

# **Building Integrity and Reducing Corruption in Defence**

**A Compendium of Best Practices**



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## Chapter 19

# The Role of Ombudsperson Institutions

In the 200 years of its history,<sup>1</sup> the ombudsman institution has demonstrated its value for both developing and mature democracies. The ombudsperson institution is not the primary instrument to fight corruption as a criminal activity. However, if properly designed, supported by strong political will and equipped with experienced and motivated staff, the ombuds office can be an effective instrument within a strategy of preventing, neutralising and eradicating corruption in defence.

### The Ombudsman Function in Defence

In its modern interpretation, the primary function of the ombudsman is “to protect the people against violation of rights, abuse of powers, error, negligence, unfair decisions and maladministration in order to improve public administration and make the government’s actions more open and the government and its servants more accountable to members of the public.”<sup>2</sup> The essence of this explanation, as embraced by mature democracies, is that the ombudsperson is independent from the organisation subject to peoples’ complaints. Hence, the ombuds institution is created by law; the ombudsperson is appointed by the legislature and serves as its agent. One of the supporting arguments is that such an arrangement helps guarantee the independence of the ombudsman, who might otherwise be reluctant to criticize the actions of agencies that are responsible to the executive. As part of the legislative branch of government, the ombudsman is not only providing a direct service to citizens, but also performs a role in the legislative oversight of the agencies under the ombudsman’s jurisdiction. Since the ombudsman may only make recommendations, and may not compel the executive and judicial agencies to take substantive actions, his or her role is consistent with the concept of separation of powers.<sup>3</sup>

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<sup>1</sup> Frank Orton, former human rights ombudsman of Bosnia and Herzegovina and former Swedish ombudsman, argues that in October 1713 the king of Sweden signed an ordinance by which he established the institution of the King’s Highest Ombudsman to ensure that the judges, military officers and civil servants in Sweden were observing the laws of the country and the rules laid down for them.

<sup>2</sup> International Ombudsman Institute, as quoted at: [www.law.ualberta.ca/centres/ioi/](http://www.law.ualberta.ca/centres/ioi/).

<sup>3</sup> Comment from the *Model Ombudsman Act for the State Governments*, developed by the U.S. Ombudsman Association, [www.abanet.org/adminlaw/ombuds/usoamodel1.html](http://www.abanet.org/adminlaw/ombuds/usoamodel1.html).

### Box 19.1. Defining “Ombudsman”

Loosely translated, “ombudsman” means “the citizen’s defender” or “representative of the people.” Ombudsman is a gender-neutral term, used throughout the world by women and men who hold the office. However, some prefer the terms ombuds or ombudsperson (see [www.usombudsman.org](http://www.usombudsman.org)). Many other names are used to represent the ombudsman office. For example, in English speaking countries the names vary from *parliamentary commissioner for administration* (Sri Lanka, United Kingdom), *public protector* (South Africa), to *investigator-general* (Zambia). In a number of countries, the protection of human rights is one of the major purposes of the ombudsman office and this is often reflected in the name of the office, e.g. Mexico’s *National Commission of Human Rights*, the *Civil Rights Protector* of Poland, the *Human Rights Ombudsman* of Slovenia and the *Parliamentary Commissioner for Human Rights* in Hungary.

Source: Petter Bolme, *International Overview of the Ombudsman Concept* (Stockholm: Global Reporting Sweden AB, 2008), 4.

This is the core of the original concept that, applied to defence, looks at the public protector or military ombudsman who safeguards the rights of military personnel and emphasises democratic constitutionalism within the defence forces. It is important to underline that interpretations such as “internal ombudsperson” or “inspector general” with ombuds functions, appointed by the head of the institution, deviate from the original concept. They may have positive impact in keeping the institution healthy but cannot be examined as alternatives. Bureaucracies characterized by diverse organisational cultures have introduced modified versions of the original ombuds concept with varying degrees of success. The knowledge of the basic concepts and their specific implementation mechanisms facilitates the establishment of an ombudsperson institution adequate to the strategy of building national and institutional integrity.

The establishment of a defence ombudsman institution aims to cope with two principal problems of defence in a liberal (or liberalising) democracy: to keep the relations between civil society and its military institutions under proper civil control and, simultaneously, to protect the human and social rights of the people in defence. Thus, the classical question in civil-military relations “who will guard the guardians?” is combined with another one – “how to guard the rights of guardians as citizens in uniform?” The issues, embraced by both questions, are interrelated not only conceptually but as a strategy and policy of societal and defence institutional development.

The internationally accepted role of the ombuds office is merely to investigate and recommend solutions. The establishment of such an office, therefore, does not have to be seen as a threat to any existing authority.<sup>4</sup> The scope of activity of a military ombudsman will be dependent, to a large extent, on the intent, influence and nature of

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<sup>4</sup> In many cases such activities are viewed as contrary to military subordination and are explained—rightly or wrongly—as eroding military or political authority and leadership.

the evolving defence environment. It is unlikely that it will get “out of hand.”<sup>5</sup> Corruption, in its multiple forms and manifestations, is plausible throughout the entire spectrum of civil-military relations. Therefore, a “full-scale ombudsman” should have the responsibility and capacity to cope with all serious civil-military problems. It is worth noting that the establishment of this office in a number of countries has resulted in some remarkable developments in the conduct and behaviour of military personnel in executing their duties and responsibilities.

## Models of Ombudsman Institutions

Generally, ombuds institutions are divided into two groups – “classical” and “organisational.” There is constant evolution within each group and the demarcation lines among them change rapidly.<sup>6</sup> But defence is different both as a governmental policy and a societal detachment. For that reason there are numerous types of ombudsman institutions in defence, with widely varying tasks and authorities. Three main models may be distinguished from a practical point of view – the classical ombudsperson, the powerful institutional ombudsperson in defence, and the weak organizational ombudsperson of the armed forces.

Recalling the basic premise in management that “what is measured is what gets done,” the power of the ombudsperson is examined herein as a component of the processes of monitoring and evaluation of defence governance, in particular in the formulation and implementation of defence policy.

### The Classical Model of Ombudsman in Defence

This model is based on the presumption that in any parliamentary democracy the parliament is the supreme national authority. The parliament alone makes all final decisions on defence matters, including decisions on resource allocation and institutionalization of control mechanisms such as budget control, hearing of petitions, the raising of problems through parliamentary hearings, etc. These mechanisms could also include a public protector or military ombudsman who safeguards, on one hand, the parliamentarian and societal ownership of the national defence policy and emphasises democratic constitutionalism within the defence force and, on the other hand, the rights of military personnel as humans, citizens and members of the military organisation. Box 19.2 provides an example of the classical ombudsman in defence in Norway.

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<sup>5</sup> Phasoane Mokgobu, “Determining a Role for a Military Ombudsman in the South African National Defence Force,” *African Security Review* 8:1 (1999), [www.iss.co.za/ASR/8NO1/Determining.html](http://www.iss.co.za/ASR/8NO1/Determining.html).

<sup>6</sup> According to materials published by The Ombudsmen’s Association (TOA), a U.S.-based umbrella body. See also the website of the Canadian Armed Forces ombudsman, [www.ombudsman.forces.gc.ca](http://www.ombudsman.forces.gc.ca).

### Box 19.2. Classical Model of an Ombudsman in Defence in Norway

An example of a *classical* ombudsperson in defence is the Parliamentary Ombudsman for the Armed Forces of Norway – the world's first parliamentary military ombudsman established in 1952. The ombudsman and the Ombudsman's Committee are bodies of the Norwegian Parliament and part of its oversight and supervisory activities. The ombudsman shall safeguard the rights of all members (and former members) of the armed forces. Anyone who feels that he or she has been wrongly, unjustly or unreasonably treated can bring his or her case before the ombudsman. The Ombudsman's Committee is required to submit annual reports to parliament but may address a matter to parliament at any time. The ombudsman acts as an advisor to the parliament and the Ministry of Defence on matters within his sphere of competence. In its role as independent military oversight mechanism the Ombudsman's Committee inspects military units stationed at home and abroad. The ombudsman submits inspection reports with proper recommendations to the minister of defence and the chief of defence.

The ombudsman may address or take actions of his own initiative in any matter which comes to his attention. He is empowered to deal with cases involving all authorities, has access to all documents and information and may hear witnesses and experts. The ombudsman is impartial and independent of the minister of defence, the Ministry of Defence and the military authorities.

*Source:* Website of the Norwegian ombudsman for AF, [www.ombudsmann.no/mil/english.asp](http://www.ombudsmann.no/mil/english.asp).

Despite some variations in name, classical ombuds institutions for defence share some essential characteristics:

- To protect people's rights, *the ombudsman function is created by law* and the ombudsperson is *appointed by the legislative body* that provides strong legal safeguards for their independence and confidentiality of records.
- The ombudsperson has the *power to investigate* whether the government, including the Ministry of Defence (MoD) performs its functions contrary to the law or against public moral norms.
- The ombudsperson *makes proposals and issues recommendations* to the government for changing or initiating actions (including legal actions) to eliminate unfair and improper institutional performance.
- He or she makes the results of its activities *public possession* and initiates non-governmental and media *pressure* for administrative or legislative corrective action.

In all cases, the ombudsman institution must be impartial, non-partisan and non-political. But inevitably the ombudsperson is an actor in the political arena.<sup>7</sup> He/she is

<sup>7</sup> In this case, the political arena consists of political parties, political institutions like parliament, the government, the presidential office, non-governmental organisations and the formal and informal, legal and illegal procedures they use to interact within the arena.

in a position to initiate political responses, including through introduction of new laws or amendments, recommend dismissal of political appointees, illuminate illegal political or administrative practices and initiate sectoral or structural institutional reforms. The criticism of a ministry or other public authority represents a criticism against the governing option (party or coalition) and can be (mis)used by the opposition.<sup>8</sup>

The power of the *classical* ombudsperson in building national military identity and integrity is not just in investigating personal cases of violation of different rights. The ombudsperson's role in integrity building could be considerable if he or she succeeds to influence the political process at the stage of policy formulation, to strengthen the legitimacy in its implementation and to provide the society with information on achieved results. The ombudsperson would have a key role for the society and the military if he or she contributes to establishing an environment of mutual confidence and support.

### The Institutional (Organisational) Model

The original concept of ombudsman is based on the independence of the ombudsman from the executive powers. Historically, during the past two centuries, most government agencies in democracies have matched the authentic ombudsman model and role by establishing internal procedures for handling complaints from employees. The classical concept has been modified by extending it to embrace so-called ombudsmen appointed by the heads of the departments or agencies being complained against. On occasion, this is seen as an alternative to the classic ombuds institution, created for the purpose of guaranteeing the liability of complex organisations such as defence. Such alternatives are established in order to meet specific needs of the organisation and their terms of reference and powers are tailored to that end. Such alternatives share some common characteristics, which clearly illustrate their specifics and limitations:

- They are set up via regulations issued by the minister of defence; as a result they do not have strong legal safeguards and autonomy guaranteed by special legislation. In some cases such ombudspersons are only mentioned as an element of the ministerial architecture.
- They are appointed by the minister of defence and report directly and only to him/her, without having direct access to the legislature.
- As MoD employees, they are part of the ministerial chain of command with all benefits and limitations stemming from that fact.
- Their reports, findings and recommendations are usually "for official use only" or even of higher level of classification.

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<sup>8</sup> Ivan Bizjak, "The Ombudsman between Legislator, Administration and Citizen – Political Angle" (Copenhagen, April 2005).

- They attempt to resolve issues informally, when possible, and have the capacity to investigate and make recommendations if necessary, but following the established military order.

Analysts and practitioners have opposing opinions on how valuable this modified concept is. One point of view is that by introducing the *institutional* ombudsperson the idea has been distorted and distanced from the original idea and desired objectives. Clearly, in comparison with the classical model, any institutional ombudsperson has limited status, power and capabilities to perform his or her duties. The opposing view is that the existence of many classical and institutional persons and offices with ombuds functions has created an additional layer of scrutiny and transparency to what normally occurs in the executive organisations.

In addition, the experience of different countries, being at different stages of democratic maturity and/or defence institution building, provides arguments to delineate “strong” or “weak” versions of the institutional ombudsperson model.

### *Strong Institutional Ombudsman*

Within the “strong” formula the ultimate goal is to create an effective and credible ombudsman *office*, with a focus on the *office*. The principal qualities of the “strong” ombuds office are independence and impartiality, confidentiality and capabilities (normative, resources, personnel) of performing credible review and investigations. Within this model the initiative and responsibilities are for the ombudsman, who should not wait for “the client” (soldier, officer, civilian employee or family member) to approach the office but monitors, studies, analyses and investigates on his or her own initiative, as well as upon special request or order.

A strong institutional ombudsman for defence exists when it has been established by law with the presumption to exercise control and provide feedback over: 1) defence policy, taken as a whole; 2) defence resource management; 3) performance of the armed forces; and 4) personnel ethos, rights and freedoms. Box 19.3 presents an example based on the experience of the Netherlands. This should be a large and functionally powerful office, usually led by an inspector general, placed outside the military command system and reporting directly to the minister of defence. All military and civilian personnel, as well as all functions performed by the MoD and the armed forces, should be under his or her oversight. The inspector general could make investigations and produce recommendations following orders, pursuing signals or on their own initiative. They are vested with considerable power and authority and there is a clear correlation between their ability to ascertain the facts and their credibility within their fields.

Within the concept of the so called Integrated Ministry of Defence, where the administrative and defence staff are organisationally and functionally integrated under the shared leadership and control of a senior civilian administrator and a chief of defence, the role and responsibilities of the inspector general's office are much larger than those of the ombudsman, who is focused mainly on people's complains. Such design

### **Box 19.3. The Inspector General as a Strong Institutional Ombudsman**

An example of a strong institutional ombudsman is the inspector general of the Netherlands Armed Forces. He works outside the chain of command and reports directly to the minister of defence. He has a mandate to: inform and make recommendations to the minister on request or on his own initiative on matters relating to the armed forces, in addition to instituting investigations into, or fulfilling the role of mediator and adjudicator, matters relating to individual armed forces personnel or former personnel, these being submitted to him in writing by, or on behalf of, the person in question or his next of kin. His functions include giving advice, mediating at later stages in proceedings, networking and bringing any problems to the attention of those who can solve them. The two fundamentals of his office are independence and confidentiality. The inspector general has wide ranging investigative powers, including the right to access any place or document belonging to the armed forces, as well as the power to summon any armed forces personnel to a hearing.

*Source:* National Defence and Canadian Forces Ombudsman, *The Way Forward: Ombudsmen Models*.

of a defence agency is based on clear conceptual distinction between political, management and command functions and maximum integration of civilian and military expertise. To work properly, such a system vitally needs internal checks and balances designed to guarantee both the quality of advice and the quality of the relationship between civilians and military. In order to cope with such a challenge, the inspector general, in addition to his or her principal functions to ensure that no one suffers injustice while serving in the armed forces or working for the MoD, has the role of serving as "an internal independent audit" office. Such expansion of the ombudsman model has extremely great value for preventing and fighting corruption especially in sensitive areas such as defence acquisition and procurement, resource allocation and management. Organisationally and in terms of resources, it has to be a large and very capable office, placed outside the military chain of command and directly subordinated to the minister of defence.

#### *Weak Institutional Ombudsman*

In its "weak" version, the institutional ombudsman *assists the client* to develop, and then pursue, his or her own options to resolve problems. The onus is on the "client" (soldier, officer, civilian employee, business entity, citizen, etc.). This is a much distorted concept of the ombudsman – it looks more like an administrative "office of grievances" than an institution for defending democracy and human rights. It has some value for the people in defence and could be used to counter corruption but has rather limited value for the development of defence as an effective and democratic, transparent and accountable institution, for the society of free and active citizens, and for the parliament as a centre for democratic development and control of the executive "on behalf of the people." Typical functions of this model often include only "check-up,"

### Box 19.4. The Model of “Weak” Institutional Ombudsman: An Example

An example of an “ombudsman-like” institution is *The Inspectorate of the Minister of Defence* of the Czech Republic (which is also the case in other countries—former members of the Warsaw Pact). This is the supreme internal inspection body of the Ministry of Defence responsible for the performance of inspection operations within the Czech military, excluding the inspection of financial operations. The inspectorate cooperates with national-level inspection authorities, such as the Supreme Audit Office of the Czech Republic, the Public Defender of Rights – Ombudsman, with Czech authorities with jurisdiction over criminal prosecution and the National Security Authority. The inspectorate coordinates the anti-corruption strategy within the military and provides coordination in the implementation of anti-corruption measures. It is also responsible for investigations into the causes of air crashes. The inspectorate is headed by a director, who reports to the minister of defence.

Source: Website of the Czech Republic Ministry of Defence, [www.army.cz/scripts/detail.php?id=7152](http://www.army.cz/scripts/detail.php?id=7152).

listening, providing information, reframing issues, referring, advice, looking into a problem, formal mediation, proposing changes in certain practices, and monitoring and upward referral of trends.<sup>9</sup>

There are differences in the specific application of this model but one single feature is common to each: the ombudsman’s duty is to ensure that the public authorities meet the requirement of lawful administration and respect for the individual rights of citizens.<sup>10</sup>

## The Ombudsman Role for Building Integrity and Reducing Corruption Risks in Defence

Corruption is the antithesis of good governance, which is widely recognised to be essential to economic development.<sup>11</sup> The old and enduring view, with deep roots in some defence establishments, is that corruption is “just another business expense, normal for the market economy and those who want to make business with defence should pay it. Everybody does it!” In fact, corruption leads to poor performance with long-term implications not only for the character of the armed forces but for the nation as a whole. Corruption in defence is one of today’s most serious moral challenges.

<sup>9</sup> These are the “ten points” as quoted in *The Ombudsmen Association* literature.

<sup>10</sup> Michael Lunn, *The Ombudsman between Legislator, Administration and Citizen – Developing the Ombudsman Concept*, speech on the occasion of the 50<sup>th</sup> anniversary of the Danish ombudsman’s institution, 1.

<sup>11</sup> As the prominent analyst of the Bulgarian transition towards democracy, Dr. Ivan Krastev once said in a TV interview, “Public officials take bribes because they do not have a reason not to take bribes. Private companies give bribes because they do not have an option not to give.”

Despite the specifics of individual countries, corruption could be named a common reason for some spectacular failures in defence acquisition, sales of real estate and property management, drafting into and dismissal from military service and even in some aspects of structural reforms.

The defence decision-making process is based on and passes through the political, administrative and military sectors where: (1) military experts determine operational doctrines and required capabilities; (2) civilian managers and politicians make decisions on resource allocation, material acquisition, arms trade and organisational development; and (3) civilian defence agencies organise the acquisition of public tenders and provide services. Every sector along this process is susceptible to corruption.

Moreover, from a socio-political point of view, every potentially corrupt decision of a civilian minister runs up against the social "cost of politics," confuses the image of the politicians transferring them from a symbol of democracy into "business politicians," creates a gap in military confidence and the political leadership (notwithstanding suspicions that their military colleagues are also engaged), and forms the impression that every political party is surrounded by its own "ring of companies." At the same time, every engagement of the military in corrupt activities damages the internal ethos and morale of the people in uniform, public prestige and the national value of the defence institution. In one sentence, corruption destroys the cohesion of the national integrity system, including its military pillar.

John McMillan, the commonwealth and defence force ombudsman of Australia, based on his comprehensive experience argues, "Fighting corruption is not the main or even a major function of Ombudsman offices. They do not have the intrusive powers that are needed for that purpose, such as the power to conduct covert surveillance, intercept telephone calls, and arrest suspects for questioning. Those functions are also resource intensive and beyond the capacity of most Ombudsman offices. Rather, the core function of Ombudsman offices is twofold: to handle complaints from members of the public about shortcomings in government decision-making and service delivery; and to conduct occasional own-motion investigations into systemic problems occurring either across government or in specific agencies."<sup>12</sup>

Nevertheless, the role of the ombudsman institution within a holistic approach against corrupt practices has the following values and capabilities:

- The very existence of an ombudsman office and the fact that every man and woman in the defence establishment has the right to communicate to him or her any problem created by decisions or their performance is a strong argument for those in political, administrative or command power to act lawfully and with integrity.

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<sup>12</sup> John McMillan's speaking notes for the U.N. Conference on Anti-Corruption Measures, Good Governance and Human Rights, Poland, 8-9 November 2006.

- The establishment of an office within a defence institution, independent from the command hierarchy, creates a sense of *alternativeness* in case someone thinks that corruption is possible or it is a fact. People in defence have an option and know that the requirements to follow strict organisational procedures do not oblige them to keep quiet when witnessing corrupt behaviour.
- The easy accessibility of the ombudsperson provides opportunities to deal with “minor” cases of corruption that usually are left outside judiciary, administrative or military sanctions. However, such minor cases are often the viruses that after not so long make even solid systems like defence rotten.
- The potential of the ombuds office to examine all defence decision-making processes, which in practice means most of the government, systematically and unpredictably, having a potentially large number of sources of information, is a permanent reminder to those engaged that their work is monitored from inside and outside and every indication of corruption, or potential corruption, could trigger alarm at any stage of the decision-making or implementation processes.
- The access of the ombudsperson to classified documents and facilities is a strong deterrence factor against falsifying documents, evidence and procedures in attempts to facilitate corruption.
- The capacity of the ombudsperson to make his work public and announce all names of political, military and civilian personnel engaged in corrupt or other illegal practices, with no exemption, is a warning to every servant to stay away from corruption unless they are willing to risk their career and honour.
- The fact that every citizen, not only defence personnel, has the right to attract the attention of the office of the ombudsperson for defence creates an important sense of integrity between society (consumers of security and stakeholders of national defence) and the military, which is one of the pillars of consolidated national integrity.

Thus, the ombudsman for defence plays an important role in keeping the institution healthy, improving its governance and performance and systematically developing the ethos and morale of the people in defence in accordance with the highest professional standards and the maturity of the social and national integrity. As John McMillan has underlined, “Many ombudsman offices see themselves as a champion of complaint handling principles, freedom of information, and whistleblower protection. Those are part of the fabric of democratic values that can strengthen a system of government and act as a barrier and disincentive to corrupt and damaging practices.”<sup>13</sup>

One noteworthy lesson from worldwide experience in fighting corruption is that a multifaceted strategy combining political, social and economic reforms with strengthening the national integrity system is likely to be more successful than piecemeal anti-

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<sup>13</sup> Ibid.

corruption measures, despite how decisive and crucial they are.<sup>14</sup> Hence, the establishment of an ombuds institution for defence is an important component of any anti-corruption strategy. Worldwide, no two models are identical (see Box 19.5 for an example of a very specific implementation of the ombudsman concept). An ombudsman model will only be successful in its implementation if it is tailored to meet the demand leading to its creation. Nevertheless, some principal considerations drawn from positive experience of defence ombudsmen from different countries and of various models could be considered when a country or a defence institution designs its ombudsman institution:

- *Vision:* The introduction of a defence (or military) ombudsman should persuade the society and the defence establishment that the national authorities (parliament, government, the head of state and the judicial system) operate in a fair, effective, accountable and transparent manner strictly within the constitutional framework and in accordance with democratic and national moral values. Achieving and sustaining mutual confidence is vital for the civil-military relations in the country and for the national security sector. Confidence as perception is the faith in the system and its ability to successfully manage national security, the defence establishment and any type of crisis.
- *Role:* The role of defence ombudsman should be to contribute to the strengthening of the identity and character of the military, defence civilians and the political leadership of national defence. In that respect, the ombudsperson has the role of a consensus-builder through dialog, mutual respect and intensive and inclusive communion of broadly shared goals and purpose.
- *Mission:* The principal mission of the ombudsperson is to contribute to enhancing the credibility and performance of defence political leadership, administration and command, since strengthening identity and integrity requires a proven record of accomplishments. The ombudsman office safeguards the society in its relations with the Ministry of Defence and the armed forces. It contributes to correcting administrative deficiencies through independent review of complaints about the ministry's administrative actions, fostering good public administration that is accountable, lawful, fair, transparent and responsive, assisting people to resolve complaints about government administrative action, developing policies and principles for accountability, reviewing statutory compliance by agencies, etc. But the mission of the ombudsman is not to replace or oppose decision making by the government, Ministry of Defence or the armed forces. Rather, the ombudsman institution exists to encourage those agencies, and civilian and military leaders within its jurisdiction, to be aware of their responsibilities to society, military and civilian personnel, to act reasonably, and to ensure that they comply with the law and

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<sup>14</sup> Rick Staphenurst and Sahr John Kpundeh, *Curbing Corruption: Toward a Model for Building National Integrity* (Washington, DC: World Bank, 1999).

best practices in administration, and respect the traditional military ethos. The ombudsman for defence shall work to develop the country's defence organisation into an organisation that is shared and beneficial for all members of the community.

### **Box 19.5. Implementing the Concept of Ombudsman in Enhancing the Integrity of Defence Acquisition**

Since 2006, Korea has operated the Defence Acquisition Programme Administration (DAPA). It was established following extensive problems with integrity and corruption in defence acquisitions in the past, and under pressure from civil society on the need for fundamental reform to introduce transparency.

In 2003, a special committee was launched to prepare the fundamental reform to defence procurement. DAPA was launched in January 2006 with the backing of a new law. It was tasked to deal with defence acquisition and procurement, with a vision to enhancing transparency, efficiency, expertise and accountability in the process. DAPA was established with a 50 percent civilian staff, which was important as the first movement into a previously untouchable or even "divine" area of government. Inviting civil society to participate in this was also a further achievement in Korea.

The tools available to DAPA included a programme execution committee, Integrity Pacts, ombudsman programmes, and "real name" policies. Three civilian ombudsmen were appointed under recommendations by Transparency International Korea, PSPD, and the Board of Audit and Inspection. The principles of activity for the ombudsman are independence, continuity, participatory process, transparency and neutrality. The ombudsman group holds weekly meetings, makes recommendations and corrections and publishes results.

The DAPA ombudsman system was the first in Korea to be based on law and the first case of participation of civil society in monitoring defence procurement. Changes are beginning to be made to old practices for the first time, with the possibility of cooperation raised.

The lessons from this process have been the following:

1. Civil society participation is possible and important in each step
2. External, participatory monitoring is crucial for enhancing integrity
3. Engagement of experts is also very important to build confidence in investigation results
4. A non-confrontational and cooperative attitude is a key factor to draw voluntary change
5. Sustaining change is as important and as difficult as achieving it.

*Source:* Based on the presentation of Sung-Goo Kang, Secretary-General of Transparency International Korea and Representative Ombudsman at the Defence Acquisition Programme Administration in Korea to the NATO Building Integrity conference in Monterey, California, 25-27 February 2009.

- *Functions and powers:* Despite the selected model, the main function of the defence ombudsman shall be to investigate any and every kind of complaint made against the civil service. The primary outcome from this function is not exclusively to identify a violation of law or rights but to contribute to establishing cohesion within the defence organization and throughout society. Cohesion means unity of purpose in achieving common goals.

If the country's expectations are high, the model chosen should be close to the *classical model* where the defence ombudsman is empowered to investigate all spheres of government and the public sector, including those related to the provision and use of materiel and services. Military service, foreign relations issues, military courts, state wartime reserves, military health and recreation services, among others, fall within the scope of the ombudsman's responsibility. The ombudsman's principal duty shall be to oversee and ensure the observance of constitutional rights and legal requirements within all sectors of the defence organisation, whether they originate from within the MoD or the armed forces, defence industries or civil society. The defence ombudsman can investigate complaints about administrative actions and force employment matters but usually cannot investigate actions related to disciplinary proceedings or the grant or refusal of an honour or award to an individual. Unless under exceptional circumstances, he or she investigates complaints from serving members only after they have exhausted internal grievance mechanisms.

If the country's ambitions are to have a *strong institutional ombudsman*, in order to be effective, he or she should be provided with legally determined independence and impartiality, confidentiality and a credible review and investigative process. Given this intent, the defence ombudsman should be able to initiate investigations, should also be required to investigate complaints and shall be bound to investigate any case where persons pursue unlawful ends within the scope of their jurisdiction, make arbitrary or unreasonable decisions, or otherwise commit mistakes or acts of negligence in the discharge of their duties.

The functions of the *weak institutional ombudsman* shall be determined in a way that provides for work more with people until their problems are solved, thus closing the gap between "the office and the client."

A common denominator of different models of ombudsman's powers includes, but is not limited to the following powers:<sup>15</sup> to investigate, on complaint or on the ombudsman's own initiative, any administrative act of the MoD without regard to the finality of the administrative act; to undertake, participate in or cooperate with persons and agencies in such conferences, inquiries, meetings, or studies which might improve the functioning of the MoD and the

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<sup>15</sup> Adopted from United States Ombudsman Association, *Model Ombudsman Act for State Governments* (Dayton, Ohio, February 1997).

armed forces or lessen the risks that objectionable administrative acts will incur; to make such inquiries and obtain such assistance and information from any person or defence unit; to enter and inspect without prior notice the premises of any unit; to subpoena any person to appear, to give sworn testimony or to produce documentary or other evidence that is reasonably relevant to the matters under investigation; to maintain the confidentiality of any matter related to complaints and investigations; and to prepare and administer a budget for the office of the ombudsman.

- *Values:*<sup>16</sup> *Independence* and *impartiality* are the hallmarks of the ombudsman institution – they are the foundation upon which this office must be built. Independence is needed to ensure actual and perceived impartiality and to establish a close relationship between the ombudsman and the minister. The *integrity* of the ombudsman is in his or her steadfast adherence to a strict moral or ethical code of conduct – his or her behaviour should convince the people in defence that their loyalty should be towards the state and its democratic political system, which will protect their rights and their earned privileges, thus enabling them to apply their efforts in a positive and responsible manner. The ombudsman shall be easily *accessible* to the military and civil servants, as well as to citizens and business people. He or she must have access to any military camp, division, unit and other work environment, to call for and have access to any and all documents pertinent to a case being investigated, with a guarantee that no documents may be withheld. *Confidentiality* should help the ombudsperson win people's reliance on the institution. The role of the ombuds office requires utmost *professionalism* by everyone on staff; their professional work strengthens the professionalism in defence institutions and generally in the government. The ombudsperson should be politically neutral; furthermore, he or she cannot be aligned with any formal or informal association within the organisation in a way that might create actual or perceived conflict of interest or compromise the neutrality of the ombuds office.
- *Appointment:* Despite which model is implemented, the ombudsperson should be appointed through consultations involving at least the minister of defence and the relevant committee of the parliament. One of the powers of this committee is to ask not only the minister but the senior leadership and every single service man and woman to testify on particular issues.
- *Staffing:* Different ombudsman offices have adopted various models of staffing, particularly when dealing with the issue of balancing the need for independent civilian personnel against the need for military knowledge and experience. The German parliamentary commissioner for the armed forces has

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<sup>16</sup> Values could also be explained as "standards." See: International Ombudsman Association, *International Ombudsman Association Best Practices* (A Supplement to IOA's Standards of Practice), Version 2 (March 31, 2008).

the authority to select staff members. The office has a staff of approximately 60 persons and roughly half are higher-intermediate and higher service personnel, directly concerned with the review of matters brought to the attention of the commissioner.<sup>17</sup> The Australian Defence Force ombudsman is staffed by members of the Australian Public Service. There are no military personnel involved in reviews by the ombuds office. In the Netherlands, the inspector general's office employs 16 military personnel and 13 civilians, while the positions of inspector general and chief of staff rotate among the three services.<sup>18</sup>

- *Transparency and accountability:* There should be an obligation to inform the appointing authority and the public of the activities of the ombudsman. The ombudsman, at least annually, should report generally on the activities of the office to the ombudsman's appointing authority, other policymakers and the public.<sup>19</sup> The list could also include a range of brochures and information sheets available to the public, better practice guides to orient people and agencies on how to deal with the ombudsman's office, inspection reports of duty service in the MoD and the armed forces, investigation reports of administrative actions of the MoD and the armed forces, an ombudsman's website and e-bulletins that describe recent case studies of finalised complaints where lessons of interest to a wider audience can be drawn, posters explaining the ombudsman's role and services, ombudsman's submissions to a parliamentary committee, and others.<sup>20</sup>

## Conclusion

Ombudsman institutions are one of the key components of "horizontal" accountability of the state political, executive and security systems. The appointment of an ombudsman for defence should serve to safeguard against any improper actions by the defence political, administrative or commanding body, the government or the public administration, while at the same time ensuring that the rights and duties of military personnel, civilian employees and civil society comply with democratic norms and values.

The flexibility of the ombudsman model means that integrity in defence can be promoted in numerous ways – through investigations, reports, public speeches, par-

<sup>17</sup> Karl Gleumes, *The Parliamentary Commissioner for the Armed Forces: Her Role in Exercising Parliamentary Control over the Federal Armed Forces and Processing Petitions from Service Personnel*, 17.

<sup>18</sup> See the website ([www.ombudsman.forces.gc.ca](http://www.ombudsman.forces.gc.ca)) of the ombudsman of the Canadian Defence Forces.

<sup>19</sup> Most offices issue a report annually that describes the work of the previous year: the number of inquiries, the number of cases resolved informally, cases investigated and investigations pending, recommendations made and whether or not they were followed.

<sup>20</sup> The list is based on the experience of Australian, Canadian, German, Norwegian and US ombudsman offices.

liamentary submissions and meetings with senior government managers. In any case, this shall be an office that independently receives and investigates allegations of maladministration.

In order to be effective for strengthening national and defence integrity, the ombudsman institution and its function should be established by law, protected from arbitrary removal or censure, provided with adequate budget and non-partisan staffing and should be easily accessible to every defence person and citizen. Thus, it will compel executives to respect and act on recommendations, including those addressing integrity building in defence.