant for conflict-affected populations, and the Commission on Human Security has emphasized the need to address a ‘broad range of interconnected issues’ through human security, including by ‘protecting people during violent conflict and in post-conflict situations, [and] defending people who are forced to move’.¹⁰¹ Human security thus centres on the interconnectivity of various threats to the freedom from want, fear, and dignity, and supports tangible results at the local level.¹⁰²

In contrast, SSG/R has traditionally aspired to reform the institutional architecture that governs a country’s security sector by aligning it with a set of good governance principles, such as accountability, transparency, rule of law, participation, responsiveness, effectiveness, and efficiency. Despite its aim to improve both human and state security, SSG/R has historically emphasized technical solutions delivered through ‘top-down’ programming. But as a precondition to achieving SDG 16, this must now be complemented by bottom-up approaches. For, as the work of the PDO demonstrates, improvements to human security made from the bottom up can amplify the ability of SSG/R to contribute to peaceful, just, and inclusive societies.



100 United Nations Development Programme, *Human Development Report 1994* (Oxford University Press, 1994), p. 23. For more on human security and the SDGs, see: Oya Dursun-Özkanca, *The Nexus Between Security Sector Governance/Reform and Sustainable Development Goal-16: An Examination of Conceptual Linkages and Policy Recommendations*, DCAF SSR Paper 20 (Ubiquity Press and DCAF, 2021).

101 Commission on Human Security, *Human Security Now* (United Nations, 2003), p. iv.

102 Oya Dursun-Özkanca, *The Nexus Between Security Sector Governance/Reform and Sustainable Development Goal-16: An Examination of Conceptual Linkages and Policy Recommendations*, DCAF SSR Paper 20 (Ubiquity Press and DCAF, 2021).

2.3. Protecting the human rights of conflict-affected populations

According to the 2021 Report of the Public Defender, there were 291,886 IDPs (constituting 92,679 internally displaced families) registered in Georgia as of 2022.¹⁰³ This is a rather significant number in a country of 3.7 million people, and reflects that the country has faced displacement-related challenges for over three decades, beginning in the early 1990s. The military conflict over the breakaway regions of Abkhazia and South Ossetia led to a first wave of IDPs, and this was followed by a second significant wave after the 2008 Russo-Georgian War.¹⁰⁴ The vast majority of IDPs in Georgia are ethnic Georgians from Abkhazia, though a considerable number of Ossetians and even more ethnic Georgians also fled the conflict in South Ossetia.¹⁰⁵ It is important to note, however, that IDPs make up only one category of the conflict-affected population in Georgia. Other people affected by conflict still reside in occupied regions or in settlements near the ABL. While they do not hold official IDP status, the proximity of these populations to the Russian occupation means they face numerous challenges.

This has made monitoring, investigating, and advising on human rights issues related to the conflict-affected population a priority for the PDO. The conflicts in Abkhazia and South Ossetia did immense damage to the social, economic, and political development of the country, but have also left a legacy of human rights violations. If these violations are not addressed and resolved in a just and inclusive manner, they will aggravate existing social frictions and deepen mistrust, which are often among the underlying causes of conflict, and could therefore lead to the recurrence of violence. Similarly, impunity for the perpetrators of human rights abuses also contributes to tensions, possibly fuelling further violations. Hence, human rights violations can be both a cause and a consequence of violent conflict, and either way, undermine efforts to achieve SDG 16.1 on reducing violence. The PDO therefore views human rights protection and promotion as key to achieving peace and stability and preventing new conflicts.

To comprehensively address the human rights challenges faced by the conflict-affected population in Georgia, the PDO created a new position for an Adviser on Human Rights Issues of the Conflict-affected Population within its Secretariat in February 2014.¹⁰⁶ The role of the Adviser is to counsel the Public Defender, oversee work aimed at fostering human rights protection in conflict-affected communities, supervise research in this area, develop recommendations, and cooperate with governmental agencies as well as local and international organizations to disseminate any such recommendations. The activities of the PDO are largely concentrated in monitoring and advising, as the Adviser has determined that these two functions have the most potential to improve the human security of people affected by conflict, and thereby to strengthen the ability of SSG/R to act as a tool for realizing SDG 16.

Monitoring

The monitoring activities of the PDO vis-à-vis the conflict-affected population in Georgia represent a good example of human rights monitoring by an ombuds institute that has a direct impact on the target population. When it became clear, for instance, that IDPs across the country lacked complete and updated information on

their legal status and rights, the capacities of the PDO were strengthened and resources were allocated to educate and raise awareness among this population. Partners of the PDO and the donor community also recognized this need, and in 2010, UNHCR and the Council of Europe supported a project to enhance the capacity of the PDO to address the conditions of IDPs.¹⁰⁷ The project facilitated the establishment of a monitoring

103 Public Defender of Georgia, *Report of the Public Defender of Georgia On the Situation of Human Rights and Freedoms in Georgia: 2021 (2022)*.

104 UNHCR, *Protection of Internally Displaced Persons in Georgia: A Gap Analysis* (European Union and UNHCR, 2009).

105 World Bank, *Georgia: Transitioning from Status to Needs Based Assistance for IDPs – A Poverty and Social Impact Analysis*, Report No: ACS16557 (Washington, DC: World Bank, 2015).

106 The current Adviser on Human Rights Issues of the Conflict-affected Population within the Public Defender's Office of Georgia is Meri Kochlamazashvili, one of the two authors of this case study.

107 Council of Europe Office in Georgia, 'Supporting the Public Defender's Work to Defend the Rights of IDPs and Other Conflict-affected Individuals', <https://www.coe.int/en/web/tbilisi/idps> (accessed 1 December 2023).

team within the PDO, which carried out 700–800 visits annually to engage in education and awareness raising with IDPs throughout Georgia, to share new policy and legal developments, clarify important issues such as social benefits and housing standards, and discuss any pressing security needs and challenges. These field visits by the PDO enabled it to collect data that helped identify gaps in policy implementation and other practical problems, which resulted in the development of new recommendations for relevant stakeholders. Some of the different monitoring activities undertaken by the PDO to address the needs of the conflict-affected population are described below, as well as how they have improved human security and have contributed to improving SSG and advancing progress towards SDG 16.

Monitoring eviction practices that target IDPs

In 2010 and 2011, thousands of IDPs were forcibly evicted by local Georgian authorities from buildings in which they had lived since the conflicts in Abkhazia and South Ossetia. The PDO – the mandate of which to protect the rights of IDPs includes protecting their right to an adequate standard of living as specified in the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Economic, Social and Cultural Rights – began monitoring these eviction processes and determined that they failed to meet international standards. Specifically, the PDO found that Georgian authorities, primarily the Ministry of Internal Affairs, had not carried out a genuine consultation process with the IDPs and had failed to provide reasonable advance notice about the evictions or adequate housing alternatives. In fact, in some cases, evicted IDPs were not offered alternative accommodation at all, with authorities instead instructing them to find shelter with relatives and friends.

The PDO was particularly critical of the eviction planning and implementation process, the absence of special regulations to govern a re-allocation process, and the lack of information regarding alternative accommodation offered to IDPs; and it aired these criticisms in various public statements, in its annual report to parliament, and in recommendations presented to relevant state authorities. It recommended, for example, that the Ministry of IDPs adopt clear criteria/procedures for

the eviction and re-allocation of IDPs.¹⁰⁸ On this basis, ‘Standard Operating Procedures for the Vacation and Re-allocation of IDPs for Durable Housing Solutions’ were developed and adopted by the interagency Steering Committee for IDPs, which was created after the adoption of a State Strategy for IDPs in 2007, to oversee and coordinate its implementation.¹⁰⁹ As a member of the Steering Committee, the Public Defender was involved in the process of drafting and adopting these procedures, following which the PDO monitored their implementation along with local civil society organizations (CSOs) and international organizations.¹¹⁰

This case illustrates the crucial role of the PDO in protecting the right to adequate housing for the most vulnerable and marginalized in Georgian society. Through its oversight of the work of the security agencies responsible for evicting and relocating IDPs, the PDO was able to improve the human security of IDPs by ensuring that eviction practices are conducted in compliance with human rights standards. This is an example of how the work of the PDO furthers progress towards SDG 16.6 by enhancing the transparency and accountability of public institutions.

Monitoring the human rights situation of IDPs living in private accommodation in Georgia

Towards the end of 2010, during the IDP eviction crisis, the PDO launched a profiling and monitoring initiative to gather information about the situation facing IDPs in Georgia who were residing in private accommodations. This entailed a survey of privately accommodated IDPs across Georgia, as well as interviews with 279 displaced families.¹¹¹ Survey respondents and these families were selected randomly from a list of IDPs in private accommodation provided to the PDO by the Ministry of IDPs for this purpose.

The PDO sought primarily to determine the needs of IDPs in Georgia, including their security needs, but verifying the Ministry’s database became a secondary objective. There were challenges in locating the households selected by the PDO based on the residence addresses provided in the database, and it was soon evident that much of the information recorded by the Ministry was outdated and inaccurate. This was largely due to the frequent movement of IDPs from one

¹⁰⁸ See: Public Defender of Georgia, *Annual Report of the Public Defender of Georgia: The Situation of Human Rights and Freedoms in Georgia – 2010* (Tbilisi: Office of Public Defender of Georgia, 2011).

¹⁰⁹ The Steering Committee is responsible for adopting and approving legislative frameworks for IDPs, as well as setting key priorities and monitoring implementation of the Strategy. It is led by the Ministry of IDPs but includes members from across the Georgian government and the international sector, as well as the Public Defender. See: ‘Standard Operating Procedures for the Vacation and Re-allocation of IDPs for Durable Housing Solutions’ (2010). NB: In this case, the use in English of ‘Vacation’ means the act of vacating.

¹¹⁰ Follow up monitoring was coordinated by the UNHCR office in Georgia.

¹¹¹ Public Defender of Georgia, *Annual Report of the Public Defender of Georgia: The Situation of Human Rights and Freedoms in Georgia – 2010*, pp. 251–258.

accommodation to another. The PDO thus urged the Ministry to update its database of IDPs and ensure its accuracy, which led to a re-registration process for IDPs in 2013 aimed at collecting the most current information on the IDP population.¹¹² The Ministry established 12 commissions to carry out the (re-)registration of IDPs, as well as a special group to monitor the process, which was coordinated by the UNHCR and included representatives from the PDO, local CSOs, and international organizations.

This effort to re-register IDPs in Georgia had a positive impact on the human security of this population, as many had been unable to obtain legal identity documents without a registered address, and were thus blocked from accessing basic public services. This made many IDPs in Georgia essentially invisible to the system.¹¹³ In such a situation, people may be inclined to rely on informal networks to substitute formal services, which can increase their exposure to fraud, human trafficking, and other crimes. By re-legalizing the identities of IDPs, the re-registration process reduced their dependency on informal networks and also contributed to the realization of SDG 16.9, which aims to provide legal identity for all.

Monitoring the human rights situation in settlements near the Administrative Boundary Line

The PDO also monitors the human rights situation for the conflict-affected population that lives near the Administrative Boundary Line (ABL) in Georgia. Living in such close proximity to occupied territory that is not controlled by Georgian authorities, these people are subject to an increased risk of human rights violations.¹¹⁴ To assist this population, the PDO conducts monthly field visits to communities near the ABL, to monitor their living and socioeconomic conditions and provide residents with comprehensive information about their rights, and how to protect them. It also monitors potential

human rights violations resulting from the continued construction of fences along the ABL by Russian and Ossetian soldiers, who are attempting to divide Georgia from South Ossetia. These fences are patrolled by soldiers and many people who come near or attempt to cross the ABL are detained.

Such detentions are arbitrary and violate the rights to liberty and security, and freedom of movement, so it is notable that in most cases, detainees are released after paying a fine. That said, people attempting to reach the town of Akhagori in the Tskhinvali region of South Ossetia have been illegally detained for 2–3 days, and in recent years, there have been frequent cases of long-term illegal detentions in both Abkhazia and South Ossetia. In 2021, seeking to better understand these trends, the PDO conducted a comprehensive study of illegal detentions of Georgian citizens in the vicinity of the ABL.¹¹⁵ It found that the occupation regime had previously charged detainees with an administrative offence and had imposed a fine, but had more recently taken to launching criminal proceedings in response to border crossings, significantly affecting the lives of people residing near the ABL.¹¹⁶ The PDO has repeatedly called on the de facto authorities and the Russian Federation, which exercises effective control over the occupied regions, to put an end to this practice of ‘borderization’ and to respect the right to liberty and security of the residents of affected communities.¹¹⁷

When individuals are detained under these circumstances, the PDO conducts monitoring visits to the families of detainees, to gather information from them. These cases are also highlighted in parliamentary reports and special reports of the PDO, and in public statements of the Public Defender.¹¹⁸ Additionally, the PDO provides legal assistance to people who are illegally detained and works to raise awareness about this issue in the international community.¹¹⁹ For instance, the PDO has sought to contribute to clarifying the question of state jurisdiction and responsibility vis-à-vis

112 Public Defender of Georgia, Annual Report of the Public Defender of Georgia: *The Situation of Human Rights and Freedoms in Georgia – 2013* (Tbilisi: Office of Public Defender of Georgia, 2014).

113 Luka Glušac, *Leaving No One Behind, Leaving No One Unaccountable: Ombuds Institutions, Good (Security Sector) Governance and Sustainable Development Goal 16*, DCAF SSR Paper 22 (Ubiquity Press and DCAF, 2021).

114 For example, see: Natia Seskuria, ‘Russia’s “Hybrid Aggression” against Georgia: The Use of Local and External Tools’, Center for Strategic and International Studies, September 2021, p. 3.

115 Public Defender of Georgia, *Special Report of the Public Defender of Georgia on the Impact of the Closure of So-called Checkpoints in 2019-2020 on the Human Rights Situation of the Population Living in the Occupied Territories* (Tbilisi, 2021).

116 *Ibid.*, p. 17.

117 ‘Borderization’ is a Russian policy by which it systematically encroaches on Georgian territory and constructs a literal, physical border, while also using the ‘ongoing’ conflict in Georgia as a political tool. See: Seskuria, ‘Russia’s “Hybrid Aggression” against Georgia’, p. 3; and Mariusz Rzeszutko, ‘The borderization of Georgia’s breakaways as a tool of Russia’s long-term struggle with the EU and NATO’, Marshall Center Papers, June 2022.

118 For example, see: Public Defender (Ombudsman) of Georgia, ‘Meeting with Family Members of Persons Detained by Occupation Regime’, 13 July 2020, <https://www.ombudsman.ge/eng/akhali-ambebi/shekhvedra-saokupatsio-rezhimis-mier-dakavebulis-ajakhtan>; and see the annual reports of the PDO to parliament at: <https://ombudsman.ge/eng/saparlamento-angarishebi> (accessed 1 December 2023).

119 See: Public Defender’s Office of Georgia, Submission to the Office of the High Commissioner for Human Rights (OHCHR), pursuant to Human Rights Council resolution 34/37 entitled ‘Cooperation with Georgia’ (19 September 2017).

detention in occupied territory. Given that the Georgian government is unable to exercise effective control over occupied territories and the de facto regime is not recognized by the international community, ensuring effective protection of human rights in these territories is a significant challenge. Yet, the Georgian government has a positive obligation to take all measures to protect the rights of its citizens, and this implies that Georgian law enforcement bodies investigate any illegal actions committed along the line of occupation.¹²⁰

These efforts of the PDO to ensure that the rule of law is upheld, and fundamental freedoms are respected are aimed at improving the human security of the conflict-affected population residing near the ABL. Fundamentally, this work recognizes the right of this population to freedom from fear. In this way, the PDO is directly contributing towards SDG targets 16.3 on promoting the rule of law and equal access to justice, and 16.10 on access to information and protecting fundamental freedoms.

Monitoring the human rights situation in occupied territories

As noted above, questions of jurisdiction and responsibility arise in the context of PDO monitoring of the rights of people living in the occupied regions of Georgia. Even so, the PDO attempts this rather challenging undertaking, despite difficulties in securing physical access to residents in Abkhazia and South Ossetia as well as administrative and political obstacles imposed by the de facto authorities. To mitigate these challenges so that it can fulfil its mandate to monitor the human rights situation, provide redress for human rights violations, and advocate for improved human rights protection for the conflict-affected population in occupied territories, the PDO actively collaborates with CSOs and community organizations based in those territories. This collaboration has enabled the PDO to gather important information about human rights violations, develop recommendations for corrective action, and raise concerns to the Georgian government and the de facto authorities.

An instructive example is the work of the PDO to advocate for access to healthcare for persons residing in the occupied Abkhazian district of Gali. People from Gali were excluded from the referral medical programme intended for residents of the occupied regions and were therefore unable to receive

healthcare in Georgia, until the PDO partnered with CSOs and community organizations to persuade the government to include the population of Gali in the programme, on the premise that they should be granted equal treatment and provided with free medical care just as any other Abkhaz and Ossetian population residing in those regions. This advocacy was successful and the Gali population now benefits from the referral programme, which contributes to realizing SDG 16.10 on access to information and fundamental freedoms and more broadly, to SDG 3 on good health and well-being. Moreover, this case highlights the value of collaborative efforts of the PDO with civil society to improve human security and impact lives in practical ways that advance their right to live in dignity.

Indeed, where the PDO has no direct influence over the Russian government or de facto authorities, it routinely seeks to join forces with international organizations and CSOs, for two main reasons. First, international stakeholders have supported the PDO in promoting its findings and recommendations;¹²¹ and second, international partners provide the PDO with an opportunity to more widely share its assessments, findings, and recommendations on access to health and education, freedom of movement, and legal identity, which is crucial to fulfilling the mandate of the PDO to protect and promote human rights.

Advising

Alongside monitoring, the PDO also provides policy and legislative advice, both of which can play a role in improving the governance of the security sector, and by extension, the implementation of SDG 16. When it comes to policy, the PDO advises state authorities on how to formulate and improve human rights policies, and best implement them. For example, as a member of the Steering Committee established to oversee implementation of the state's IDP strategy, the PDO is part of a coordination mechanism that makes decisions about joint activities of the government and international organizations to implement the strategy and its associated action plan. The PDO also offers legal advice, manifesting its normative function; that is, the right to submit parliamentary bills, propose amendments, encourage the ratification of or access to international human rights instruments, and/or challenge laws and other regulations before the constitutional court (or other judicial bodies).

¹²⁰ Public Defender of Georgia, *Special Report of the Public Defender of Georgia on the Impact of the Closure of So-called Checkpoints in 2019-2020 on the Human Rights Situation of the Population Living in the Occupied Territories*.

¹²¹ For example, see: OSCE ODIHR, 'Report on First Phase of the Nomination and Appointment of Supreme Court Judges in Georgia', June – September 2019; OSCE ODIHR, 'Fourth Report on the Nomination and Appointment of Supreme Court Judges in Georgia', August 2021; and OSCE ODIHR, Opinion on the Legislative Amendments on the State Inspector's Service of Georgia, No. GEN-GEO/436/2022 [NR], Warsaw, 18 February 2022.

Advising on legislation to protect the rights of IDPs

The PDO sometimes provides legal commentary on legislation, and did so in relation to Georgia's previous Law on Internally Displaced Persons, first adopted in 1996. With amendments from 2001, 2005, 2006, and 2013, the law set out the rights of IDPs and the responsibilities of the government towards IDPs, for example entitling IDPs to a monthly allowance and adequate housing, and like all Georgian citizens, to free primary and secondary education, medical coverage under existing state programmes, and assistance in finding temporary employment. Despite this, starting in 2011, the PDO highlighted ways the law was not fully in compliance with international norms and standards, through tailored recommendations for corrective actions and in its annual reports.¹²² After 2013 amendments to the law failed to align it completely with those norms and standards, the PDO lobbied relevant state authorities to abandon the 1996 law altogether (as well as its amendments), and develop a new law entirely.

This process began with an invitation by the Ministry of IDPs for the PDO to join a working group it had established to address challenges in providing support to IDPs, the main goal of which was to conduct a systematic revision and analysis of relevant legislation and to assess the harmonization of existing legislation with international standards. Apart from representatives of the Ministry and the PDO, the working group was composed of representatives of international organizations and local CSOs.¹²³ By early 2013, a draft law on IDPs had been formulated by the Ministry, incorporating most of the suggestions of the working group, including those offered by the PDO. At a final meeting of the working group, held in June 2013 and organized by the PDO, the draft law was reviewed, and its final iteration agreed.¹²⁴ In March 2014, the new Law on IDPs came into effect.¹²⁵

The adoption of this new law was an indisputable step forward in protecting the human rights of IDPs in Georgia. It aligns more closely to international standards than the previous law, including by more clearly defining IDPs. The role of the PDO in developing it directly contributed to realizing SDG targets 16.6 on effective, accountable, and transparent institutions (by improving the harmonization of state law with international norms on IDPs), and 16.10 on access to information and fundamental freedoms (by ensuring that the rights of IDPs are enshrined in legislation that conforms with international norms and standards).

Advising on policy development for durable housing solutions for IDPs

Another critical precondition for enjoying freedom from want as an essential element of human security is housing, and all IDPs have the legal right to shelter.¹²⁶ As established by the Pinheiro Principles, adopted by the United Nations in 2005, it is the right of refugees and displaced persons to have their housing, land, and/or property restored, or to be compensated for it if it cannot be restored.¹²⁷ Prior to 2013, however, Georgian legislation was not in line with these standards, and lacked clear criteria or procedures for providing durable housing solutions. The PDO repeatedly voiced that this was a major concern, and the Ministry of IDPs finally responded by adopting Order No. 320, which set rules and criteria for the provision of living space to IDPs, and also established a Commission on IDPs tasked with reviewing applications for IDP status. The PDO has an observer status on the Commission and is charged with monitoring its work.¹²⁸ In this way, the PDO is again making an important contribution to protecting the fundamental freedoms of IDPs, thereby furthering progress on SDG targets 16.6 and 16.10.

122 Public Defender of Georgia, *Annual Report of the Public Defender of Georgia: The Situation of Human Rights and Freedoms in Georgia – 2011* (Tbilisi: Office of Public Defender of Georgia, 2012).

123 Public Defender of Georgia, *Annual Report of the Public Defender of Georgia: The Situation of Human Rights and Freedoms in Georgia – 2012* (Tbilisi: Office of Public Defender of Georgia, 2013).

124 The meeting was attended by the representatives of Ministry of IDPs, UNHCR in Georgia, DRC, NRC and the Fund for Social Programmes.

125 Government of Georgia, Law of Georgia on Internally Displaced Persons from the Occupied Territories of Georgia (6 February 2014).

126 OCHA, *Guiding Principles on Internal Displacement* (New York: United Nations, 2001), Art. 18.

127 The final report of Special Rapporteur Paulo Sérgio Pinheiro was delivered to the UN Economic and Social Council's Commission on Human Rights in June 2005, and the principles he laid out are available in UN document E/CN.4/Sub.2/2005/17. These principles stipulate that: 'All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal'. For more on the Pinheiro Principles and their implementation, see: *Handbook on Housing and Property Restitution for Refugees and Displaced Persons: Implementing the 'Pinheiro Principles'* (FAO, IDMC, OCHA, OHCHR, UN-HABITAT, and UNHCR, 2007).

128 Public Defender of Georgia, *Annual Report of the Public Defender of Georgia: The Situation of Human Rights and Freedoms in Georgia – 2015* (Tbilisi: Office of Public Defender of Georgia, 2016).

2.4. Lessons learned and recommendations

The PDO plays a critical role in promoting and protecting human rights in Georgia. Through its monitoring, investigative, and advisory activities, it helps to ensure that the government and other authorities respect and protect the rights of all people in the country, and as this chapter has demonstrated, the conflict-affected population particularly. The activities of the PDO to improve legislation and legal procedures, and secure basic public services and housing for IDPs and other conflict-affected people have made public institutions more effective, accountable, and accessible to this vulnerable group and have ensured that Georgian legislation and policies conform with international standards. This has undoubtedly contributed towards the realization of SDG 16 and its aspirations for peaceful, just, and inclusive societies.

The examples offered here of the work of the PDO reflect the tangible results it has achieved while operating in a complex and sometimes volatile environment. By improving the human security of the conflict-affected population in Georgia, the PDO has enhanced the capacity of SSG/R as a tool for achieving SDG 16, as illustrated in the operationalization of its advisory and monitoring work using bottom-up strategies and approaches that emphasize direct engagement with that population. From this experience, several key lessons emerge related to the strategic perspective and results of the PDO and its broader contributions to human security and SDG 16. These lessons may serve as recommendations for other ombuds institutes working with conflict-affected populations.

The first of these lessons concerns the absolute necessity for ombuds institutes to *be present on the ground*. This is a precondition for the effective discharge of two essential ombuds functions: complaint handling and monitoring. It was only through its consistent presence on the ground that the PDO was able to fully understand the needs of different categories of the conflict-affected population, which varied substantially due to differences in their legal statuses and histories. Ongoing monitoring of this kind has ensured that the PDO remains up to date on information and evidence that allow it to pursue important initiatives aimed at improving the status of IDPs. Furthermore, this ground-level awareness feeds bottom-up strategies for improved

human security, which act to complement the often top-down approaches of SSG/R in realizing SDG 16.

Another lesson is that ombuds institutes should strengthen their advocacy and communication, so that they *have the capacity to influence change at the policy level*. This means establishing efficient internal communication channels so that staff on the ground can feed timely information to headquarters, which is necessary to develop and propose strategic initiatives to the relevant state authorities. While all major policy and legislative changes are ultimately negotiated and adopted by legislators, their impetus often lies in data collected on the ground, analysed within an ombuds or human rights institution, and then disseminated in an efficient manner to policymakers.

These activities are more effective when trust has been built, which leads us to a third lesson: it is essential that ombuds institutions both *establish personal contact and deliver on any promises when dealing with marginalized and vulnerable populations*. This is certainly true of IDPs in Georgia, many of whom have little to no trust in the state after having been forcibly displaced. For this reason, the PDO has invested significant effort into making itself visible and accessible and has built trust by being transparent about what it can and cannot do. This has contributed to SDG target 16.3 by improving access to justice for the conflict-affected population.

To translate any of these and other lessons learned into meaningful action, *ombuds institutes need specialists*. This is the fourth lesson, as well as a strong recommendation. Hiring staff who are equipped with the knowledge and skills to deal with specific vulnerable groups, whether migrants, IDPs, or refugees is imperative. Each of these categories imply a different legal regime, making specialization a necessity. The PDO achieved this by appointing a specialist advisor who exclusively addresses the rights of the conflict-affected population, which enabled the institution to suggest viable and feasible solutions for all parts of this population. This led to wide recognition of the PDO as a reliable partner to both the conflict-affected population and to state authorities, helping the PDO remain dedicated to the core theme of the 2030 Agenda – to “leave no one behind” – by facilitating its efforts to reach and assist the most vulnerable and marginalized.

A final key lesson that can be drawn from the experience of the PDO in Georgia relates to the importance of *local, national, and international cooperation*. Operating in the context of conflict-affected territories has brought many challenges to the work of the PDO, including issues of contested statehood and jurisdiction. As a consequence, the bilateral mechanisms that would typically be deployed by state authorities to resolve cross-border issues are absent. This has compelled the PDO to innovate by working with CSOs and community organizations located in the occupied territories, and to raise awareness of key issues on the international stage. Establishing these partnerships is crucial, especially as a growing number of inter-state and intra-state conflicts are resulting in more conflict-affected populations and increasing numbers of IDPs and refugees worldwide. On top of this, protracted armed conflicts tend to have severe economic consequences that greatly affect the ability of state parties to assist and support IDPs, thereby increasing their vulnerability further. Hence, ombuds institutes should redouble their efforts to develop partnerships on the local, national, and international levels, including with grassroots CSOs working in areas that remain outside the control of statutory authorities.

Of course, ombuds institutes are only part of the machinery needed to successfully respond to the challenges posed by the growth of conflict-affected populations. The urgent need to adopt effective policies, offer legal guarantees, and secure state protection are often disproportional to the capacity of a state to deliver them, and conflict-affected populations particularly struggle to access public services and receive sufficient material support from the state. This exposes these populations to risks including poverty, hunger, violence, discrimination, and insecurity. In other words, they risk being left behind; precisely what the 2030 Agenda seeks to prevent. In Georgia, as this chapter has shown, the PDO has worked deliberately through its monitoring and advisory functions to reach those who are furthest behind, especially people affected by conflict. This has improved the human security of IDPs, boosting the capacity of SSG/R to advance the country towards a number of SDG 16 targets, including 16.1 on reducing violence, 16.3 on rule of law and access to justice, 16.6 on developing effective, accountable, and transparent institutions, 16.9 on legal identity for all, and 16.10 on access to information and protecting fundamental freedoms.

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3. THE COMMISSION ON ADMINISTRATIVE JUSTICE- OFFICE OF THE OMBUDSMAN OF KENYA: PROMOTING TRANSPARENCY AND ACCOUNTABILITY IN POLICE RECRUITMENT AND PRISON MONITORING

DR. MARY KIMARI AND DR. LUKA GLUŠAC





3.1. Introduction

This chapter aims to demonstrate how the Commission on Administrative Justice–Office of the Ombudsman (hereinafter CAJ) contributes to achieving SDG 16 through its oversight of and engagement with the security sector, notably the police service and prison administration of Kenya. By enhancing the effectiveness, accountability, and transparency of these institutions, CAJ supports implementation of SDG 16, in particular target 16.6 on developing effective, accountable and transparent institutions. Moreover, as this chapter seeks to demonstrate, the work of CAJ to promote transparency and accountability in police recruitment and prison monitoring has improved the human security of Kenyan citizens and has advanced national efforts towards peace, justice, and inclusivity.

Since the adoption of a new Constitution in 2010, Kenya has made significant progress in strengthening its democratic institutions. However, serious challenges persist, including political polarization, ethnic tension, corruption, and infringement of rights and freedoms such as the freedom of access to information, freedom of expression, and freedom of the media. Together, these challenges continue to adversely affect the composition and functioning of state institutions, including those responsible for the provision and management of security. Additionally, the country has a mixed record in relation to human rights protection and observance of the rule of law, necessitating further measures to ensure that all citizens enjoy full and equal rights and protections.

The above position notwithstanding, Kenya has made considerable strides in advancing human rights, including by taking steps to address police brutality. For instance, when 21-year-old student activist Carilton Maina was killed by police in 2018, the Independent Policing Oversight Authority (IPOA) launched an investigation, resulting in the arraignment of Constable Emmanuel Abunya Oyombe in 2020.¹²⁹ Moreover, the government also established a task force to review existing legislation on the use of force by police. Further, it is worth noting that there has been a gradual increase of women leaders in the security sector.

It is in this context that CAJ works to protect the sovereignty of Kenyan citizens while securing the observance by all state organs of democratic values. This obligates CAJ to implement strategies to ensure that the state is more effective, accountable, and inclusive, while strengthening the rule of law and access to justice. Together, these strategies – and their results – illuminate the critical role played by CAJ in promoting administrative justice, particularly in the security sector. Through such efforts, CAJ plays a key role in fostering conditions conducive to sustainable development. To illustrate this, this chapter examines the work of the CAJ with the Kenyan police and the State Department of Correctional Services, which are domiciled within the Ministry of Interior and National Administration.

129 Farrel Ogolla, 'IPOA investigates shooting of varsity student Carilton David Maina in Kibera', *The Standard*, 26 December 2019, <https://www.standardmedia.co.ke/article/2001307474/ipoa-investigates-shooting-of-a-varsity-student-in-kibera>.

As the component of the state security apparatus that is most visible to the general population, the conduct of police can directly affect public trust in the state.¹³⁰ In Kenya, available data indicates that police are among the least trusted public authorities, with corruption consistently cited as a key explanatory factor.¹³¹ Despite this, the security sector remains one of the most attractive employers to young Kenyans, in part because entry-level positions require minimal education qualifications. With this in mind, and given that the Kenya Police Service (KPS) ranks amongst the largest security bodies in the country – with over 70,000 officers¹³² – it is imperative that efforts continue to increase its effectiveness, in particular through implementing transparent, inclusive, and procedurally fair strategic human resource practices concerning recruitment, induction and placement.

Corrections officers, being responsible for maintaining safety, security and appropriate conditions within prisons, are commonly considered as part of the security and justice sector.¹³³ As of 2022, in Kenya these officers worked in facilities housing a total population of nearly 60,000 detainees, including pre-trial detainees.¹³⁴ With the majority of jails and prisons in Kenya built decades ago and designed for almost half the number currently held in detention, concerns persist about living conditions and overcrowding. In 2022, the UN Committee against Torture reported the ‘poor material conditions of detention in places of deprivation of liberty’ in Kenya, in particular, the report highlighted inadequate hygiene status, lack of ventilation, insufficient quality and quantity of food and water and limited recreational or educational activities. The Committee also observed that ‘limited access to quality health care, including mental health care, and the lack of trained and qualified prison staff, including medical staff, remain serious problems’ in the Kenyan prison system. Further, it raised concerns about reports on the prevalence of prison violence, ‘including violence perpetrated by prison staff on detainees, inter-prisoner violence, cases of rampant sexual abuse’, and noted that in some cases children were held in the same detention facilities as adults.¹³⁵

With the above in mind, this chapter presents two case studies related to police recruitment and prison monitoring, respectively. It begins with an overview of the functions and powers of CAJ, before presenting essential information on the security sector in Kenya, including its oversight architecture. These case studies aim to demonstrate the contribution of CAJ to the realization of SDG 16 in Kenya. Finally, lessons and recommendations drawn from the activities of CAJ in relation to these cases bring the chapter to a close.

130 DCAF – Geneva Centre for Security Sector Governance, ‘The Police’, SSR Backgrounder Series, 2019.

131 See: Paul Kamau, Gedion Onyango, and Tosin Salau, ‘Kenyans cite criminal activity, lack of respect, and corruption among police failings’, Afrobarometer Dispatch No. 552, 19 September 2022. Available as a PDF at: <https://www.afrobarometer.org/wp-content/uploads/2022/09/AD552-Kenyans-cite-criminal-activity-and-corruption-among-police-failings-Afrobarometer-16sept22-1.pdf>.

132 According to the 2021 Annual Report of the National Police Service, there was total of 72,005 police officers in NPS (60,885 males and 11,120 females). National Police Service, 2021 Annual Report, <https://www.nationalpolice.go.ke/annual-report.html?download=94:annual-report>, p. 1.

133 DCAF – Geneva Centre for Security Sector Governance, ‘The Justice Sector’, SSR Backgrounder Series, 2022.

134 See: World Prison Brief, ‘Kenya’, 12 May 2022, <https://www.prisonstudies.org/country/kenya>.

135 United Nations Committee against Torture, ‘Concluding observations on the third periodic report of Kenya’, CAT/C/KEN/CO/3 (30 May 2022), para. 17.

3.2. The Commission on Administrative Justice–Office of the Ombudsman of Kenya, Security Sector Governance/ Reform, and SDG 16

The following describes the mandate and functions of the Commission on Administrative Justice (CAJ), and how these are applied in furtherance of good security sector governance and SDG 16 implementation in Kenya.

The mandate and functions of the CAJ

The Commission on Administrative Justice (CAJ) was established, pursuant to Article 59(4) of the Constitution of Kenya, by the 2011 Commission on Administrative Justice Act.¹³⁶ Commonly referred to as the Office of the Ombudsman, CAJ is one of the three successor commissions to the Kenya National Human Rights and Equality Commission, alongside the National Gender and Equality Commission and the Kenya National Commission on Human Rights. According to the Constitution, CAJ is an independent state institution headed by a chairperson, who is appointed by the President with approval from the National Assembly.

As one of its primary functions, CAJ investigates complaints and grievances against state agencies and public officers, and has the power among others, to summon witnesses, gather evidence, and make recommendations to relevant authorities. The investigatory jurisdiction of CAJ includes all state officials and public officers in the National Government and County Governments, as well as those in public institutions such as hospitals, schools, and universities. CAJ's functions centre on enforcing administrative justice and ensuring access to justice, both of which play a crucial role in realizing SDG target 16.3 on promoting the rule of law and ensuring equal access to justice for all. It does this through issuing state advisories, implementing capacity building programs for state officials and public officers – including those within CAJ – conducting research on how to improve administrative justice processes and procedures, implementing

strategies to improve access to information, undertaking systemic investigations, conducting awareness raising activities on fundamental rights and freedoms, and providing free legal advice, among others.

One of the key features of CAJ is its accessibility to the public. For instance, complaints can be filed through various means, including by visiting one of its seven offices or 12 Huduma Centres,¹³⁷ calling a toll-free number, texting, writing a letter, sending an email, or completing an online complaint form on CAJ's website. In addition, CAJ provides a centralized online platform for the submission and referral of complaints to other oversight bodies, helping to ensure that they are addressed in a timely and efficient manner. The platform also promotes transparency and accessibility of the complaint handling process through allowing users to track the progress of their complaints as they are referred to the relevant oversight actor.

In addition to SDG 16, the aforementioned functions of CAJ support progress towards several other SDGs. For example, through conducting research and promoting awareness of administrative justice, CAJ plays a role in furthering SDG 4 on inclusive and equitable quality education and lifelong learning opportunities for all. In addition, in the context of SDG 5 on gender equality, CAJ conducts investigations into service issues that involve discrimination, harassment, and other forms of gender-based violence.

¹³⁶ Republic of Kenya, Commission on Administrative Justice Act, No. 23 of 2011 (27 August 2011).

¹³⁷ Huduma Centres are 'one-stop-shop platforms' where various government services are offered 'to ensure access to efficient, effective, and citizen-centric services', through the Huduma Kenya Service Delivery Programme (HKSDP) – a Kenya Vision 2030 Flagship Project. See more on the Huduma Kenya website, at: <https://www.hudumakenya.go.ke/aboutus>.

The CAJ, SSG/R, and SDG 16

As one of Kenya's main security sector oversight actors, CAJ oversees all the institutions and mechanisms responsible for maintaining law and order, protecting the country's borders, and ensuring the safety of its citizens. This includes the two ministries chiefly responsible for security management – the Ministry of Defence and the Ministry of Interior and National Administration – and security providers such as the Kenya Police Service, the National Intelligence Service (NIS), the Kenya Defence Forces (KDF), and the Kenya Wildlife Service.

The National Police Service (NPS) is the primary law enforcement agency in Kenya tasked with 'maintain[ing] law and order by protecting lives and property while detecting and preventing crime'.¹³⁸ The Service has implemented reforms in recent years aimed at improving its effectiveness and professionalism and ultimately, preventing police brutality and increasing public trust in the force. So far, however, these reforms have yet to fully achieve their intended results.¹³⁹

Alongside the police service, the National Intelligence Service (NIS) is a less visible but equally important security actor, given its responsibility for gathering and analysing intelligence to protect national security, and its involvement in counterterrorism operations and border security. Further, as Kenya has historically experienced security challenges related to poaching and other wildlife crimes, the Kenya Wildlife Service (KWS) also plays a central role in security by protecting the country's wildlife and conserving its natural resources, in part through wildlife law enforcement and anti-poaching operations. Meanwhile, the Kenya Defence Forces (KDF), administered by the Ministry of Defence, are responsible for defending the country's borders and territorial integrity. The KDF is also involved in peacekeeping operations in the region, including as part of the African Union Mission to Somalia (AMISOM), where its role in restoring peace and stability has been commended by the UN.¹⁴⁰

Statutory security bodies, including the KDF, have their own internal grievance systems. Section 303(1) of the Kenya Defence Forces Act of 2012 stipulated that such

a grievance mechanism be established to 'address any complaint brought by or against a member of the Defence Forces.' The Defence Council thus developed the 2017 Kenya Defence Forces (Internal Grievance Mechanism) Rules, which set out how complaints are to be lodged and investigated and how the outcome of an investigation can be appealed.¹⁴¹ The Ministry of Defence also has complaint-handling procedures and guidelines for civilian staff, adopted in 2015, which were modelled on CAJ guidelines for the resolution of public complaints.

These internal mechanisms and procedures contribute to ensuring that administrative processes within the military are more transparent, accountable, and responsive, in line with SDG target 16.6. This notwithstanding, CAJ has continued to receive complaints against the KDF (roughly 300 since 2011), filed by civilians as well as those in active service and retired personnel, indicating that existing internal grievance mechanisms are not entirely effective at addressing the issues raised by complainants. Complaints generally relate to promotions, terminations of service, and transfers, all highlighting non-compliance with policies and standard operating procedures. In addition, civilian complaints often emanate from land disputes as a result of the military claiming ownership over private property. It is against this background that CAJ, with the support of DCAF, has worked to strengthen grievance mechanisms for the armed forces, including by advocating for the establishment of a new body that would focus exclusively on protecting the human rights of military personnel and of the civilians affected by their operations.

In addition to its work on strengthening internal grievance mechanisms within the KDF, CAJ has also supported the development and implementation of an internal complaint management system for the Ministry of Interior and National Administration. Notwithstanding such internal systems, various other external entities also exercise oversight and control of the Kenyan security sector. For instance, the National Police Service Commission (NPSC) is responsible for overseeing the administration and management of the police force, while the Independent Policing Oversight Authority (IPOA) investigates complaints against police officers

138 See: Republic of Kenya, National Police Service Act, No. 11A of 2011 (27 August 2011), Article 24.

139 For more, see: Ingvild Magnæs Gjelsvik, 'Police Reform and Community Policing in Kenya: The Bumpy Road from Policy to Practice', *Journal of Human Security*, Vol. 16, No. 2 (2020), pp. 19–30; Tee Ngugi, 'Needed: Full, not piecemeal reforms for Kenya police', *The East African*, 15 April 2023, <https://www.theeastafrican.co.ke/tea/oped/comment/needed-full-not-piecemeal-reforms-for-kenya-police-4199924>; International Center for Transitional Justice, 'The Persistent and Widespread Need for Police Reform: Lessons from Kenya's Police Vetting Process', 24 June 2020, <https://www.ictj.org/news/persistent-and-widespread-need-police-reform-lessons-kenya%E2%80%99s-police-vetting-process>.

140 See: Government of Kenya, 'UN Secretary General Ban Ki-Moon welcomes Kenya's role in Somalia', press release, 8 December 2011. Available at: <https://reliefweb.int/report/kenya/un-secretary-general-ban-ki-moon-welcomes-kenya%E2%80%99s-role-somalia> (accessed 5 December 2023).

141 Republic of Kenya, National Defence Forces Act, No. 25 of 2012 (27 August 2012); and Republic of Kenya, Kenya Defence Forces (Internal Grievance Mechanism) Rules, Legal Notice No. 229 (17 July 2017).

and recommends appropriate action.¹⁴² Concomitantly, the National Assembly also carries out oversight of the security sector, primarily through the Committee for Administration and Internal Affairs and the Committee for Defence, Intelligence and Foreign Relations.¹⁴³ Other external oversight actors include the Kenya National Commission on Human Rights (KNCHR), human rights civil society groups and the Auditor General. Notably, the mandate and functions of the KNCHR complement and mutually reinforce those of CAJ by monitoring human rights abuses within the security sector through investigating and providing redress for human rights violations; carrying out research and monitoring compliance with human rights norms and standards; conducting human rights education; and by facilitating trainings, campaigns, and advocacy programmes on human rights. Civil society also plays a critical role through monitoring and advocating for accountability in the security sector, while the Auditor General performs financial oversight of the sector by auditing government expenditures and reporting on any irregularities.

Within this oversight architecture, the work of CAJ to promote accountability and transparency in the Kenyan security sector is essential. While CAJ exercises its powers to expose misconduct in the security sector and promote accountability and transparency in the provision and management of security more broadly, it also works for the benefit of the security sector actors themselves, for example through undertaking inquiries and investigations aimed at enhancing police welfare. In addition to such efforts, CAJ has collaborated with other actors in the law enforcement domain in order to prevent and address maladministration. For instance, in 2019 CAJ signed a memorandum of understanding with the IPOA and the NPS with the aim of enhancing institutional cooperation in the investigation and resolution of complaints related to police (mis)conduct. Additionally, CAJ has worked with other stakeholders to improve the recruitment and selection process for police officers – a pressing challenge that is addressed in the next section.



142 For more on police oversight in Kenya see: Kempe Ronald Hope, Sr., 'Civilian oversight of the police: The case of Kenya', *The Police Journal*, Vol. 93, No. 3 (2020), pp. 202–228; and Kempe Ronald Hope, Sr., 'Civilian Oversight for Democratic Policing and its Challenges: Overcoming Obstacles for Improved Police Accountability', *Journal of Applied Security Research*, Vol. 16, No. 4 (2021), pp. 423–455.

143 The National Security Council, which is chaired by the President, provides overall guidance and direction on matters of national security. The Cabinet Secretary for Interior and National Administration is responsible for formulating and implementing national security policies.

3.3. Promoting transparency and accountability in police recruitment and prison monitoring

The following case studies offer examples of how CAJ has exercised its oversight functions vis-à-vis the Kenyan security sector, describing its use of monitoring and advisory functions to improve police recruitment processes, and of an own-motion investigation to scrutinize maximum-security prison conditions in Nairobi. Both cases are intertwined with SDG 16, highlighting CAJ's contribution to this goal by promoting access to justice, protecting human rights, promoting transparency and accountability, and ultimately strengthening security sector institutions. Indeed, these case studies demonstrate the many ways in which the CAJ promotes access to justice for all Kenyans, including marginalized and vulnerable groups. Through its advocacy for governance reforms and greater accountability in the security sector, CAJ seeks to ensure the efficient and effective use of public resources, promote a culture of respect for human rights and the rule of law, and enhance the effectiveness and professionalism of public bodies, including those within the justice and security sector.

Monitoring and advising on the police recruitment process

Ideally, the profile of a police force should mirror the population, in terms of gender, ethnicity, religion, and other identities, as this helps the police better understand the society and the challenges faced by minorities. Thus, CAJ works to ensure that the recruitment process for police officers is fair and transparent and meets all legal requirements, by reviewing recruitment and selection procedures to identify and address any irregularities or violations of the law. This use of its monitoring and advisory functions to promote transparency and accountability in recruitment helps CAJ influence the police to become more inclusive and to make recruitment procedures fair. In so doing, it contributes to several SDG 16 targets, most notably 16.3 on the rule of law and access to justice, and 16.6 on developing effective, accountable, and transparent institutions.

CAJ has been actively involved in efforts to promote transparency and accountability in the recruitment and selection of police officers since 2012. This includes audits of police hiring processes conducted in 2015 and 2016. After the audits revealed nepotism and favouritism in both recruitment and selection, in 2018, CAJ received complaints from candidates who had applied for the position of constable. The complainants alleged that the recruitment process had been unfair and was marked by bias and favouritism. Following these accusations,

in March 2022, the National Police Service Commission (NPSC) invited CAJ to observe a nationwide recruitment drive for police officers. The exercise, which was conducted in all 290 constituencies with the aim of enlisting 5,000 youth to join the NPS, serves as an illustrative example of CAJ's monitoring function, as detailed below.

During the exercise, CAJ deployed 29 investigators in 15 recruitment centres across five counties to act as observers, including in 11 centres in Nairobi and one centre in Uasin Gishu, Isiolo, Kisumu, and Mombasa, respectively.¹⁴⁴ The observers monitored the recruitment drive and also interviewed members of the recruitment panels, candidate recruits, and other independent observers. The methodology adopted involved the development of a standard observation tool intended to monitor key elements of the recruitment process to verify that the procedures in place were equitable, and to identify ways the process could be further improved. CAJ placed a particular focus on observing whether recruitment was conducted in a just and fair manner. As such, CAJ observed and recorded if opportunities existed at the recruitment centres for applicants to submit complaints or provide feedback; if the process was efficient, members of the recruitment panel and the officers deployed to assist them were competent and whether the recruitment centres were suitable for the exercise. Any instances of discourtesy from the recruiters and or cases of abuse of power by the recruitment panels were also recorded.¹⁴⁵

¹⁴⁴ Purposive sampling was employed in selecting the recruitment centres where observers were located, based largely on proximity to CAJ headquarters and regional offices. See: Commission on Administrative Justice, *A Report on the Observation of the Recruitment of National Police Service Constables Held on 24th March 2022* (2022), p. 7.

¹⁴⁵ *Ibid.*, p. 6.

As a result of the monitoring exercise, CAJ found that practices across recruitment centres were inconsistent. For instance, while the majority of the centres started recruitment tests on time, at others, they were significantly delayed; and while the recruitment teams in most of the centres were professional and courteous, in some instances this was not the case. Moreover, a good practice observed at the Mamboleo Show Grounds in Kisumu – where a complaint desk was set up and was staffed by an officer – was not seen in other centres, which not only lacked complaint desks but offered no alternative means through which unsuccessful candidate recruits could raise concerns or grievances. At one recruitment centre, an unsuccessful candidate approached a CAJ observer and alleged that several recruited candidates had not gone through the required medical examination; but as the observer could not verify this allegation without access to restricted information, the complainant was advised to file a formal complaint with CAJ.¹⁴⁶

It is worth noting that a number of drawbacks affected both the monitoring exercise and the recruitment process, including the barring of CAJ observers from some stages of the process. For instance, in one recruitment centre, observers were denied access to documented procedures and guidelines, which challenged efforts to ascertain the parameters that were used to eliminate candidates. Further, CAJ observers were barred from witnessing the final selection process stage in all instances other than in the Isiolo Police Grounds, which also provided a list of the successful candidates.

The recruitment drive was also impacted by some critical substantive shortcomings, particularly incoherence relating to the formal criteria for recruitment. For instance, advertisement around the recruitment drive failed to mention important eligibility requirements, especially with respect to physical attributes. This meant that some candidates were disqualified because they did not fulfil criteria which had not been disclosed. In addition, physical eligibility requirements criteria were inconsistently weighted by recruiters. For example, the height of candidates was used as a criterion in some cases but not in others; and some centres used the running test (measuring the distance a candidate can run over a designated time) as a criterion for elimination while others did not.

CAJ observers also identified that many centres did not prioritize the ethnic and gender balance rule in recruitment. The number of male recruits far exceeded that of female recruits, ignoring the rule that at least one-third of recruits should be of ‘the less represented

gender’. There were also centres, including in Nyayo and City Stadium centres, where only males were recruited. This directly contradicted claims made in recruitment advertising that successful police candidates would reflect the gender, ethnic, and regional diversity of Kenya, and serves to undermine the country’s efforts to achieve SDG 5 on gender equality.

As a follow-up to the recruitment monitoring exercise, CAJ observers generated reports for each recruitment centre which informed the overall recruitment exercise report that included recommendations for the NPS and NPSC aimed at creating a more transparent, fair, and objective recruitment process that not only reflects the gender, ethnic, and regional diversity of the Kenyan people but also systematizes a comprehensive complaint-handling mechanism.¹⁴⁷ In a notable outcome, NPSC commissioners agreed to invite key stakeholders to monitor future recruitment events, and committed to providing clear procedures to allow for the direct observation of all stages of future recruitment exercises.

Through continued monitoring of police recruitment processes, CAJ found that both the NPS and NPSC largely complied with its recommendations and the NPSC’s Recruitment and Appointment Regulations, which together contribute to the realization of SDG targets 16.3 (promoting the rule of law and ensuring equal access to justice for all), 16.6 (developing effective, transparent and accountable institutions), and 16.10 (protecting fundamental freedoms), and demonstrate the tangible impact of CAJ on security sector governance in Kenya. This is evidenced by the implementation of CAJ recommendations in the following areas:

- ▶ An online recruitment portal was launched, to make the process easier and clearer to potential applicants.
- ▶ The advertising for recruitment was made clearer with respect to criteria, including the requirements for each gender.
- ▶ Recruitment processes have commenced on time and have been carried out in accordance with guidelines.
- ▶ Lists of shortlisted candidates have been made available and candidates who did not qualify informed of the reasons for their elimination, in the preliminary stage, so that only shortlisted candidates are invited for the second stage that focuses on physical attributes, skills, and medical assessments.
- ▶ A complaint desk has been set up in all recruitment centres.

¹⁴⁶ Ibid, p. 16.

¹⁴⁷ Ibid., pp. 25–26.

Notwithstanding these positive developments, several relevant legal provisions are yet to be fully implemented. This includes Section 12(7) of the NPSC Recruitment and Appointment Regulations (2015), which stipulates that the NPSC ‘shall publish the names of the shortlisted applicants and invite the public to send their complaints and comments, if any, concerning the suitability of the applicants’.¹⁴⁸ In the absence of such a procedure, the public are denied the opportunity to voice their views on the suitability of applicants, thereby undermining the transparency of police recruitment processes.

While more work is needed, the comprehensive and consistent monitoring of police recruitment by CAJ has produced tangible results. Ensuring the rule of law and access to justice (target 16.3) requires a competent police force that is responsive to the security needs of all, and can deliver security in an effective and transparent manner. This necessitates a transparent and fair recruitment process, in which only the most suitable candidates are chosen. By overseeing the recruitment process and providing corrective recommendations, CAJ has positively influenced this process and has thereby helped realize SDG 16.6 on developing effective, accountable, and transparent institutions. Furthermore, transparent recruitment has positive implications for the realization of target 16.5, aimed at reducing corruption and bribery in all forms. These efforts have also worked towards progress on SDG 5 on gender equality by ensuring that gender quotas are made public and respected.

Improving prison conditions through complaint handling and own-motion investigation

The work of CAJ to improve conditions in the Kenyan prison system through its complaint-handling and (own-motion) investigatory functions directly relate to achieving SDG 16, as it concerns access to justice, human rights protection, and rehabilitation and reintegration. Any prison administration must ensure that detainees have access to justice and are treated fairly within the criminal justice system, which means they must not be subject to abuse, torture, or other forms of mistreatment. In addition, protecting the rights of detainees, including their right to life, dignity, and non-discrimination, also means they must have adequate living conditions, access to healthcare and education, and opportunities and services that promote rehabilitation and reintegration. This requires a holistic

approach that incorporates legal aid to vocational training to mental health support, while promoting community involvement and support for reintegration.

In collaboration with other agencies such as the KNHRC, CAJ plays a vital role in preventing torture, noting that Kenya is yet to ratify the Optional Protocol to the UN Convention against Torture (OPCAT), which designates an independent national mechanism for the prevention of torture. These collaborative efforts are particularly relevant to realizing SDG targets 16.1 and 16.3, and especially indicator 16.1.3 on the proportion of the population subjected to physical, psychological, and sexual violence, as well as 16.3.2 on unsentenced detainees as a proportion of the overall prison population. It is the mandate of CAJ to investigate complaints and grievances against state agencies and public officers, along with its power to investigate complaints of maladministration, abuse of office, and unfair administrative action, that make the CAJ such a crucial actor in preventing torture. To that end, CAJ can summon witnesses, collect evidence, and make recommendations for disciplinary action, compensation, and other forms of redress.

CAJ not only acts upon individual complaints, but also to cases of maladministration highlighted through media reporting or other public sources, as the following case study shows.

In August 2018, an own-motion investigation was launched by CAJ when reports of a hunger strike by a number of inmates at the Nairobi Remand and Allocation Maximum Security Prison brought to light allegations of their unfair and inhumane treatment, dereliction of duty, abuse of power, and poor governance by prison officials. As one of the largest male detainees’ facilities in Kenya, housing both remanded and convicted individuals, the prison was built to hold the most dangerous and high-risk offenders. It has a reputation for being among the toughest prisons in Kenya, and boasts the highest incidences of inter-prisoner violence of any penal institute in the country. Following the aforementioned media reports, investigators from CAJ visited the facility in late August 2018 to interview both prison officers and detainees, while reviewing requisite prison documents.¹⁴⁹

The investigation confirmed that inmates detained in the Capital Block of the prison had staged a protest on August 20th and 21st by refusing to take meals, as an expression of their opposition to stringent measures that had been adopted by the management

¹⁴⁸ Republic of Kenya, National Police Service Commission (Recruitment and Appointment) Regulations, Legal Notice No. 41 (10 April 2015). Also see: Republic of Kenya, National Police Service Commission Act, No. 30 of 2011 (10 October 2011).

¹⁴⁹ Commission on Administrative Justice, *An Investigations Report on the Alleged Maladministration at the Nairobi Remand and Allocation Maximum Prison*, No. CAJ/IE/6/53/2020 (2020), p. v.

of the facility with the aim of tackling the smuggling of contraband;¹⁵⁰ a practice that CAJ found was also aided by prison officers.¹⁵¹ CAJ established that the facility was overcrowded, housing double its capacity. This was attributed to court delays in processing bond and bail applications, which were too exorbitant for inmates to pay, thereby exacerbating the problem.¹⁵² Indeed, the overall percentage of unsentenced detainees in the Kenyan prisons remains very high.¹⁵³ In September 2023, the UN Committee against Torture noted that the overuse of prolonged pretrial detention in Kenya is causing chronic overcrowding, with detainees awaiting trial accounting for 48 percent of the overall prison population.¹⁵⁴

In addition to the aforementioned, CAJ identified several other challenges facing the Nairobi Remand and Allocation Maximum Security Prison, including with respect to the working and living conditions of prison staff. These included deplorable onsite accommodation, a strained and outdated infrastructure absent of modern security technology (CCTV cameras, metal detectors, and mobile phone detectors), with few prison buses to transport inmates to and from court and the frequent non-payment of allowances to prison officers who escorted inmates. Prison officers were also provided with inadequate supplies, for example blankets and cleaning products, and were supported by too few counsellors.¹⁵⁵ In addition, CAJ noted a variation in salary grades and allowances of prison officers and police officers with the same rank.¹⁵⁶

Based on these findings, CAJ issued 20 recommendations – nine to the Ministry of Interior and National Administration, nine to the Commissioner General of Prisons, and two to the Judiciary – a majority of which have since been implemented.¹⁵⁷ Some of the recommendations that demand more substantial financial resources have been accepted but not yet implemented, indicating that authorities understand the deficiencies that must be remedied and agree with the actions suggested by CAJ but lack the material means to do so. This is a common phenomenon in low – and lower middle-income countries, where costly undertakings like building new prison infrastructure are often only achievable

with the support of the international donor community. The same is true when it comes to acquiring modern security equipment, such as CCTV systems, metal detectors, and mobile phone detectors.

The implementation of some of CAJ's recommendations have brought about improvements to the housing conditions for prison staff and living conditions for inmates, although much work is needed in this regard, particularly given that the construction and renovation of various prison wards has not met international standards. Still, the Kenya Prisons Service (KPS) has undertaken a number of other development and modernization projects, including constructing and maintaining staff houses, administration blocks, kitchens, gate lodges, guardrooms, armoury stores, visiting bays, and septic tanks. While there remains a substantial gap between the number of staff and available staff housing, the government has committed to raising the housing allowance for qualifying officers, which would enable them to afford suitable offsite housing.¹⁵⁸

The provision of prison staff with higher salaries, housing allowances, and other benefits has positive impacts beyond the improvement of their material conditions, as this curbs corruption by eliminating incentives, thereby contributing to SDG 16.5 on substantially reducing corruption. Since CAJ issued its recommendations, the KPS has also promoted over 3,000 officers, and has deployed over 200 religious officials/chaplains to enhance the welfare of staff and inmates. Furthermore, the KPS and prison administrations have invested in important educational and awareness-raising activities. Capacity-building exercises have been organized for prison staff on legal matters, human rights, and the treatment and handling of violent extremist offenders; and trainings have been offered to inmates on their individual rights – including the right to bail and bond and the right to a fair trial – in line with requirements of United Nations instruments on human rights (e.g., the Mandela Rules). This supports national implementation of SDG target 16.3 on promoting the rule of law and ensuring equal access to justice for all.

150 Contraband: mobile phones, drugs (heroin and bhang), prescription medicine (valium, cosmos), and cigarettes within the prison facility

151 Ibid.

152 Ibid.

153 See: World Prison Brief, 'Kenya'.

154 United Nations Committee against Torture, 'Concluding observations on the third periodic report of Kenya', para. 15.

155 Commission on Administrative Justice, *An Investigations Report on the Alleged Maladministration at the Nairobi Remand and Allocation Maximum Prison*, p. v.

156 Ibid, p. v.

157 The full list of recommendations is available in the Report. See: Ibid, pp. vi–vii.

158 This allowance is provided as a stipend to non-commissioned officers and grew annually from 2017 to 2019 but plateaued in 2020 and has not risen since, making it insufficient to afford suitable housing.

CAJ has observed that prisoners now enjoy more contact with the outside world, including with lawyers and family members. In other words, most of the recommendations that could be implemented through the goodwill and resources of the prison administration itself seem to have been put into practice. CAJ continues to advocate for the allocation of more government resources to facilitate the implementation of other recommendations it made based on investigation findings, which have been formally accepted but unrealized due to the lack of funding.

In March 2023, CAJ and the State Department for Correctional Services convened a roundtable meeting to discuss implementation of CAJ recommendations. Amongst other issues, the development of a more comprehensive complaint-handling structure was deliberated, and the parties agreed to establish and operationalize such a structure within the KPS. Furthermore, CAJ was appointed as a member of the Prisons Legislation Review Committee to help design a strategy for the review of the Prisons Act.

Taken together, these activities are important for several reasons and highly relevant for the realization of SDG 16. With a history of prison brutality and overcrowded facilities, it is clear that places of detention in Kenya are environments where human rights violations and various forms of maladministration can occur. Overcoming the culture of impunity is one of the key tasks of oversight bodies, which is well recognized by CAJ. By undertaking a comprehensive investigation of the Nairobi Remand and Allocation Maximum Security Prison, CAJ has not only motivated improvements to prison conditions but has also played a role in preventing violence and ensuring humane and fair treatment of detainees, which contributes to achieving SDG 16.1 on reducing violence. Additionally, the focus of CAJ on better working and living conditions for prison staff, which acknowledges the link between conditions of service and corruption incentives, directly relates to SDG 16.5 on reducing corruption. CAJ also highlighted governance problems associated with the functioning and administration of prisons, which could serve as a roadmap for better security sector governance that advances the country towards SDG target 16.6 by ensuring the sector is more effective, accountable, and transparent.



3.4. Lessons learned and recommendations

The work of CAJ to promote administrative justice, ensure accountability and transparency, foster gender equality, and improve access to information helps advance the SDGs in Kenya in crucial ways. As such, CAJ has been recognized for promoting accountability and transparency in the security sector – through complaints-handling, own-motion investigation and monitoring; publications (reports and advisories), training programmes, and collaborations with other institutions that have improved the conduct of security officers and have encouraged greater respect for human rights in the sector. By showcasing the two case studies in this chapter, the aim was to demonstrate how CAJ contributes to realizing SDG 16 and to enhancing human security in Kenya. Given that ombuds institutes generally have jurisdiction over police and prisons, these case studies may also serve to inform and inspire peers of CAJ in other countries.

Though the CAJ is not designated as a National Preventive Mechanism against Torture (NPM), institutions designated as NPMs under OPCAT have especially strong mandates over law enforcement agencies and places of detention and may therefore be particularly interested in examining the work of CAJ in this area. The work of the CAJ on police recruitment, which generated a comprehensive set of recommendations to render the process more just, inclusive, transparent, and procedurally fair, is more important than it may seem at first glance. Indeed, the systematic implementation of these recommendations has a far-reaching positive impact not only on recruitment processes and procedures but on the overall system of law enforcement governance in Kenya.¹⁵⁹

That said, CAJ did encounter challenges in monitoring the police recruitment drive, most notably a lack of access to some stages and elements of the process. This, in itself, is an important lesson, as *ombuds institutes cannot fulfil their mandates without full access to premises, people, and documents*, and yet many face limitations on accessing information. Often, this is not the result of a deliberate intent to prevent the institution from collecting facts, but of a lack of knowledge about

its mandate and broad powers. For this reason, CAJ and its international peers should *invest additional efforts to communicate and clarify the role of ombuds institutes to state actors*. This requires cooperation with security sector institutions at the leadership level, both through strong buy-in from the top as well as effective communication with the lower ranks regarding the legal obligation to cooperate with ombuds institutes, in order to ensure successful cooperation that improves the work of the security sector.

Similarly, ombuds institutes should *work with police and prison administrations to incorporate modules on grievance mechanisms as a mandatory part of new staff trainings*. This can be done jointly with other independent oversight institutions, to help officers differentiate the mandates and powers of each institution. Training of this kind should also be tailored to an officer's rank. For instance, in the Kenyan context, cooperation with the newly established National Police Service Leadership Academy could facilitate a better understanding of the role played by CAJ among higher-ranking police officers. Meanwhile, a partnership with the National Police Service Commission would be a pathway to ensuring that curricula used at the Police Academy and in basic training for officers includes sufficient content on human rights and complaint mechanisms.

On the operational level, CAJ's experience shows that *a strong monitoring tool is crucial when observing police recruitment processes concurrently across multiple locations*. To author fact-based reports, monitors must use a comprehensive list of well-designed questions that generate easy-to-compare data. This ensures greater accuracy in the findings, which is a critical precondition to legitimately challenging the status quo in a way that changes deep-rooted practices. As this case study has shown, *ombuds institutes can contribute to raising public confidence in the security sector by monitoring police recruitment processes* to ensure that the best candidates are selected under the most fair and transparent terms. This improves the effectiveness, accountability, and transparency of the police, thereby contributing to SDG 16.6.

¹⁵⁹ See more on systemic recommendations in: Ben S. Buckland & William McDermott, *Ombuds institutions for the Armed Forces: A Handbook* (DCAF, 2012), pp. 129-139; DCAF (Geneva Centre for Security Sector Governance), *Ombuds institutions for the armed forces*. SSR Backgrounder Series (DCAF, 2019), https://www.dcaf.ch/sites/default/files/publications/documents/DCAF_BG_14_OmbudsInstitutions_Nov2022.pdf

A lesson of the own-motion investigation initiated by CAJ with respect to allegations at the Nairobi Remand and Allocation Maximum Security Prison is that, *while the primary focus of ombuds institutes when conducting visits to prisons should be whether the rights of detainees are respected, they should also focus on the living and working conditions of prison staff as these can undermine staff morale, produce corruption risks, and cause tension between prison staff and those they serve.* Together, the conditions of detention for inmates and the terms of service for prison staff posed a significant problem at the Nairobi Remand and Allocation Maximum Security Prison. CAJ sought to address these grievances by, *inter alia*, recommending improvements to their salaries, accommodation, and benefits. Such actions can result in a virtuous cycle, for example by curbing corruption through reducing the incentives among prison staff to engage in corrupt practices, thereby contributing to the realization of SDG target 16.5 and increasing trust in the prison system. Moreover, improving work conditions inversely reduces cases and levels of frustration a key factor in the reduction of violence by prison staff directed at detainees (SDG target 16.1), further illuminating the relevance of ombuds institutes' monitoring function.

The experience of CAJ in the aftermath of its investigation of the Nairobi Remand and Allocation Maximum Security Prison also underscored the importance of ombuds institutes *adopting practices that facilitate systematic follow-up on recommendations made as a result of investigatory findings*, particularly when those recommendations call for substantial legislative changes or infrastructural investments. Strictly speaking, it should be the task of the government to implement such recommendations, as it guides, coordinates, and oversees the work of public administration. In fact, governments should collect data from public administration institutions on their compliance with recommendations issued by ombuds institutes, and submit reports to parliaments. However, in practice, it is often the ombuds institutes themselves that track institutional compliance with recommendations thereof. While ombuds institutes should collect and analyse data on their own work in order to reflect on and assess their performance, the executive should report on ombuds recommendations in the exercise of its coordinating function over public administration, and ombuds institutes should be a partner in this endeavour by providing additional information where needed, or verifying data collected by the government.¹⁶⁰

As this chapter has sought to show, CAJ has used its complaint-handling, own-motion investigation, and monitoring functions to contribute to enhancing good security sector governance through its work with the Kenyan police and prison system. Its activities have also enhanced the human security of citizens and have contributed to creating a more just and inclusive Kenyan society. Notably, efforts by the CAJ have served to advance progress towards several SDG 16 targets in a way that is mutually reinforcing. In other words, the oversight of the CAJ over security sector institutions has made the sector more effective, accountable, and transparent (SDG target 16.6), which can reduce corruption (SDG target 16.5) and violence (SDG target 16.1), both in the streets and in prisons. This makes CAJ an indispensable part of the national security sector oversight architecture needed to accelerate SDG implementation, and underscores the critical role played by ombuds institutes in advancing progress towards a more peaceful, just and inclusive world.

160 Luka Glušac, *Leaving No One Behind, Leaving No One Unaccountable: Ombuds Institutions, Good (Security Sector) Governance and Sustainable Development Goal 16*, DCAF SSR Paper 22 (Ubiquity Press and DCAF, 2023).

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4. THE NATIONAL HUMAN RIGHTS COMMISSION OF THE GAMBIA: STRUCTURAL TRANSFORMATION OF THE SECURITY SECTOR GROUNDED IN COMPLAINT-HANDLING

HALIMATOU DIBBA AND MAAIKE DE LANGEN





4.1. Introduction

This chapter discusses how the National Human Rights Commission of The Gambia (NHRC), which has a broad mandate to promote and protect human rights and oversee the security sector, contributes to realizing a more peaceful, just, and inclusive society. In particular, it explores how its handling of complaints about human rights violations by security sector actors, informs the work of the NHRC and helps it develop monitoring and advisory activities that advance good security sector governance (SSG) and drive systemic reforms to achieve Sustainable Development Goal 16 (SDG 16). Here, we bring a specific focus to SDG targets 16.3 on access to justice and 16.6 on developing effective, accountable, and transparent institutions; and by extension to targets 16.1 and 16.2 on ending all forms of violence including violence against children, and 16.10 on the protection of fundamental freedoms.

Following a 22-year dictatorial regime that was ousted in the December 2016 presidential elections by a coalition of opposition parties, The Gambia is going through a period of transition. As part of the country's efforts to consolidate its newfound democracy, the newly elected Government embarked on a process of transitional justice and institutional reform, recognizing respect for human rights, the rule of law, and access to justice are the cornerstones of a modern democratic state. It created several new structures and processes, including the Truth, Reconciliation and Reparations Commission (TRRC), the Constitutional Review Commission (CRC), and the National Human Rights Commission (NHRC) – and initiated security sector and public service reforms.¹⁶¹ These initiatives are interrelated and part of a comprehensive approach aiming to establish the truth about widespread human rights abuses, initiate institutional reform, and abolish draconian laws, ushering in a new era of peace, justice, and inclusion.

¹⁶¹ See: Sophie Frediani, 'The Complementarity of Transitional Justice & SSR in Addressing and Preventing Human Rights Violations: Focus on The Gambia', DCAF Policy Paper, July 2021.

A key goal of these efforts was the structural transformation of the Gambian security sector, which holds responsibility for a vast majority of the human rights violations perpetrated under the previous regime, as established in hearings of the TRRC.¹⁶² Indeed, the institutions of the security sector still require drastic transformation to become an apparatus that ensures the respect, protection and fulfilment of human rights and access to justice for all in an open and democratic society. All the more so, because under the dictatorship, these same institutions were purposely kept weak, isolated and denied opportunities to professionalize.¹⁶³ Thus, the 2018-2021 National Development Plan of The Gambia, in acknowledgement of the centrality of security sector governance and reform (SSR/G) to achieving SDG 16, identifies security sector reform (SSR) as a priority, and sets a goal to ‘enhance and improve human rights, access to justice, and good governance for all’.¹⁶⁴

While the TRRC has worked successfully and expeditiously, and other transition initiatives are making significant strides, security sector reform has not gained much momentum. Even so, there has been some progress on policies and frameworks, including a 2017 Security Sector Assessment, the 2019 National Security Policy, and a Security Sector Reform Strategy for 2020–2024. The Strategy, which aims at ensuring both state and human security as fundamental aspects of the democratic consolidation of The Gambia, outlines ambitious priority areas such as restoring public trust and confidence, enhancing civilian management and oversight bodies, and addressing cross-cutting challenges, and also recommends specific institutional reforms.¹⁶⁵ Yet, with less than a year left before the Strategy’s timeframe ends, there are significant gaps in its implementation and there seems to be wide public awareness of this. In fact, a 2022 opinion poll showed that only 34 percent of respondents agreed or strongly agreed that the government remains interested in security sector reform.¹⁶⁶ Additionally, a major setback to the transition occurred when the fifth legislature failed to adopt the 2020 draft constitution, which would have replaced the 1997 Constitution, ushering in significant transformative provisions on human rights, democracy, and the rule of law and contributing appreciably to helping the country meet its democratic aspirations.

However, neither this setback in the process of constitutional reform nor the slow start to security sector reform efforts have had significant effect on the NHRC, which has been fully operational and capably executing its duties for several years now. As we will see in this chapter, the NHRC is supporting a structural transformation through its complaint-handling, own motion investigations, and monitoring and advisory work. In section two, the NHRC is introduced in more detail, including its role in security sector governance and its contributions to SDG 16. This is followed in section three by the presentation of three individual cases of human rights violations, which were perpetrated by security sector actors and handled by the NHRC, as well as an analysis of these cases through which four different effects of NHRC complaint-handling are identified. Then, section four lays out the process by which the NHRC translates insights from individual cases to its monitoring and advisory role, helping to drive systemic reforms and promote SDG 16. The concluding section reflects on the role of the NHRC in achieving structural improvements in security sector governance in The Gambia, and offers some lessons learned and recommendations.

162 Truth, Reconciliation and Reparations Commission of The Gambia, *Report: Volume 1 (Part A) – Compendium on Findings and Recommendations* (2021).

163 Chris Jagger, ‘Restoring Trust: Toward a people-centric security sector in the Gambia’, *Developments* (blog), DAI Global, n.d., <https://dai-global-developments.com/articles/restoring-trust-toward-a-people-centric-security-sector-in-the-gambia/> (accessed 27 November 2023).

164 Republic of The Gambia, *The Gambia National Development Plan (2018-2021)*, p. 13. Learn more about the NDP at: <https://ndp.gm/>; or view it as a pdf at: <https://www.thegambiatimes.com/wp-content/uploads/2018/02/1.-The-Gambia-National-Development-Plan-2018-2021-Full-Version.pdf>.

165 Republic of The Gambia, *Security Sector Reform Strategy 2020–2024* (Office of National Security, 2020).

166 Center for Policy, Research and Strategic Studies (CepRass) and the National Endowment for Democracy (NED), ‘The Gambia Post-Election Opinion Poll Survey 2022’, 6 April 2022, p. 10.

4.2. The National Human Rights Commission of The Gambia, Security Sector Governance/Reform and SDG 16

As the first human rights commission in The Gambia, the NHRC plays a pivotal role in the post-dictatorial transitional justice process, including through its oversight of the security sector.

The mandate and functions of the NHRC

The NHRC was established as a permanent commission by a parliamentary act in 2017 and by 2019, its first five commissioners had been sworn in. The NHRC was created by the state as an independent institution with a broad mandate to promote and protect human rights. Its powers described in the NHRC Act 2017 and the NHRC Amendment Act 2020 are, amongst others to 'monitor, receive, investigate and consider complaints of human rights violations in The Gambia, including by private persons and entities' as well as to 'recommend appropriate remedial action to the Government and seek appropriate redress on behalf of complainants'.¹⁶⁷ Since its establishment, the NHRC has spearheaded several transitional justice activities and policies, in accordance with regional and international human rights standards, and it attained the coveted 'A status' accreditation by the Global Alliance of National Human Rights Institutions (GANHRI) in just three years.¹⁶⁸

Human rights were brought to the forefront of Gambian national discourse by the scale and systemic nature of the human rights violations, violence, and repression revealed in hearings of the TRRC. The proceedings generated shock at the magnitude of the violations, grievance and expectation among victims and their families, questions about the plight of perpetrators and their impunity or accountability, and an awareness that the security sector was highly compromised and in desperate need of reform. This has elevated the importance of the NHRC in promoting and protecting human rights in the transitional justice process,

particularly in the absence of an effective security sector reform process and a new constitution.

The work of the NHRC is in line with recommendations of the TRRC, which called for immediate reform efforts to enable an effective, accountable, and transparent security sector in accordance with SDG target 16.6. The TRRC hearings exposed an array of human rights violations across all sectors of the state, but among the most disturbing were those perpetrated by security sector actors, who had been weaponized by the former regime to carry out systematic abuses that included forced disappearances, extrajudicial killings, SGBV, interference with the judiciary, and attacks on the media, religious minorities, and political opponents.¹⁶⁹

The NHRC, SSG/R, and SDG 16

The security sector in The Gambia comprises eight institutions: the Armed Forces, the Police Force, the State Intelligence Service, the Immigration Department, the Drug Law Enforcement Agency, the Fire and Rescue Service, the Prison Service, and the Revenue Authority (Customs and Excise).¹⁷⁰ The mandates of these institutions cut across issues that concern both state and human security, and are thus intrinsically linked to the role of the NHRC in security sector reform. The NHRC also monitors the implementation of all recommendations of the TRRC, whose findings highlighted the human rights violations that were committed by these institutions. The NHRC is also tasked with implementing the TRRC recommendation to train the security sector on human rights standards, international human rights law, and international

167 Republic of The Gambia, National Human Rights Commission Act 2017, No. 8 of 2017 (13 December 2017), p. 7. Also see: Republic of The Gambia, National Human Rights Commission (Amendment) Act 2020, No. 3 of 2020 (7 July 2020).

168 See: National Human Rights Commission of The Gambia, 'NHRC at 3-Years Granted "A" Status Accreditation by the GANHRI Sub-Committee on Accreditation', Press Release RHP 58/154/01(7), 31 March 2022.

169 See: Truth, Reconciliation and Reparations Commission of The Gambia, *Report: Volume 1: (Part A) – Compendium on Findings and Recommendations*.

170 See: Republic of The Gambia, *National Security Policy* (2022).

humanitarian law.¹⁷¹ Hence, even while the national security sector reform process is slow, the NHRC is advancing some aspects of reform by engaging different security institutions in training programmes and the development of standard operating procedures and materials. Significantly, the NHRC capitalizes on its complaint-handling role to contribute to structural improvements in the security sector, and to the establishment of effective, accountable, and inclusive security institutions. This puts the NHRC at the centre of both monitoring and supporting security sector governance and reform in The Gambia.

Receiving and resolving individual complaints is at the heart of the work of the NHRC and enables it to address human rights violations and injustices individually, while breaking patterns of behaviour more systematically. This way, the NHRC can shape and strengthen the transformation that is needed within the Gambian security sector to deal with the past and build a peaceful, just, and inclusive society, as envisioned in SDG 16. The complaint-handling function of the NHRC allows it to gather first-hand empirical data about the performance of the security sector that enables it to identify and effectively employ various other mechanisms in the service of its broad mandate, including to build capacity in the sector, develop advisory notes for the state, bring human rights issues and recommendations to the attention of parliament, engage with relevant government and civil society stakeholders, conduct monitoring visits to detention facilities, and engage in public outreach.

As part of its efforts to be accessible to all, the NHRC runs mobile legal clinics to provide its services across the country, including in rural areas, to deliver people-centred justice as inspired by SDG 16 and ensure equal access to justice for all as described in SDG target 16.3.¹⁷² The mobile clinics are a yearly activity carried out in partnership with the Gambian Ministry of Justice, other state institutions, and the Office of the Ombudsman, as well as CSOs and NGOs – the representatives of which constitute a team of lawyers and investigators. This team visits a different region each year to engage in human rights education, sensitize the local community on the mandates of various institutions as they relate to human rights

and access to justice, and receive and investigate complaints.¹⁷³

In 2021, the NHRC received 259 complaints through Mobile Legal Aid Clinics in rural communities and 41 through other means,¹⁷⁴ and in 2022, 72 complaints through clinics and 104 through other means.¹⁷⁵ Thus, these clinics are clearly an important tool to provide equal access to justice for all. In its complaint-handling the NHRC applies the ‘no-wrong-door-principle’, meaning that any inadmissible complaints it receives is referred to the relevant institution(s) for action and the NHRC follows up and intervenes in these referred cases when necessary. This is an important service, particularly in the context of the mobile legal clinics and this too contributes to providing access to justice for all. Moreover, the mobile clinics typically reach women living in rural areas of The Gambia, who are among those that find it hardest to access justice. No less than 84 percent of complaints received during the mobile clinics held in 2021 were reported by female complainants (216 of 259), mostly about gender-based violence. While this rate dropped in 2022 – when just over half (55 percent) were reported by female complainants it is clear that in both years, the clinics contributed towards the overarching goal of the 2030 Agenda to Leave No One Behind.¹⁷⁶

The mobile clinics have a broader impact on the work of the NHRC, as they are a good source of information about trends and threats related to the protection of human rights across the country and contribute to spreading a culture of human rights beyond urban areas. The clinics have highlighted key issues, including misconceptions about individual rights, gender disparities, the prevalence of SGBV, and cases in which the protection of economic, social, and cultural rights have been neglected. They also give the NHRC a broader view of the country’s human rights landscape by capturing the experiences of women in rural communities, some of whom will engage privately with members of the team even if they are reluctant to lodge official complaints. This underscores a key sociocultural dimension of The Gambia as a strongly patriarchal society; a fact that fundamentally informs the activities and focus of the NHRC.

171 Truth, Reconciliation and Reparations Commission of The Gambia, *Report: Volume 1: (Part A) – Compendium on Findings and Recommendations* (2021).

172 See: Task Force on Justice, *Justice for All – Final Report* (New York: Center on International Cooperation, 2019).

173 ‘NHRC Mobile Legal Aid Clinic, Way of Empowering Communities’, *The Voice* (The Gambia), 30 March 2022, <https://www.voicegambia.com/2022/03/30/nhrc-mobile-legal-aid-clinic-way-of-empowering-communities/?amp=1>.

174 National Human Rights Commission of The Gambia, *2021 Annual Report* (Kotu), p. 14.

175 National Human Rights Commission of The Gambia, *Annual Activity Report 2022* (Kotu), p. 12. Also see: United Nations Sustainable Development Group, ‘Leave No One Behind’, <https://unsdg.un.org/2030-agenda/universal-values/leave-no-one-behind> (accessed 27 November 2023).

176 National Human Rights Commission of The Gambia, *Annual Activity Report 2022* (Kotu), p. 12. Also see: United Nations Sustainable Development Group, ‘Leave No One Behind’, <https://unsdg.un.org/2030-agenda/universal-values/leave-no-one-behind> (accessed 27 November 2023).

4.3. Addressing and preventing human rights violations by security sector actors

While the complaint-handling and own-motion investigation functions of the NHRC are aimed at addressing human rights violations and providing an effective remedy, its monitoring and advisory functions are aimed at preventing human rights violations. These goals complement one another, and both are critical to good SSG. Nonetheless, The Gambia cannot be expected to transform overnight, given the country's legacy of systemic human rights abuses committed in the recent past and its current sociopolitical dynamics.¹⁷⁷ This makes access to justice through complaints mechanisms for the victims of rights violations an indispensable element of good SSG.

Complaint handling and own-motion investigations

Handling individual complaints about security sector actors is a core pillar of the work of the NHRC.¹⁷⁸ The Commission can receive complaints on human rights violations, recommend appropriate remedial actions to the Government and seek redress on behalf of victims.¹⁷⁹ The NHRC's competence is based on its jurisdiction in The Gambia (and acts committed in Gambian diplomatic missions), the time of the event and the nature of the act. Since the competence of the NHRC is defined by the act committed (i.e., violations of human rights) and not by the identity of the perpetrator, it has the power to investigate any security sector actor, public or private. That said, complaints on matters that are the subject of legal procedures before the courts are inadmissible, though the NHRC can follow up on any cases that are unduly delayed. Additionally, complaints related to human rights violations that occurred before 24 January 2017 are also inadmissible unless they are continuing violations.¹⁸⁰

The NHRC has made accessibility a priority, and complaints can be made in a wide variety of ways. Complainants can walk directly into the Commission's offices, either at its headquarters in Banjul or at one of two regional offices, they can call a 24-hour telephone line, answered at all times by an investigating officer;

or they can complete an online form available on the NHRC website.¹⁸¹ The complaints procedure is free and accessible to all, without discrimination. Moreover, the two regional offices of the NHRC, located in the North Bank Region and Upper River Region, are staffed by legal officers, administrators, and investigators, just as the Commission headquarters in Banjul.

The processing of complaints received by the NHRC follows a standard procedure outlined in the Rules of Procedure, which stipulates that the Investigation Department submits a preliminary assessment to the Legal Department, which then performs a legal analysis and makes recommendations regarding the admissibility of a complaint. Where necessary, they can request further information from the complainant. The recommendation of the Legal Department informs a final review and decision by the Commission.¹⁸² The decision of the NHRC is communicated to the complainant and the respondent, as well as to the government and any relevant institutions that need to take necessary corrective action. Yet, investigations do not always need to be based on a complaint, as the NHRC has the power to conduct own-motion investigations into individual cases or structural problems that are potential human rights violations. Own-motion investigations can be based on any type of information, including reports about potential cases on mainstream news, or digital materials that make the rounds on social media.

177 Adrian Barchet and Sophia Birchingner, 'Security Sector Reform in The Gambia – The Historic Roots of Current Challenges', *PRIF blog*, Peace Research Institute Frankfurt, 9 November 2022, <https://blog.prif.org/2022/11/09/security-sector-reform-in-the-gambia-the-historic-roots-of-current-challenges/>.

178 National Human Rights Commission Act 2017, p. 7.

179 Ibid.

180 Ibid., p. 13.

181 National Human Rights Commission of The Gambia, *Annual Activity Report 2022*, p. 15. See the webpage through which complaints can be filed here: <https://www.gm-nhrc.org/file-a-complaint>.

182 National Human Rights Commission of The Gambia, Rules of Procedure on Complaints Handling, 1 November 2019.

The NHRC has considerable investigative powers, allowing it to summon any person, official, or authority to appear before it to testify and to produce any document or record it needs for its investigation.¹⁸³ Furthermore, members of the Commission have the right to access all government offices, facilities, and places of detention, and all non-classified information in government documents.¹⁸⁴ While the NHRC also has the right to access classified information, it is not permitted to make it public. However, when a government official deems the public disclosure of specific information a risk to national security due to its sensitive and confidential nature, they must justify this to the Commission.¹⁸⁵

The NHRC produces a statutory annual activity report on the numbers of complaints it has received and how these have been processed and addressed and presents it to the Gambian parliament. Over the four years of its operations, the number of cases has varied, and it is likely they will continue to fluctuate as the NHRC expands its reach across the country and people become more aware of its work.¹⁸⁶ For instance, the NHRC received a total of 70 complaints in 2020, but only 41 in 2021, before receiving 104 complaints in 2022. And, while 34 percent of complaints in 2021 were registered against law enforcement actors, these complaints represented 21 percent of those received in 2022.¹⁸⁷

The three cases outlined below, which were received and resolved by the NHRC in the 2020–2022 period, offer a deeper understanding of the security sector abuses about which people file complaints, and are representative of common problems that are reported as well as the responses of the Commission. They are also illustrative of how certain behaviours that violate human rights persist within the sector, including excessive use of force and torture, and arbitrary and prolonged detention. Thus, these cases highlight the urgent need for further reforms of the Gambian security sector and additional efforts to realize SDG 16, especially targets 16.1 on reducing all forms of violence, 16.3 on providing equal access to justice for all, and 16.10 on protecting fundamental freedoms in accordance with national legislation and international treaties.

Case No. 1: Police brutality by the Anti-Crime Unit

In July 2020, the NHRC learned of a young man who had allegedly experienced police brutality at the hands of the commander of the Anti-Crime Unit (ACU) of The Gambia Police Force (GPF).¹⁸⁸ The NHRC initiated an investigation and evidence was considered by a panel chaired by the chairperson of the NHRC and composed of representatives of the GPF, the Ministry of Interior, the Association of Non-Governmental Organizations, and The Gambia Bar Association. The panel heard 17 witnesses including the victim and perpetrator, reviewed medical documents, heard medical expert testimony, inspected police station logs, and visited the scene of the assault.

The complainant was arrested by night patrol officers of the Police Intervention Unit (PIU) at a night club, along with over thirty other individuals, and was taken to the premises of the ACU. There, they were subjected to various forms of forced labour, including weeding a corn field. At one point, the ACU commander hit the complainant on the genitals with a hoe. According to a medical report and testimony by a doctor that were collected as part of the investigation, the complainant had symptoms that may have resulted from the assault. When the complainant was released on bail, a day later than the other detainees, he tried to lodge a complaint against the ACU commander at the Senegambia police station, but instead of receiving and registering his complaint, the duty officer informed the ACU. The ACU responded by sending officers to take him to a hospital where he was admitted for a day – and then attempting to re-arrest him.

The statements offered by the perpetrator and complainant to investigators were inconsistent regarding whether or not they had met subsequent to the incident in question, as well as whether apologies were made, or money was offered to the complainant by the perpetrator. The panel encountered various other discrepancies, such as in information provided by the ACU regarding its statements about and timelines of the incident, and in testimonies about what happened – as told by other detainees on one hand and police officers on the other. After a comprehensive review, the panel established that the arrest of the complainant and other detainees had been unwarranted, that the complainant

¹⁸³ National Human Rights Commission Act 2017, p. 9.

¹⁸⁴ *Ibid.*, p. 11.

¹⁸⁵ *Ibid.*, p. 12.

¹⁸⁶ See: National Human Rights Commission of The Gambia, *Annual Activity Report 2020 (Kotu)*; National Human Rights Commission of The Gambia, *2021 Annual Report*; and National Human Rights Commission of The Gambia, *Annual Activity Report 2022*. All available at: <https://www.gm-nhrc.org/annual-reports>.

¹⁸⁷ *Ibid.*

¹⁸⁸ This was not assigned a case number, as it was one of the first cases handled by the NHRC and was completed before the launch of its case management database and case numbering system.

had indeed been assaulted by the ACU commander, and that he and other detainees had been subjected to forced labour during their detention, all of which constitute violations of human rights and personal liberty as guaranteed in the Constitution of The Gambia.

The panel made recommendations on immediate changes required within the ACU – including that all officers carry notebooks for record purposes, need to follow due process in the context of arrests and detention and need to make proper and accurate entries in logs – and it emphasized the need for capacity building more broadly. Additionally, the panel recommended that the Inspector General of Police (IGP) take disciplinary action against and redeploy the ACU commander and compensate the complainant for his pain and suffering with a sum of 20,000 Gambian Dalasi (around 300 euros), both of which the IGP did.¹⁸⁹

Case No. 2: Excessive violence during arrest by the National Drug Law Enforcement Agency

In September 2021, the NHRC initiated an investigation after pictures surfaced on social media of a young man with severe injuries alleged to have been sustained after his arrest and by officers of the National Drug Law Enforcement Agency (NDLEA) in the Central River Region.¹⁹⁰ The incident was also reported several days later to the NHRC by a human rights activist. The NHRC responded by dispatching a team of investigators to the region on a four-day fact finding mission, to interview the victim, the perpetrators, senior security officials, and witnesses, and to visit the scene of the incident and inspect station logs and other relevant materials.

Investigators determined that the victim had been arrested by NDLEA officers with support from regular police officers, who had been on a routine patrol seeking to arrest drug peddlers. The victim was assaulted by four to five of these officers for allegedly possessing marijuana. According to reports, he was then arrested, severely beaten, and dragged by a moving vehicle – while half his body hung outside the vehicle – to the police station, along a tarred road, for some 200–300 meters. He sustained severe injuries to his feet, requiring a four-day hospitalization, during which he was occasionally cuffed to the bed. He continued to endure ill treatment after discharge, when he was kept in custody by the NDLEA for another two days.

After a thorough investigation, the NHRC established that the fundamental human rights of the complainant had been violated. It made recommendations to the NDLEA and GPF ranging from disciplinary actions against the officers involved, to counselling for officers on respecting and protecting human rights, to monetary compensation for the victim. The NDLEA was particularly receptive and adhered closely to these recommendations.

Case No. 3: Assault by the Police Intervention Unit

In December 2021, the NHRC received a complaint from a young man who alleged he had been assaulted by police in the capital city of Banjul.¹⁹¹ According to the complainant, he had been attacked late at night by officers of the Police Intervention Unit (PIU), who started hitting him without any explanation and escalated to beating him with batons and stomping on him. Though he filed a complaint against the officers at police headquarters in Banjul the day after the incident, he also filed one with the NHRC.

The preliminary findings of the NHRC confirmed the complainant had in fact filed a complaint with the Human Rights and Professional Standard Unit of the GPF, prompting the Commission to write the IGP, requesting that a prompt, credible, and impartial investigation be conducted into the matter and appropriate disciplinary action be taken against the perpetrating officers. In response, the IGP indicated that the case was under investigation by the Police Human Rights Unit, which informed the NHRC in February 2022 that it had established the actions taken by the officers in this incident were due to mistaken identity. It recognized their behaviour as unjustified and unprofessional, and the IGP indicated that necessary action was being taken to hold the four PIU officers in question accountable through internal disciplinary measures.

The NHRC acknowledged the Police Human Rights Unit for carrying out such a swift investigation to ensure accountability and urged the Unit to communicate which disciplinary measures the perpetrators had faced and how these measures would deter recurrence. The NHRC also recommended that monetary redress be extended to the complainant, and that the IGP work with the Chief Disciplinary Officer to strengthen and empower the Human Rights and Professional Standards Unit to monitor implementation of the Code of Conduct for police officers more effectively. The monetary compensation recommended by the NHRC as redress to the victim was duly granted by the IGP.

¹⁸⁹ It should be noted, however, that this redeployment was only temporary, as the former commander has been returned to the position once again. Last year, the NHRC engaged the IGP following media reports and rumors that this was the case, and the IGP insisted that the perpetrator had indeed been redeployed as per the recommendations but noted that no timeframe had been specified nor any stipulation that his redeployment be permanent.

¹⁹⁰ Case No. NHRC-106-2021/1011.

¹⁹¹ Case No. NHRC-117-2021/1217.

Effects of complaint handling

Complaint handling is critical to the work of the NHRC to contribute to better security sector governance and increased human security in The Gambia. From these cases we can identify four different effects of the complaint-handling by the NHRC, each of which contributes to achieving SDG 16. These are the justice effect, the accountability effect, the feedback and learning effect, and the information effect.

The justice effect is achieved through the resolution of individual complaints. When a person experiences violence at the hands of security sector actors, constituting a human rights violation, this represents an individual injustice that deserves to be remedied. Whether seen in the context of SDG 16, which promises access to justice for all, or in the context of human rights guarantees (in both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights) that include the right to an effective remedy, the NHRC gives individual victims of human rights abuses an avenue for recourse. Its investigation and decision-making powers make the Commission a credible institution for the recognition and condemnation of instances of mistreatment which is critical to mitigating the grievances that can undermine public trust. Research shows that grievances against state security actors are often a tipping point for individuals to join violent extremist groups, so mechanisms aimed at resolving such grievances have a clear societal value.¹⁹² Disciplinary actions recommended by the NHRC also serve as a remedy for complainant, who sees justice being done.

The accountability effect in individual cases links to fairness and the prevention of impunity. Any actor who uses excessive violence in violation of people's human rights should be held accountable, not only because it is important for victims to have recourse and remedy, but because it serves a broader preventative function by reinforcing norms and values regarding acceptable behaviour as well as deterring recurrence. The risk of consequences for individual perpetrators also increases the likelihood that individuals within the security sector will refuse to be instrumentalized for political purposes, as they were under the dictatorial regime. This makes the accountability effect vital to accomplishing SDG 16 and its aspiration in target 16.6 to develop effective, accountable, and inclusive institutions.

The feedback and learning effect is always important in public institutions, and especially in light of the transformation that is needed in the Gambian security

sector. It is therefore notable that complaints to the NHRC, such as those described above, have yielded interactions with security sector actors that amount to direct and concrete feedback on their behaviours. This feedback can be used to inform institutional learning and build the capacity of security managers and providers, and it further clarifies expectations and sets boundaries for these actors. One example in which an individual complaint prompted these types of efforts is Case No. 2 involving the NDLEA, which implemented the recommendation of the NHRC to institute capacity building training. Internal human rights units within security sector agencies can facilitate this feedback and learning even more directly. This is an important role for these units, considering that professional and effective complaint handling can help repair relationships and reinforce trust, and increasing professionalism can reduce the use of illegitimate violence by security sector actors, contributing to the realization of SDG targets 16.1 and 16.2 on reducing violence everywhere and ending all forms of violence against children.

Finally, the information effect is critical to exercising credible oversight over the security sector. Individual complaints to the NHRC provide relevant empirical data about what is really happening, and the issues people face; the trends and threats of violations, and the corrective action that is needed. This helps ensure that the oversight role of the NHRC is grounded in actual problems and focused on the most pressing concerns. Analysing individual cases and their interconnection helps identify patterns. For example, a standard response of public authorities when confronted with allegations of maladministration is to claim that a case in question 'was an exception'. Understanding patterns help the NHRC distinguish between cases that are truly exceptions and those that expose structural problems. Moreover, facts gathered by the NHRC provide valuable information for other actors with responsibility for the security sector, including the government and parliament, because the information is independently verified through NHRC's investigation. The NHRC capitalizes on this information by drafting advisory notes to the government, incorporating it in its quarterly dialogue with the National Assembly Standing Committee on Human Rights and Constitutional Matters, and presenting it in its annual State of Human Rights Reports.

In this way, and because of the sum of the different effects described above, individual complaint handling by the NHRC is foundational to structural improvements that contribute to better security sector governance, increased human security in The Gambia, and the realization of SDG 16.¹⁹³

¹⁹² See: United Nations Development Programme, *Journey to Extremism in Africa: Drivers, Incentives and the Tipping Point for Recruitment* (New York: UNDP, 2017).

¹⁹³ For more on how the treatment of individual cases can lead to structural improvements and the creation of feedback loops, see: Maaik de Langen, 'Strategies to Increase Justice: The Goldmine of Individual Cases', *Pathfinders for Peaceful, Just and Inclusive Societies* (blog), 7 June 2018, <https://medium.com/sdg16plus/strategies-to-increase-justice-the-goldmine-of-individual-cases-756e0e8a8d1c>.

Monitoring and advising

The monitoring and advisory functions of the NHRC, as well as its structural activities and initiatives to prevent human rights violations, have also contributed to better security sector governance and the achievement of SDG 16 in important ways. Its broad mandate means that, along with serving as an external complaint-handling mechanism for the security sector, the NHRC also has oversight over internal complaint-handling mechanisms within the sector. Moreover, it has been called upon to develop protocols for security actors, to help move them towards greater respect for human rights and equality.

Oversight of internal complaints procedures

The investigations the NHRC has undertaken have yielded considerable interactions with security sector actors, as part of the system of internal and external complaint handling in The Gambia. The complaints procedure of the NHRC is external and is intended to be complementary to primary or internal complaint-handling mechanisms that allow the police or other security actors to address complaints themselves, from which they can learn directly and attempt to repair relationships with complainants. Most Gambian security sector institutions have these internal complaint handling procedures, for example through human rights units or investigative panels.¹⁹⁴ Internal complaint handling is considered more efficient, can help restore trust if an institution is willing to acknowledge its mistakes and can create a feedback loop to guide institutional improvements.

The NHRC has been shaping its role on this continuum of internal and external complaint handling, which is sometimes viewed as a first and second line of recourse. The NHRC can and does monitor internal complaint handling procedures, and takes action in cases of noncompliance in accordance with national or international human rights standards.¹⁹⁵ The NHRC also monitors the length of time internal human rights units take to address complaints and can intervene if no significant progress is made within a reasonable period of time.¹⁹⁶ In such instances, the NHRC can follow up on and investigate a complaint filed with an internal complaint-handling mechanism, to ensure its resolution; an option that has proven particularly valuable in cases

involving the Police Intervention Unit (PIU), as the human rights units of the Gambia Police Force are not decentralized to all stations in the regions as often one officer covers a whole region.

Guidance on policing assemblies

The NHRC has been central to another significant advance in reform of the Gambian security sector, with the development of crowd control guidelines for security forces.¹⁹⁷ Protests and peaceful public assemblies were a rare sight in The Gambia during the dictatorial regime, and when they occurred, armed forces were deployed and protesters often faced various abuses, as elucidated during TRRC hearings. Even today, protests in the country are on some occasions accompanied by a large security presence, and in many instances demonstration permits are denied by the GPF. The NHRC has received complaints alleging that peaceful demonstrators have been mistreated by security forces.

The NHRC recognized that the presence and behaviour of these security actors raises the likelihood of escalation, either because protesters become violent or security actors use or threaten to use force (or both).¹⁹⁸ In response, the NHRC developed Guidelines on Policing Public Assemblies in The Gambia with the objective to help prevent violence at the hands of law enforcement during demonstrations.¹⁹⁹ These guidelines draw on international standards and experiences as well as similar guidelines issued by the African Commission on Human and Peoples' Rights.²⁰⁰ They provide a concrete code of conduct for Gambian security actors, highlight the organizational and operational requirements of policing assemblies in a professional manner, and seek to enhance respect for human rights, prevent the use of force, and protect public order, peace, and security. Now used by the GPF, the Guidelines outline everything from regulatory frameworks and command structures to communication and facilitation with protest organizers in accordance with international and regional best practices.²⁰¹

As part of its early efforts to establish a culture of security sector governance based on human rights standards, especially among the police, the NHRC also developed a comprehensive Code of Conduct for

194 Adama Tine, 'IGP reveals setting up Human Rights Unit to monitor officers' activities', *The Point* (The Gambia), 24 June 2022, <https://thepoint.gm/africa/gambia/headlines/igp-reveals-setting-up-human-rights-unit-to-monitor-officers-activities>.

195 National Human Rights Commission Act 2017, p. 11.

196 *Ibid.*, p. 12.

197 National Human Rights Commission of The Gambia, *Guidelines on Policing Public Assemblies in The Gambia* (2020).

198 Amnesty International, 'Gambia: Mass arrests risk fuelling tensions', 27 January 2020, <https://www.amnesty.org/en/latest/news/2020/01/gambia-mass-arrests-risk-fuelling-tensions/>.

199 National Human Rights Commission of The Gambia, *Guidelines on Policing Public Assemblies in The Gambia*.

200 African Commission on Human and Peoples' Rights, *Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa* (2017).

201 National Human Rights Commission of The Gambia, *Guidelines on Policing Public Assemblies in The Gambia*.

the GPF.²⁰² The Code, which was warmly welcomed by the office of the IGP, sets out key guidelines for police officers in carrying out their duties to the public with integrity and intent, and goes a long way towards advancing SDG 16 in The Gambia. Though it is difficult to establish a causal link, key security sector stakeholders have credited the NHRC Guidelines on Policing Public Assemblies and the Code of Conduct for a recent reduction in complaints of police violence during demonstrations and have noted a change of attitude among the police who are deployed to assemblies.

The government has therefore indicated a willingness to work with the NHRC to 'ensure training programs are developed to train security personnel on crowd control and use of force during riots and protests.'²⁰³ The NHRC is working to develop a training module for that purpose, which will deepen understanding of human rights, encourage a transformation in the culture of the security sector, and equip personnel with the skills and capacity to effectively control crowds without using force. This training is expected to become a graduation requirement for new recruits. By mainstreaming these new guidelines and principles into the security sector, this work by the NHRC will protect civic space and improve security sector governance, while contributing to SDG targets 16.1 on the reduction of all forms of violence everywhere, 16.6 on effective, accountable, and transparent institutions, and 16.10 on effective protection of fundamental freedoms such as the freedom of assembly.

Oversight of prisons

In accordance with its power to access places of detention to determine their compliance with human rights standards, the NHRC conducts routine visits to detention facilities throughout The Gambia.²⁰⁴ In 2021, for instance, visits were conducted to the three main prisons as well as to the detention centres of five major police stations, during which the team received several complaints from inmates who reported human rights violations relating to access to justice, the right to health, and freedom from inhumane treatment.²⁰⁵

In both adult and juvenile detention facilities in The Gambia, detainees commonly file complaints about the long duration of pre-trial detention, overcrowding and relatedly about difficulties in accessing legal aid and representation. Through its visits, the NHRC has indeed identified many people in pre-trial detention, including some for more than five years and two held for over ten years. In response, the NHRC continues to engage the government and the judiciary in order to address case backlogs and made recommendations about the obligation to respect and fulfil access to justice as a fundamental human right.²⁰⁶ This is central to achieving the 2030 Agenda, since pre-trial detention is one of the key measures for access to justice in SDG indicator 16.3.2.²⁰⁷

Seeing as the NHRC had already visited Gambian detention facilities across the country, including the Mile 2 central prisons in Banjul and Jangjangbureh in the Central River Division, in September 2022 the National Assembly Standing Committee on Human Rights and Constitutional Matters asked that it act as an official oversight body for prisons.²⁰⁸ The NHRC has also taken proactive steps to address the issue of access to justice for prisoners, such as by organizing the two-day Conference on Speedy Access to Justice in September 2021, which brought together members of the judiciary, the Gambia Bar Association, the National Agency for Legal Aid, the Prison Service, the ministries of justice and interior, and other relevant stakeholders. This has become a recurring NHRC event with a second conference in June 2023, during which resolutions from the 2021 conference were consolidated and innovative ways to expediate access to justice were mapped out, with a particular focus on prisons and other detention facilities.²⁰⁹

202 National Human Rights Commission of The Gambia, Code of Conduct for The Gambia Police Force (2020).

203 Republic of The Gambia, *Government White Paper on the Report of the Truth, Reconciliation and Reparations Commission* (2022), para. 174.

204 National Human Rights Commission Act 2017, p. 11.

205 National Human Rights Commission of The Gambia, *2021 Annual Report*.

206 NHRC, State of Human Rights Reports 2021 and 2022, accessed: <https://www.gm-nhrc.org/annual-reports>.

207 Indicator 16.3.2 reads, 'Unsented detainees as a proportion of overall prison population'.

208 National Human Rights Commission of The Gambia, *2021 State of Human Rights Report* (Kotu: NHRC); and National Human Rights Commission of The Gambia, *State of Human Rights Report 2022* (Kotu: NHRC, 2023).

209 Ali Jaw, 'NHRC convenes synergy on speedy access to justice', *The Point* (The Gambia), 10 November 2021, <https://thepoint.gm/africa/gambia/headlines/nhrc-convenes-synergy-on-speedy-access-to-justice>; and National Human Rights Commission of The Gambia, *Compiled Report: Conference on Speedy Access to Justice*, 9–10 November 2021 (available upon request).

Improving the response to violence against women and girls

Reducing violence against women and girls in line with SDG target 16.1 and SDG 5 remains extremely challenging in The Gambia, where sociocultural barriers – including an entrenched patriarchy – persist. The systemic sexual harassment and exploitation of women and girls by security officials, as well as the denial of promotions to women within the security sector for refusing sexual advances, were revealed in testimonies during public hearings of the TRRC. Yet, other women and girls who were victims of such violations were reluctant to appear, due to the stigma that those who had testified faced. The NHRC has observed the power of this stigma in other contexts as well, such as during its mobile legal aid clinics, where it is common for women and girls who are victims of violence to exhibit a reluctance to report this violence to the police, out of a fear of being judged or (re)victimised by officers, and by society at large.

It is for this reason that the relatively small number of complaints received by the NHRC alleging SGBV over the past four years almost certainly fails to reflect the real prevalence of the problem. This is confirmed by data collected through the newly launched Gender Information Management System (GIMS) in The Gambia, which offers a confidential phone-based reporting service and is operated by UNFPA. In August, UNFPA announced that it had recorded 310 cases of SGBV since January 2023.²¹⁰ This suggests both that SGBV is widespread in the country and that it is under-reported in complaints received by the NHRC and other justice service providers, including the police.

To better address SGBV, the NHRC commissioned a study in 2021 on sexual harassment in the workplace in The Gambia and subsequently developed a Sexual Harassment in the Workplace Policy that same year.²¹¹ On the recommendation of the TRRC, the government has moved to adopt it as a national policy, which is currently under consideration by the Ministry of Gender, Children and Social Welfare.²¹² The NHRC also plans to engage in capacity building with security officials, especially police, that incorporates responses to SGBV as a key component. This is relevant to SDG target 16.3 on access to justice, and specifically indicator 16.3.1 on the crime-reporting rate, but at the same time contributes to SDG target 16.1 on the reduction of all forms of violence, SDG 5 on gender equality, SDG 8 on decent work, and SDG 10 on reduced inequality.



210 UNFPA The Gambia, “This is just the beginning for the Gender Management Information System”, 15 August 2023, <https://gambia.unfpa.org/en/news/%E2%80%9Cjust-beginning-gender-management-information-system%E2%80%9D-0>.

211 The National Human Rights Commission of The Gambia, *Sexual Harassment in the Workplace Policy* (2021).

212 Republic of The Gambia, *Government White Paper on the Report of the Truth, Reconciliation and Reparations Commission*, p. 89 (recommendation 323).

4.4. Lessons learned and recommendations

The Gambia is still in transition from an authoritarian regime to a democratic system, and has yet to fully realize a peaceful, just, and inclusive society where the human rights of all are respected. Progress has been made in advancing transitional justice, but much work remains to reform the constitution and the security sector. Reform of the security sector is particularly crucial, considering how security actors were weaponized under the previous regime, and it will require profound changes in institutional culture and individual behaviour. At the same time, the governance of the sector will also need to be transformed. In this effort, the NHRC has been and continues to be an important institution, despite its relative recent creation.

A first lesson we draw from these experiences in The Gambia is *the value of complaint handling and own-motion investigations as a means of monitoring violations of human rights and providing justice to people that become victims of such actions*. Indeed, the complaint-handling function of the NHRC has four mutually reinforcing beneficial effects: the justice effect, the accountability effect, the feedback and learning effect, and the information effect. By ensuring that Gambian security actors are held to account when they commit violations, the NHRC helps to prevent the recurrence of human rights violations and helps to ensure that those who are unwilling to change are rooted out. Moreover, the firsthand information from complaints is critical to security sector oversight that is grounded and relevant. The direct exchange it prompts between the NHRC and security actors facilitates learning among those actors that leads to more professional and effective security sector institutions.

A second lesson from the Gambian case is that *nascent institutions can implement vital interventions which increase access to justice and reduce violence, even when national reform processes are making little progress and even in contexts where human rights violations were deeply rooted in pre-transition security institutions*. In The Gambia, the NHRC has delivered redress for people affected and real consequences for security actors who fail to respect human rights. It has also directly contributed to improving security sector governance through its monitoring and advising

functions and undertaken important initiatives to develop resources for security actors, such as the guidelines on policing assemblies and the code of conduct for police. The NHRC continues its work to enhance the ability of security sector actors to protect women and girls from violence. The NHRC also provides oversight over internal complaint-handling within the security sector, and over the prison system. These are all critical to effective security sector governance.

The role played by the NHRC to advance reform has clearly helped The Gambia in its effort to move past the previous dictatorship, the legacy of which renders even the country's small successes in security sector governance and reform rather remarkable. Nevertheless, a third lesson to take from the Gambian experience is that *the NHRC could have had a greater impact and could have better met its mandate to protect and fulfil individual rights if the country had been engaged in a robust and constructive national security sector reform process*. The passage of a new constitution that includes human rights provisions in accordance with international standards is also crucial to achieving the targets of SDG 16. Good security sector governance must be comprehensive and grounded in standard legal frameworks, policies, and programmes that require multisectoral implementation, especially in a transitional context such as The Gambia.

And so, the final lesson we draw from this case is that *mechanisms like the NHRC must be easily accessible to all*, especially those who are vulnerable to being left behind, including in rural areas. This is why the NHRC receives complaints by multiple means, including online, by phone, and in-person, but also through its innovative mobile clinics. Along with its establishment of regional offices, this has made the institution more accessible to people in all parts of The Gambia. Still, while the clinics and regional offices of the NHRC have become a key outreach tool for security sector reform, it has become clear that many human rights issues raised during the mobile clinics are not formally lodged as complaints, especially those relating to SGBV. This suggests that significant outreach efforts are necessary for human rights and ombuds institutions to reach those furthest behind.

Indeed, the work of human right commissions and ombuds institutions should be grounded in people's lived experiences. The unique powers of these bodies afford them an important role in shaping the social justice landscape of their countries, and they do this in part by receiving individual complaints. This is complemented by their ability to conduct own-motion investigations and undertake a wide range of monitoring and advisory initiatives, to spur structural change and reform, signal trends and concerns, and fulfil their independent oversight role. As this chapter has demonstrated, the methods and strategies of the Gambian NHRC contribute to better security sector governance and therefore to building a more peaceful, just, and inclusive society as envisaged in SDG 16.

The transformation of the security sector is a long-term and continuous project and, in many ways, will never end. Every country needs effective governance mechanisms, including mechanisms for individual recourse, credible and relevant oversight, continuing capacity building, training and feedback on progress and challenges, and how to address them. The NHRC, through its work and grounded in the complaints that people bring to its attention, can play a central part in identifying gaps and problems within the security sector, contributing to its transformation and by extension, the realization of SDG 16.



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CONCLUSION

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This compilation of case studies sought to illuminate the significant role played by ombuds institutes in national efforts to achieve SDG 16 on peaceful, just, and inclusive societies. By examining the work of ombuds institutes in Costa Rica, Georgia, Kenya, and The Gambia, it traces some of the many ways their efforts to improve SSG and human security have contributed to realizing SDG 16.

In Costa Rica, through its complaint-handling function and own-motion investigations, the ombuds institute, *La Defensoría de los Habitantes*, has confronted issues like prison overcrowding, pre-trial detention, the poor treatment of incarcerated women, access to healthcare for inmates, and working conditions for prison staff, driving structural changes in the Costa Rican penal system. These include improved accountability mechanisms and working conditions for prison staff, which has reduced the risk of corruption, as well as better safeguards against potential abuses and a better system of healthcare for prisoners. In addition, *La Defensoría* placed the concept of SDG 16+ at the core of their 2018-2019 annual report, which raised awareness of the importance of peace and security for sustainable development, influencing the creation of the National Council for Citizen Security and Conviviality as well as the National Plan for Citizen Security and Peaceful Coexistence. These results demonstrate the contribution of improved SSG to increasing access to justice, reducing corruption, and enhancing the effectiveness, transparency, and accountability of security sector institutions; all key aims of SDG 16.

In Georgia, by monitoring and advising on the human rights and wellbeing of the country's conflict-affected population, the Public Defender (Ombudsman) of Georgia (PDO) has been able to initiate a series of policy initiatives that have enhanced its oversight capacity vis-à-vis the security sector and other state institutions while directly contributing to the revision of eviction policies and legislation on IDPs to align the work of security agencies and state institutions with international human rights standards. In the spirit of human-centred security, the PDO has emphasized direct engagement with conflict-affected populations, providing opportunities for this vulnerable group to influence relevant policy processes. This approach has helped the PDO identify and address the varied needs of group, whether by securing their access to healthcare or by facilitating their ability to obtain key legal identity documents. Ultimately, the PDO has positioned human security as both an enabler and outcome of their efforts to improve SSG, boosting the effectiveness of SSR and advancing progress on SDG 16.

In Kenya, the Commission on Administrative Justice–Office of the Ombudsman (CAJ) has used its complaint-handling and monitoring functions, along with own-motion investigations, to enhance the transparency and fairness of national police recruitment processes, and to improve the working and living conditions of prison staff and the living conditions of inmates. To do so, it adopted a collaborative approach, for example by ensuring the buy-in of senior leadership and management in the national police from the outset. Combined with a rigorous follow-up and monitoring regime, CAJ has thus been able to ensure that most of the recommendations which arose from its investigations and monitoring activities are acted upon by state authorities. This has improved the transparency, effectiveness, and accountability of security actors in Kenya, contributing to the achievement of SDG 16.

Similarly, in The Gambia, the National Human Rights Commission (NHRC) uncovered human rights abuses by security agencies through its complaint-handling function and own-motion investigations. These included alleged abuses in both adult and juvenile prisons, involving SGBV, access to justice, the right to health, the right to freedom of assembly, and the right to freedom from inhumane and degrading treatment. The NHRC has helped build capacity and professionalism in these institutions through its oversight of their internal complaint-handling procedures, and the three examples presented in this case study are thus illustrative of the four different effects of complaint-

handling – the justice effect, the accountability effect, the feedback and learning effect, and the information effect – all of which are critical to solidifying structural transformation in The Gambia after more than two decades of dictatorial rule. Indeed, many outcomes of the work of the NHRC, such as a substantial reduction in complaints regarding police violence during demonstrations, show the power of ombuds institutes to act as a catalyst for SSR and to contribute to achieving SDG 16 by reducing violence, facilitating access to justice, and increasing the transparency, accountability, and effectiveness of security actors.

Here, the interventions of these ombuds institutes are considered in terms of their impact on SSG/R, human security, and SDG 16 by reflecting on the research questions each case study sought to answer:

- › How do ombuds institutes contribute to making societies more just, peaceful, and inclusive through oversight of the security sector?
- › Which good practices of ombuds institutes relate directly to SDG 16 and to oversight of the security sector?
- › What is the impact of these good practices on SSG and on the human security of individuals and communities?

The following reviews the practices used by these ombuds institutes to improve SSG/R and human security and advance SDG 16, before assessing the impact of these practices on SSG/R, human security, and SDG 16. Drawing from this, lessons learned and recommendations for practitioners are then offered to inform future policy initiatives.

SDG 16 and the functions and practices of ombuds institutes

Two central themes emerge from the case studies in this series regarding the functions of ombuds institutes, SDG 16, SSG, and human security. First, the key functions of ombuds institutes – the receipt and investigation of complaints, monitoring and advising, and mediation and dispute resolution – tend to be mutually reinforcing, meaning that any one of these functions and its associated practices are likely to influence or strengthen the others. Second, through the lens of SDG 16, it is clear that these functions often impact several SDG 16 targets simultaneously or sequentially, either due to the cross-cutting nature of a given practice or because progress towards one target advances progress on another.

The case studies in this compilation especially reveal the importance of complaint handling. Providing accessible, efficient, and effective avenues by which complaints can be submitted is the foundation upon which ombuds institutes are able to oversee the security sector. Whether complaints are delivered in-person through visits to local or regional offices or legal clinics, or are mailed, e-mailed, faxed, texted, or relayed in telephone calls, it is essential that ombuds institutes make this process as simple as possible, particularly if they are to reach the ‘furthest behind’. In Costa Rica, this motivated the creation of a free-of-charge phone line directly connecting people in detention to *La Defensoría*. In The Gambia, it prompted the NHRC to operate annual mobile legal clinics to facilitate access to justice in rural areas. And in Kenya, the CAJ has expanded the means by which complaints may be lodged across the country, including by establishing regional and local offices, launching a toll-free phone number and SMS service, and receiving complaints through e-mail and other online platforms.

Complaint handling can trigger own-motion investigations, as was the case in Costa Rica with respect to concerns about the ability of prisoners to access quality healthcare. Sometimes, own-motion investigations are also initiated on the basis of public reporting or outcry, as in The Gambia when the NHRC learned of an alleged assault by the Police Intervention Unit; or on the basis of monitoring, such as the periodic inspections of women’s detention centres by *La Defensoría* in Costa Rica that led it to investigate the discriminatory conditions of women prisoners; or the fact-finding mission undertaken by the NHRC in The Gambia to examine allegations of human rights abuses by the National Drug Law Enforcement Agency. Indeed, own-motion investigations can take many shapes – from studies and investigative panels, to audits and inspections, to fact-finding missions meant to produce recommendations for relevant state authorities – and may also entail follow-up monitoring and advisories. For instance, in Kenya, an audit of the police recruitment process by the CAJ in 2015 and 2016 led to a monitoring observer mission of a national police recruitment exercise in 2022, and in The Gambia, the NHRC’s investigation of allegations involving a police unit led to its monitoring of internal complaint handling by the police.

Thus, the monitoring and advising function of ombuds institutes can be activated by the investigative function. But monitoring and advising can also be triggered by virtue of an ombuds institute’s mandate. A notable example is the establishment of a dedicated monitoring team and the enactment of monitoring initiatives by the PDO in Georgia to promote the human rights of the country’s conflict-affected population. And in Costa

Rica, regular monitoring visits to women's prisons by the Department of Women at *La Defensoría* resulted in an investigation which provoked the establishment of a mechanism to monitor and track the implementation of recommendations issued by the ombuds institute to address gender discrimination within the prison system.

Monitoring and advisory functions tend to be discussed together because they are tightly intertwined, as the former typically leads to the latter. In fact, it is the knowledge gained by ombuds institutes as they collect and analyse data that serves as the basis for their advisory work. This can be seen in the wide range of advisory activities through which the PDO in Georgia engages legislators, security agencies, and state institutions on legislative and policy matters relating to the conflict-affected population and the need to ensure that national legislation complies with international human rights norms and standards; as well as in Costa Rica, where the monitoring of prison conditions by *La Defensoría* has facilitated its advisory role vis-à-vis the drafting of legislation to address issues such as prison overcrowding or pre-trial detention.

As the case studies in this compilation have illustrated, and the use of SDG 16 as a lens for analysis makes plainly clear, practices that directly address one SSG issue and a corresponding SDG 16 target can positively impact other SDG 16 targets and goals. For instance, improved governance of prison systems (SDG 16.6), such as in Costa Rica, The Gambia, and Kenya, can reduce corruption (SDG 16.5) and violence (SDG 16.1 and 16.2), broaden access to justice (SDG 16.3), and promote and enforce non-discriminatory laws and policies (SDG 16.b). Similarly, the initiatives of the PDO in Georgia to enhance the transparency, accountability, and effectiveness of state institutions responsible for providing services to the conflict-affected population (SDG 16.6) have allowed the PDO to also address concerns regarding the right of this population to a legal identity (SDG 16.9), to access to justice (SDG 16.3), and to access to information and the protection of fundamental freedoms (SDG 16.10), including their right to health and adequate housing. These interlinkages extend to other SDGs as well, such as SDG 3 on ensuring healthy lives and promoting wellbeing for all, SDG 5 on gender equality, and SDG 8 on safe and secure working environments. This casual sequence should be taken into account when devising strategies, assessing progress towards the SDGs and outcomes at both the institutional and state-level.

Assessing impact on SSG/R, human security, and SDG 16

Three main findings emerged from an analysis of the case studies in this series. First, the practices they highlight point towards a strong nexus between SDG 16, SSG/R, and human security, reinforcing the evidence base for this relationship. In other words, whether the interventions of the ombuds institutes featured in these studies directly addressed deficits in SSG or sought to improve the human security of individuals and communities, in most cases, the practices they employed had a positive impact on SSG and human security alike. Second, the broad impact of these practices supports the hypothesis that engagement in one area of SSG can positively impact multiple SDG 16 targets or even other SDGs. Yet, the third finding is that, despite these case studies demonstrating a correlation between the work of ombuds institutes and the realization of SDG 16, evidence of the direct contribution of ombuds institutes to achieving SDG 16 is more tenuous. This is primarily due to the fact that ombuds institutes themselves rarely make this link with SDG 16 explicit, and therefore fail to track how their work impacts progress towards SDG 16 targets.

Nevertheless, the case studies in this compilation offer some compelling examples of how ombuds institutes can contribute to the implementation of SDG 16 in tangible ways by advancing specific targets. In Georgia, for instance, where the PDO established a team to monitor the human rights of the conflict-affected population, this led to a series of actions that have improved the eviction and relocation policies of the Ministry of IDPs and the Ministry of Internal Affairs (SDG 16.6). This has enhanced the accountability of these state institutions as well as the human security of IDPs living in Georgian territory by ensuring that eviction practices are conducted in compliance with international human rights standards (SDG 16.10). In addition, to support compliance by relevant stakeholders, the Ministry of IDP has developed and adopted Standard Operating Procedures (SOP) for the Eviction and Re-allocation of IDPs. In much the same way, a recommendation by the PDO that a database of IDPs living in private accommodation on Georgian territory be updated led to an important re-registration process, which made it possible for IDPs to obtain the legal identity documents necessary to access basic public services (SDG 16.9). These interventions have had a positive and direct impact on human security in Georgia but also on the ability of state security institutions to conduct their work more effectively. Whether through policy initiatives, monitoring visits, legal assistance to IDPs, or advisory activities vis-à-vis legislation, the PDO has built its own capacity to oversee the institutions responsible for the security

and wellbeing of the conflict-affected population in a way that has enhanced its role as a security sector oversight actor while also directly contributing to the human security of individuals.

Strong links between the realization of SDG 16 and the practices of ombuds institutes to advance SSG and human security are also reflected in the case studies from Kenya, Costa Rica, and The Gambia, each of which describes activities that improved the governance of prison systems as well as the human security of inmates and prison staff. In Costa Rica, for example, a prison system that was 31 percent above maximum capacity in 2020 saw this rate reduced to 6 percent by the end of 2022, resulting both from infrastructure projects to construct more facilities and the initiatives of *La Defensoría* to promote alternatives to pre-trial detention, such as electronic monitoring and house arrest. This focus on addressing prison overcrowding has a positive effect on the human security of inmates, as overcrowding can negatively impact the ability of inmates to benefit from medical care, technical support, and educational and work programmes. In addition, by tackling the infrastructural and organizational deficiencies of prison systems, the working conditions for staff can be improved, leading to a virtuous circle of better human security for both prison staff and the inmates they serve.

Importantly, the choice of *La Defensoría* to employ SDG 16+ as a framework for their 2018-2019 annual report meant it was uniquely able to illuminate how its practices intersect with specific SDG 16 targets, helping to position the ombuds institute as a key actor in national efforts to implement SDG 16. But providing empirical evidence of this sort, demonstrating the direct contribution of ombuds institutes to SDG 16, requires intentionality and rigorous data collection and analysis. While this compilation of case studies constitutes a first step in this direction, ombuds institutes could benefit from establishing comprehensive systems for monitoring and data collection in order to establish their contribution to SDG 16 empirically.

Lessons learned for enhancing the impact of ombuds institutes on SDG 16

For practitioners, some lessons can be drawn from the case studies in this series as well as from the analysis offered here of the practices and impacts of ombuds institutes. These lessons can especially help practitioners enhance the capacity of ombuds institutes

to contribute to achieving SDG 16, articulate these contributions better at the national and international levels, and make these contributions more apparent. Four of the most important overarching lessons are:

Lesson 1

Use SDG 16 as an analytical framework to guide the strategic positioning of an ombuds institute, to identify gaps, needs, and areas for intervention, and to monitor and evaluate progress and impact.

SDG 16 targets and indicators can serve as analytical and monitoring and evaluation tools, to guide the strategy of an ombuds institute and its interventions. SDG 16 can thus be used as a framework through which complaints are analysed, structural issues are identified, reports are made to parliaments, and the contribution of ombuds institutes to the realization of the SDGs is articulated more broadly. For example, in this chapter, SDG 16 was used as an analytical lens in assessing the practices and impacts of ombuds institutes. This approach has been applied throughout the DCAF programme for which this series of case studies was produced, such as in an assessment of the needs of ombuds institutes in Kenya, Niger, The Gambia, Senegal, and Togo, to identify potential areas for future interventions.²¹³

In Costa Rica, as one of the case studies in this compilation details, the country's ombuds institute also used SDG 16+ as the framework for its 2018-2019 annual report, grouping its activities under relevant SDG 16+ targets. This helped position *La Defensoría* as a key actor in national SDG 16 implementation efforts, and strengthened the coherence of its interventions while also clarifying its role and vision vis-à-vis other state institutions. The report confirmed the importance of addressing security challenges in order to achieve sustainable development and promote peace and justice in Costa Rica, and it influenced the creation of a National Council for Citizen Security and Conviviality as well as the comprehensive National Plan for Citizen Security and Peaceful Coexistence.

SDG 16 can be used not only as an analytical tool in the design or inception phases of an intervention, but as a monitoring and evaluation tool to collect data during and after an intervention and to inform the development of evidence-based policies. In fact, this is a crucial means by which ombuds institutes can further their contribution to SDG 16 and shape policy development.

213 See: DCAF – Geneva Centre for Security Sector Governance, 'Ombuds Institutions, SDG 16, and Security Sector Governance: Towards Peaceful, Just, And Inclusive Societies in Sub-Saharan Africa', Workshop Report, Oslo, 5–6 October 2022.

For this reason, ombuds institutes should establish comprehensive monitoring and evaluation systems, to assess the effectiveness of their own practices and to track the implementation of recommendations made to state authorities.

Lesson 2

Strategically combine initiatives that address the human security of individuals with systemic approaches and interventions.

The case studies in this series exemplify the importance of striking a balance between addressing the needs of individuals and tackling systemic issues related to governance of the security sector. Indeed, the strength of ombuds institutes lies in their ability to provide remedy and redress for individuals, while also drawing the attention of state institutions, and local, national, and international partners, to systemic problems of governance. For instance, ombuds institutes can provide access to justice and remedies for individuals, and at the same time contribute to improving SSG in a way that has broader systemic impact through their monitoring and advisory function. Ombuds institutes can also leverage their unique ability to collect data on the challenges faced by the population via complaint handling and use it to mobilize support for policy change, thus strengthening accountability in the security sector and creating a beneficial feedback loop that contributes to better governance and better outcomes for individuals, communities, and society as a whole.

This was true of the ombuds institutes featured in the case studies in this series. The monitoring of police recruitment in Kenya and of prison conditions in Kenya and Costa Rica, and multiple interventions to protect the rights of the conflict-affected population in Georgia, were all instances in which the activities of ombuds institutes led to the development of policy recommendations that positively impacted SSG when adopted by state authorities. By implementing the recommendations of the CAJ in Kenya, for example, the Kenya Police Service Force improved their recruitment process and rendered the institution more transparent, inclusive, and ultimately, effective. And when concerns were raised in Kenya, The Gambia, and Costa Rica regarding the living conditions of prisoners and the workplace environment for prison staff, efforts by ombuds institutes in those countries to address these issues took on a broader strategic importance insofar as they impacted other issues, including overcrowding, pre-trial detention rates, and the job satisfaction, mental health, professional motivation,

and long-term career plans of prison employees. By improving conditions for both inmates and prison staff, the Kenyan, Gambian, and Costa Rican ombuds institutes were thus able to positively affect governance of the penal system, and in doing so, reduce the risk of corruption and the propensity for prison violence. This illustrates how human security deficits are often a cause and a consequence of poor SSG and how, if addressed, can lead to a virtuous circle in which both human security and SSG are enhanced.

Lesson 3

Encourage the relationship between the functions and interventions of ombuds institutes to optimize their consistency and impact.

The complaint-handling, investigation, and monitoring and advising functions of ombuds institutes are the primary means through which they contribute to SDG 16 implementation. These functions inform one another, but obtaining up-to-date information and evidence that is essential to designing effective and timely interventions requires that an ombuds institute is present throughout a country, for example by establishing local or regional offices, deploying monitoring teams to particular areas, or holding legal clinics or public inquiries.

In the case study on The Gambia, the authors refer to the 'mutually reinforcing beneficial effects' of complaint handling by the NHRC, describing how the provision of justice can in turn enhance the accountability of security actors, facilitate feedback and learning across the broader security sector, and result in the development of policy recommendations to address structural deficits in the sector. This can be true for any ombuds institute. After all, it is the presence of an ombuds institute on the ground that facilitates access to justice, thereby expanding its ability to provide remedy and redress for maladministration. When maladministration or abuse of power in the security sector is deterred, accountability is strengthened and so is the effectiveness of security provision. Working closely with internal control and human rights units within security agencies, ombuds institutes can then facilitate feedback and learning, enabling security sector actors to improve and adapt, which increases the professionalism of security providers. Finally, by translating the information it gathers into policy or legislative recommendations, ombuds institutes can drive broader improvements in SSG.

Lesson 4

Cooperate with local, national, and international stakeholders to enhance outreach and impact.

Where ombuds institutes operate in fragile and complex environments, they are sometimes unable to operate in all the regions of a country or must engage with issues beyond their traditional areas of expertise. For instance, in Georgia, the PDO was faced with the challenge of protecting the rights of conflict-affected persons, including many residing in areas outside the control of the Georgian government. Because these individuals could not be physically accessed by the ombuds institute, the PDO established a specialized team for protecting and promoting the human rights of this vulnerable population and began actively collaborating with international organizations and civil society groups that could access these areas.

Strengthening the oversight role of ombuds institutes by raising awareness of their functions among national and international stakeholders in this way, and among security sector actors in particular, is essential to ensuring human security and the resilience of democratic institutions as more and more people are forced to leave conflict-affected regions around the globe. The number of IDPs and refugees is only growing worldwide, and protracted armed conflicts continue to have severe economic and security consequences on people as well as on state institutions. But the need to cooperate with local, national, and international stakeholders is not only relevant in conflict affected countries. As lessons learned from the Kenya case study illustrate, all relevant actors must be aware of the mandate and powers of ombuds institutes and other independent oversight bodies in order to achieve sustainable results. In Kenya, this was achieved through mandatory staff training of the police and prison administration containing content on human rights and complaint mechanisms, which strengthened cooperation between the ombuds institute and security actors. This made oversight by the ombuds institute more effective and enhanced the efficiency and transparency of security sector institutions.

Concluding remarks

This compilation of case studies examined the functions and practices of ombuds institutes in the context of SDG 16, SSG, and human security, and sought to answer the main research question: *How do ombuds institutes contribute to making societies more just, peaceful, and inclusive through oversight of the security sector?* What has become clear is that the different

functions of ombuds institutes – which include complaint handling, investigation, monitoring and advising, and mediation and dispute resolution – operate together in a complementary way that enhances the ability of ombuds institutes to strengthen both human security and SSG, and in turn contribute to achieving SDG 16. Indeed, by highlighting the importance of complaint handling, these case studies demonstrated the relationship between all the functions of ombuds institutes.

For example, when ombuds institutes provide various avenues by which people can file complaints, such as toll-free phone lines, mobile legal clinics, and online platforms, they not only help close the justice gap, particularly for marginalized and vulnerable groups, but they collect more complaints and potentially initiate more investigations as a result. Investigations can also be initiated by an ombuds institute itself, stemming from monitoring activities like inspections or fact-finding missions. In some cases, these investigations result in recommendations to state authorities and follow-up monitoring to track implementation. This monitoring can lead to advisory activities in which ombuds institutes harness the data they have collected to inform legislators, security agencies, and state institutions involved in legislation and policymaking, as seen in several case studies in this series.

Ombuds institutes can also help state institutions find compromises that bring solutions to pressing problems by mediating between different groups or government bodies, ultimately improving human security as well as the governance of the security sector. And though many entities and organizations perform monitoring functions or act as watchdogs vis-à-vis the security sector – including parliaments, civil society, the media, human rights organizations, inspectorates, and more – ombuds institutes are set apart by their complaint-handling role, which grounds their interventions and investigations in empirical realities and people's lived experiences. This increases the credibility and relevance of their work and strengthens their independence from politics.

The case studies in this compilation examined how the practices of ombuds institutes impact and interact with the SSG/R-human security-SDG 16 nexus as well, and revealed that interventions by ombuds institutes often positively affect both SSG and human security, and in a mutually reinforcing way. These studies also illustrated the interconnectedness of SDG 16 targets, and how efforts to address one can positively impact others. However, as mentioned above, ombuds institutes often neglect to explicitly link their practices to SDG 16, and should be more intentional about data collection and monitoring for the purposes of substantiating their contributions to SDG 16 and sustainable development more broadly.

Finally, this series of case studies offered key lessons for policy actions meant to enhance the capacity of ombuds institutes, as well as their local, national, and international partners, to contribute to SDG 16. Most notably, these include the strategic use of SDG 16 as an analytical framework, the importance of addressing both individual allegations and systemic challenges, the potential to connect the different functions of ombuds institutes into a virtuous circle, and the value of specialization and cooperation with key stakeholders at all levels to enhance the reach and impact of interventions.

Of course, if sustainable development is to be achieved, peace and security must first be secured, as reflected in the aspirations of SDG 16. This requires a security sector that operates in accordance with the rule of law, respect for human rights, and gender equality, and the case studies in this compilation thus sought to illuminate the critical role of ombuds institutes therein. Written in the spirit of SDG 16, which calls for a more peaceful, just, and inclusive world, these studies are intended to inspire practitioners to orient the work of ombuds institutes in a way that maximizes their potential to realize SDG 16.





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