

What role for internal Military Ombuds institutions within the Armed Forces?

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In the Sahel, there is a nascent interest in exploring the potential for the ombuds role in the armed forces, for which the models are multiple. For now, the question remains open in the majority of countries in the sub-region and existing models are largely based on civil mediation. For example, the Ombudsman of Faso and the Mediator of the Republic of Niger have general jurisdiction to hear civil and military complaints filed against any arbitrary action committed by the administration and other public bodies. This responsibility does not exist in Mali where the Mediator of the Republic has no jurisdiction to take up disputes between a public official and his/her administration, thereby excluding the disputes within the armed forces. Therefore, ombuds institutions for the armed forces can be classified into three categories: general ombuds institutions who have a general jurisdiction which includes the military; specialised military ombuds institutions who have an exclusive mandate to receive complaints from the military or armed forces; and Inspectors General, sometimes referred to as “internal complaints mechanisms”, which are referral mechanisms that are not independent from the military, but are situated within the Ministry of Defence.¹ Mostly, they report directly to the Minister of Defence or to someone of a lower rank.

At present, internal military ombuds institutions therefore remain subsidiary in the Sahel.² However, the interest in this function is growing. Military ombudsman, as understood in this paper, is a tool that allows any member of the military, regardless of rank, to be able to refer to the highest authorities of his institution or department to arbitrate a dispute he or she may have with the military administration or hierarchy. It is therefore an internal organ of the

military institution which is not intended to examine the appeals of civilians against the armed forces. As a mediation body, its independence in settling these internal problems comes from its proximity to the highest authorities ensuring it is protected from any attempt to influence it by subordinate commands. At the same time, its goal is to ensure this ease of access by the military as it is internal to the institution. As such, the internal military ombuds institution is known as a “mediation mission” carried out by an internal military mediator, either specifically dedicated or carried out by an inspectorate.

This paper examines the role and the interest of developing an internal military ombud’s institution with a mediation mission within the armed forces.

Introduction

For the past ten years, DCAF has been engaged in supporting the development of the function of ombuds institutions within the armed forces, making it possible to propose a formal mode of amicable dispute resolution within the military community. DCAF’s commitment is reflected in the annual organisation of the International Conference of Ombuds Institutions to the Armed Forces - ICOAF - where good practices are exchanged between the different ombuds organisations for the armed forces. Simultaneously, DCAF has also worked with the Konrad Adenauer Foundation (KAS) to promote mediation within the armed forces through workshops or international forums.

In Africa, depending on the specific context, national ombuds institutions generally have powers and

means enabling them to effectively fulfil their mission in the civil sphere. However, these same institutions have a limited capacity to intervene within the armed forces, an environment which is often closed to them. The concept of military-specific mediation – as a specialised military ombuds institution or internal complaints mechanisms – has struggled for wide adoption, with the exception of South Africa which created the role of Specialised Military Ombudsman in 2012.³ The mission of this office is wide reaching and includes strengthening administrative oversight, accountability, democratic governance and the settlement of disputes within the armed forces. In carrying out these functions, it was intended that the role would simultaneously strengthen the credibility of the military in South Africa.

Why mediation within the armed forces?

In some countries, such as Niger, Burkina Faso and Senegal, judicial (or arbitration) cases concerning armed forces are in theory handled by an independent civil mediation institution; this is the classic type of general ombuds institution. Its jurisdiction is broad-based enough to cover civil and military complaints filed against any arbitrary action committed by the administration and other public bodies. This model has the advantage of ensuring fair treatment of civilians and the military in defending their respective rights. However, such an institution may lack specific knowledge of the military community which affects its credibility within the armed forces. Furthermore, because of its broad mandate, it is difficult for such an institution to pay particular attention to the problems faced by the armed forces. In these cases, its resources, in particular human resources, are insufficient or sometimes non-existent, and can cause significant delays in resolving complaints.

Apart from Senegal, where cooperation between the services of the Mediator of the Republic and the Ministry of the Armed Forces appears exemplary due to a strong confidence coming from the army, military secrecy is invoked in many West African countries to get around the power of the ombuds institution. It can lead to situations where communication between the oversight institution and the armed forces is insufficient. This inevitably results in significant delays or deadlocks in the diligent processing of cases.

Thus, while the ombuds institution appears to be an essential pillar of good governance, its general jurisdiction over civil and military affairs constitutes a major obstacle to its credibility within the armed

forces. As a result, the number of case files emanating from personnel of the ministries of defence is generally insignificant.

However, societal evolutions, the multiplication of social networks, and need for understanding and explanation of a new generation of recruits mean that we need to multiply response capacities. In many states in the sub-region, the military forms an integral part of society. Young people belong to this generation of information and are undoubtedly more demanding for answers than their elders, even in highly disciplined institutions such as the armed forces.

Resorting to mediation: a citizen's right little used by the military in Africa

Members of the military benefit within their own institutions from feedback channels of grievances or difficulties they encounter. These channels generally follow the hierarchical path, i.e. all levels of command, from the first level (section, company, squadron) to that of the corps commander (regiment or aerial base commander). In some cases, these requests can be transmitted directly to the corps commander through, if they exist, category representatives (officers, non-commissioned officers). It is then the responsibility of the base or regiment commander to forward the files to the central staff for study, arbitration and decision.

These channels, when working end-to-end, are sufficient to resolve minor or administrative issues but cannot replace the role played by inspectors (general or army) or be assimilated to real "internal complaints mechanisms". The experience of many defence forces tends to show that these channels are insufficient; furthermore, information sharing on files that would require feedback from the ad-hoc levels of the institution are exceedingly rare.

The alternative at the disposal of the military would be to seize the general ombuds institution – or Mediator of the Republic – who is a civilian, an independent personality responsible for examining disputes between individuals and the administration. The right to seize it for such cases is given to all citizens. The objective of such an approach is to obtain the settlement of a dispute without going through an expensive and tedious justice procedure but also to denounce and examine more widely the failing of the administration in question.

Military personnel, as citizens, can therefore naturally seize the general ombuds institution. However, few do

so to settle internal disputes that relate to the military Institution. In some countries, the reasons may be that priority is given to the internal resolution of the military institution's disputes, but they may also be motivated by the fear of confronting the hierarchy and of facing potential consequences. With the exception of a few countries such as Senegal, ombuds institutions generally experience great difficulty in gaining access to the information required to enable them to carry out inquiries.

An ombuds system integrated within the armed forces could therefore be considered as an effective alternative. First, the questions related to which body and to whom this mission will be entrusted should be clarified, as it could be a specialised military ombuds institutions or an internal referrals mechanism. It should be borne in mind that the appointed specialised ombuds person should have a large degree of independence from the various levels of command of the armed forces, whether administrative, regional or operational. In addition, it will be essential to determine precisely the institution's attributions and field of competence, and to provide the institution with a legal framework allowing an easy and immediate access to all information necessary for its investigation. In particular, the level of referrals needs to be clarified; in that case, disputes fall out of the criminal justice system and can be resolved "amicably". That's why this mediation mechanism speaks of "referral" and not of "complaint". Mediation mission within the armed forces is exclusively dedicated to soldiers who consider themselves injured by their administration. Their referral can be appealed to specialised bodies (State Council, Mediator of the Republic, etc.). Military mediation is an additional tool at the service of the staff and the Institution.

The person of the ombuds must be given authority and rank to shield him or her from any influence or pressure, and real investigation powers and direct access to the highest authorities in the ministry. Appointing a civilian provide a shield from personal conflicts of interest but the possibility of nominating an Inspector (general or army), General or superior officer, renowned and respected, enjoying direct access to the highest authorities he advises, will undoubtedly mitigate any attempt to influence, thereby guaranteeing his independence. This model is used in most countries, as the main difficulty in nominating a civilian remains the trust that some military service members might more easily place in a military mediator. Finally, as a specialised ombuds institution reports to the President of the Republic, the internal ombuds institution within the armed forces

will report directly to the Minister of Defence and to the Chiefs of Staff. The work carried out must be the subject of an annual report which protects personal data and reveals the themes and statistics of the files processed. This report may, if necessary, be the subject of requests for clarification from political authorities or NGOs.

Military mediation: many benefits at a lower risk

The principle of military personnel's right to seize the highest level of their hierarchy to assert their rights is a principle recognised and widely adopted within the international community. In many countries, this right is known by every member of the military. They can contact the authority responsible for the mediation mission by mail, interview, or through a dedicated intranet platform which allows them to immediately forward their referral.

Therefore, this principle offers all soldiers, whatever their rank, the opportunity to bring a dispute or referral before the highest authorities. This process, when implemented, is a guarantee of transparency in military institutions in perfect consistency with better practices adopted in many countries. It thus constitutes an effective brake on nepotism and corruption. Many countries have established institutions allowing them to respect these principles. In France, this mission is entrusted to the Inspections (general or specialised) which are directly attached to the Minister of the Armed Forces or to the Chiefs of Staff. The Belgian defence forces have set up a Directorate General for Mediation. The United States has ombuds institutions in each of the forces, which are spread across the country. As mentioned above, South Africa has set up a dedicated structure, parallel to that of the civilian ombuds institution. The Military Ombuds person is an experienced retired general who directly reports to civilian power. Despite their different status, these examples enjoy a large independence linked to their affiliation, access and high rank.

Experience has shown that the possibility of having recourse to a recognised and independent authority is a guarantee of greater support and better cohesion among all personnel, civil and military, of the ministry. Indeed, at all hierarchical levels, any personnel can safely say that if necessary, his/her case will be examined and defended to the highest level. This offers each member the possibility to adopt a renewed perspective towards their own institution and can foster the kind of trust and confidence that is essential to comradery.

The settlement of disputes between a member of the Ministry of Defence and his/her institution can quickly become an issue of public concern. There have been cases where a staff member nearing retirement or the end of their contract launches endless lawsuits against their institution. Whistleblowers go public with evidence of systemic problems because complaints systems do not function or exist. Social media may then be used for accusations and denunciation and can quickly weaken an organisation that is vilified without really being able to defend itself, both inside and outside the country.

Under these conditions, the early settlement of disputes can cool down a situation that has inflamed internal interest groups or sectors of an institutions and, if used well, it can result in effective and credible communication inside the institution. As such, internal mediation would offer an opportunity for referral; experience shows that the majority of cases brought before the Military Ombudsman relate specifically to internal administrative problems. In this case, the two procedures are not incompatible.

In fact, the establishment of mediation within the armed forces could very likely facilitate the mission of the ombuds institution for referrals between a civilian and the military institution. In these cases, the military ombuds institution could be a focal point for the civilian ombuds institution and help facilitate the settlement of these disputes. The transparency and willingness of the armed forces to resolve these cases would undoubtedly result in an improvement in their relations with the civilian population.

However, it is essential to also question the multiplicity of remedies. If a soldier files his complaint internally and externally, and if the two institutions investigate and reach different conclusions, the difficulties can be enormous if one is more favorable than the other. To prevent this, in some countries, a soldier must exhaust domestic remedies before going to the institution of the external ombudsman. Others have developed memoranda of understanding to share information to coordinate efforts, but this can create legal confidentiality issues.

Conclusion & recommendations

The establishment of mediation within the armed forces has potential to offer internal and external benefits to the military institution.

Internally, by guaranteeing all the members of the ministry the treatment of potential disputes with their service, it would offer better protection of rights, a image of modern management, and would thus ensure broader support and greater cohesion within the military institutions.

Externally, greater transparency and the desire to settle disputes with the civilian population would strengthen the positive image of the armed forces and could contribute to strengthening the relations of trust between civilians and the military.

These advantages can only be achieved if all the conditions for the creation and operation of such an institution are met. In particular, if its recommendations are listened to and implemented.

In order to set up such a structure, DCAF recommends the following steps:

Step 1: To obtain full support for the adoption of such an initiative: minister, chief of the defence staff, and chiefs of staff (land and air).

Step 2: To identify an institution likely to deal with the mediation mission within the armed forces (general inspection, specialised management). At this point, its hierarchical attachment (president, minister and/or chiefs of staffs) must be specified. Finally, assurances in law that the institution will have the required independence from the various levels of command and be composed of officers whose value and integrity are recognised is needed.

Step 3: To clearly define in a ministerial instruction, the prerogatives as well as the chain of subsidiarity of the military ombuds institution.

Step 4: To provide the organisation with a few motivated senior officers, themselves being sufficiently experienced to be able to deal with referrals from all personnel (military police/justice, army, air force, human resource knowledge and command experience).

Step 5: To organise staff training workshops dedicated to the mediation mission being aware of the innovation of such an institution with new responsibilities.

Step 6: To organise an internal communication campaign in the units and in the defence academies on the mediation function and to establish different mechanisms to submit complaints (telephone hotlines, internet forms, emails, complaint boxes, etc.). The designated staff must make themselves known by traveling to the various garrisons.

Step 7: To establish a relation between the military ombuds institution and ICOAF and the international community.

Step 8: To establish a formalised relation between the military ombuds institution and the civilian ombuds institution so as to facilitate work on referrals between civilians and soldiers.

Step 9: To schedule continuous annual audits to ensure the proper completion of the mission.

Author

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