

DUTY OF CARE: OMBUDS INSTITUTIONS AND INTERNATIONAL MISSIONS

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International Missions and Abuse

At any given moment, hundreds of thousands of military personnel are deployed abroad, participating in a variety of different missions, ranging from UN peacekeeping operations, bilateral training exercises, deployments to permanent overseas bases, participation in regional defence organisations, or fighting wars. During these international missions, military personnel are isolated from their traditional support networks, such as friends and family, but also formal support structures, like ombuds institutions. Like when stationed at home, soldiers deployed in international missions will inevitably have problems or concerns that need to be resolved. Without many of these informal support networks, it is even more imperative that the formal support structures be ready and able to respond. Unfortunately, often they do not, and abuse of soldiers and by soldiers is permitted to occur.

In the context of UN peacekeeping operations, this has been a particularly troubling issue. Over the previous decade, the United Nations has expended considerable time and resources to combat misconduct and abuse by UN military peacekeepers, particularly sexual exploitation and abuse (SEA). While these efforts have led to significant reforms, that appear to have had some positive effects,ⁱ serious abuses continue to occur.ⁱⁱ These instances along with hundreds of others gravely undermine the legitimacy and effectiveness of the United Nations and its commitment to peace and security. In many of these instances of abuse, the perpetrators have faced little to no consequences for their actions due to the troop contributing countries retaining exclusive jurisdiction over military contingents involved in PKOs, and the responsible national actors demonstrating little interest in holding their own personnel accountable for their actions. For this reason, Secretary-General Antonio Guterres has prioritized reforming UN peacekeeping operations.ⁱⁱⁱ

Ombuds Institutions and International Missions

Ombuds institutions for the armed forces have an important role to play in promoting and protecting human rights and fundamental freedoms, as well as preventing misconduct and abuse of the armed forces wherever they are engaged, domestically or internationally, including in peacekeeping operations. Unfortunately, in most countries, ombuds institutions have focused much of their efforts on armed forces stationed domestically, and have not been very actively engaged in overseeing armed forces personnel participating in peacekeeping operations. According to DCAF's initial research of 29 ombuds institutions for the armed forces in 2016, only seven indicated they visited personnel stationed abroad, and a similarly small number indicated they regularly received complaints from or about personnel participating in international missions. This, however, does not indicate that personnel or civilians faced no problems, but rather suggests significant underreporting of complaints by armed forces personnel and civilians affected by peacekeeping operations, due to various limiting factors that discouraged them from raising their concerns. According to this initial research, ombuds institutions cited factors including navigating multiple jurisdictions, lack of a sufficient mandate, lack of finances and resources to carry out inspections abroad, unfamiliarity with the local situation, as well as a dependency on the willingness and cooperation of the military to receive ombuds institutions abroad.^{iv}

Engaging in International Missions

Thematically, ombuds institutions can engage in combating abuse in international missions. Some concrete examples of the role of ombuds institutions are the following:

- ❖ *Preventative function*: ombuds institutions regularly offer a preventative function, receiving complaints and responding before the abuse can continue.
- ❖ *Enforcement function*: enforcement is one of the key responsibilities of ombuds institutions. They are particularly helpful in rectifying cases that were improperly handled within the traditional systems of redress, e.g. when the chain of command failed to handle a problem seriously.

- ❖ *Remedial function*: ombuds institutions are well placed to protect the rights of civilians, and provide support to victims of abuse.
- ❖ *Policy review function*: in instances where current policies are non-existent or inadequate, ombuds institutions have a strong power to review the shortcomings and issue policy recommendations to reform the system.
- ❖ *Monitoring function*: ombuds institutions are also frequently tasked with monitoring the armed forces, particularly on sensitive topics, to ensure that the appropriate response is provided.

Practically, ombuds institutions can engage in combating abuse in international missions. Many already recognize the need to strengthen their mandate of promoting and protecting human rights and fundamental freedoms of armed forces personnel in international missions, and several ombuds institutions have taken or are in the process of enhancing their role.^v

Interoperability

Additionally, ombuds institutions have noted the potential for cooperation and coordination amongst themselves. As military engagements are increasingly multinational in scope and stress the importance of interoperability of equipment, operations and resources, then so too should ombuds institutions encourage interoperability between themselves. An encouraging example of this is a recent joint visit by the Dutch National Ombudsman and Inspector General, and the German Parliamentary Commissioner to their troops stationed in Mali as part of MINUSMA and conducted meetings with the Mediator of Mali. The visit highlighted the fact that, while the peacekeeping operations are composed of armed forces personnel with different nationalities and therefore operate under different rules and procedures, they are confronted with many of the same problems. Here, the UN and other international organizations can facilitate cooperation.

Questions for discussion:

1. How does your office engage with soldiers participating in international missions?
2. What are barriers preventing your office from engaging more in international missions?
3. Does your office coordinate with ombuds institutions of other countries engaged in international missions with personnel from your country?
4. Has your office developed protocols for handling complaints within multinational command structures (such as forwarding complaints to national counterparts or establishing joint complaints initiatives)? If not, what are some obstacles preventing the establishment of such protocols?
5. Does your office cooperate with international organisations, such as the UN or NATO, when engaging with forces deployed within such international frameworks?

ⁱ "Conduct in UN Field Missions: Misconduct Tracking System (MTS)." UN Conduct and Discipline Unit. June 09, 2017. <https://conduct.unmissions.org/other-misconduct-data>.

ⁱⁱ "'Sickening' sex abuse alleged in CAR by UN peacekeepers: UN and French peacekeepers accused of grim abuses in restive African nation, including bestiality with children." Al Jazeera News. April 1, 2016. <http://www.aljazeera.com/news/2016/03/sex-abuse-alleged-car-peacekeepers-160331183645566.html>.; Askin, Kelly. "Global: Ending impunity for crimes committed by UN peacekeepers." International Bar Association. June 17, 2016. <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=cebc5f69-a238-49bb-b85a-5e8d878fe485>.

ⁱⁱⁱ "UN announces new approach to 'stamp out' sexual exploitation and abuse." UN News Center. March 09, 2017. <http://www.un.org/apps/news/story.asp?NewsID=56322#.WMfwok0rJaT>.

^{iv} The preliminary research was carried out as part of the preparations of 8ICOAF. *8th International Conference of Ombuds Institutions for the Armed Forces (8ICOAF), Conference Statement*, 5 October 2016. <http://www.icoaf.org/8icoaf>

^v *8ICOAF Conference Statement*, 5 October 2016. <http://www.icoaf.org/8icoaf>