

**International Conference
of Ombuds Institutions
for the Armed Forces**

13 IC OAF

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Session 4: Rule of law within the barracks: formal vs informal systems

Formal systems – Working with military justice systems

Fostering discipline within the armed forces relies heavily on the degree to which formal disciplinary systems and structures uphold the rule of law among the ranks of military personnel. There is strong divergence among states on how the military justice system is governed and set up – the jurisdiction and composition of military courts can vary greatly, and they may be separated or integrated within the civilian court system. Similarly, the degree to which ombuds institutions have established relationships and points of entry to engage with the military justice system varies, determined for instance by whether ombuds institutions have the mandate to process complaints that relate to an ongoing court case. Most ombuds institutions do not play an oversight role on the outcomes of military courts, as these were subject to their own review and appeal mechanisms. In cases when ombuds institutions do play a role, challenges often relate to the limited time period following an incident during which the ombuds institution is legally allowed to receive the corresponding complaint, further preventing ombuds institutions from investigating historical cases of misconduct. Furthermore, a lacking mandate to conduct thematic investigations can impede ombuds institutions from resolving systemic issues. Systemic issues, such as the prevalence of a culture of discrimination based on gender or race, often creates difficulties for affected individuals choosing to use formal complaint mechanisms themselves. Expanded mandates for ombuds institutions to rectify systemic issues or alternative institutional and restorative justice programs to reduce the pressures of formal proceedings may offer solutions to some of these challenges.

Informal systems – Contributing to the elimination of hazing

Next to formal military justice systems, informal disciplinary practices are also widespread among armed forces around the world. Ranging from initiation rituals to the formation of informal hierarchies, these practices are often detrimental to physical and mental health and may – in severe cases – lead to the loss of human life. They furthermore undermine unit cohesion and moral, negatively impacting operational effectiveness. Alcohol often plays a role, as do gender and power dynamics, and the greatest challenge is often the broader cultural shift necessary to address these practices at their root cause level. Culture follows structure, and ombuds institutions are key players in establishing the necessary structures, constituted by laws and policies, which foster a culture wherein informal disciplinary practices do not manifest in abuse and providing access to and awareness of recourse mechanisms. Such systems, while subject to many pitfalls and risks, do fulfil specific bonding purposes required for the unique character of military life, and will not entirely disappear – because as employees, soldiers are asked to not just be willing to give their time and effort for the job, but to risk losing their life in the process.