CAPACITY DEVELOPMENT AND OMBUDS INSTITUTIONS FOR THE ARMED FORCES

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1. Introduction

Capacity development is simply one element that makes up the broader picture of institutional development. In broad terms, institutional development seeks to improve the efficiency and effectiveness of an organisation in a sustainable way, by improving the capacities of the institution and of its employees, as well as through improvements in the political and legislative context within which an institution is situated. As such, capacity development can be understood as both a basic technical project of improving skills and systems, as well as a political process that seeks to better situate an ombuds institution vis-à-vis the people, the military, and the other branches of government.

Capacity development is relevant to all ombuds institutions and is a persistent, ongoing effort. The process is perhaps most obvious with regards to newly-established institutions, which have to build institutional and individual capacity from scratch. It is a process which is, however, equally applicable to well-established institutions, as they seek to maintain, improve and adapt their capacities in the face of changing environments.

Ombuds institutions are at risk of failing to fulfil their mandates if they lack the independence, credibility, expertise and resources that are required. Capacity development is, however, not only important for ombuds institutions themselves. First, it is important for those affected by human rights violations or maladministration that complaints and systemic issues are addressed in an efficient and effective manner. Second, efficient and effective ombuds institutions help the armed forces to more effectively identify and deal with problems, thus contributing to a better-run force. Third, capacity development helps to ensure that ombuds institutions are able to play their role in the effective and accountable governance of the armed forces and of the security sector more generally.

Capacity development is not only an internal process, undertaken by an ombuds institution alone or solely within the national context. It also takes place through sharing and imparting good practices with other institutions. For example, the German Parliamentary Commissioner provided considerable external support to the Bosnian Parliamentary Military Commissioner in establishing its legal framework. Similarly, numerous institutions were consulted for advice by the South Africans as they prepared to set up their own ombuds institution for the armed forces. In addition, ICOAF has served as an opportunity to increase cooperation between ombuds institutions for the armed forces from around the world. By providing a platform for sharing common problems and good practices, ICOAF has become an invaluable capacity development tool. However, there is still considerable potential for more to be done.

The research for this paper is based on two elements. First, we looked at the relevant capacity development literature, at reports and other material provided by ombuds institutions and at material produced through the various ICOAF meetings. Because hardly any research has been done on capacity

development of ombuds institutions, we also convened a workshop (Geneva, July 2012) on the subject, which was attended by ombuds institutions who generously shared their experiences and insights.

The aim of this paper is to explore the field of capacity development of ombuds institutions for the armed forces. As such, it is divided into the following parts:

1. Aims of Capacity Development
2. The Process of Capacity Development
3. Challenges and Opportunities for Capacity Development
4. Conclusions

A note on definitions: for the purpose of this paper, an ombuds institution is any institution that deals with complaint handling related to human rights violations and maladministration within or by the armed forces. Ombuds institutions can take up many organisational forms including general ombuds institutions, specialized ombuds institutions for the armed forces, and inspectors general.[1]

Furthermore, while the term capacity building is widely used, we have chosen to use the term capacity development in this paper. The term development is preferred over building because the "building" metaphor suggests a step-by-step, linear process. The term development, on the other hand, suggests a process whereby people, organisations and societies strengthen, create and adapt capacity over time.[2] Capacity has a technical dimension and a power dimension. The technical dimension relates to elements like: skills, rules, expertise, techniques, procedures and management in an ombuds institution. The power dimension relates to elements like: interests, resistance or willingness of other actors (for example, the military) to cooperate, incentives, conflicts, and coalitions.

2. Aims of Capacity Development

Ombuds institutions for the armed forces are an essential part of any transparent and accountable security sector. As independent and impartial institutions, they play a crucial role in preventing and responding to both maladministration and human rights abuses, whether they affect civilians or members of the armed forces themselves. By receiving and investigating complaints, as well as through reporting on thematic questions and systemic problems, ombuds institutions can have an important impact both on individuals, as well as on the security sector and legislative environment as a whole. In this context, the aim of capacity development is to improve the effectiveness and efficiency of ombuds institutions in fulfilling the above role in a sustainable way. Its aims include to:

1. foster institutional learning and development within ombuds institutions;

2. help ombuds institutions to adapt to changing environments/new tasks and challenges;

3. enhance the ability of ombuds institutions for the armed forces to handle and investigate complaints, to conduct thematic investigations and to manage outreach activities;

4. increase the expertise and specialization of staff; and

5. improve the credibility of ombuds institutions.

A survey conducted by DCAF in 2009 showed that, according to ombuds institutions' representatives themselves, the effectiveness and efficiency of the institution depends on a strong legal framework, operational, personal and institutional independence, support from parliament and ministers as well as adequate resources.[3] It follows that capacity development should target and improve these factors. It also shows, as mentioned in the introduction, that capacity development is not only about technical support but also about creating an

enabling political environment for the institution to function effectively.

This approach to capacity development corresponds with the long term aim of ICOAF as formulated in the Vienna Memorandum of the 2nd ICOAF conference in 2010, which stated:

> "The long-term goal (of ICOAF) is to strengthen the various legal and other framework conditions for these controlling bodies, as far as they have been installed, which currently exist in various shapes, ranging from parliamentary ombuds institutions to military bodies in charge of controlling the armed forces."[4]

3. The Process of Capacity Development

Before discussing the process of capacity development in more detail, it is worth noting that these processes should be based on principles that respect the integrity and credibility of the institution. In particular, capacity development should be guided by the principles of local ownership, impartiality, gender-sensitivity and an acknowledgement that capacity development is a long-term process that should remain accountable to its beneficiaries.[5]

Capacity development should not only target the office-holder and staff of ombuds institutions themselves, but also focus on a range of other relevant actors. These include: parliament; relevant ministers and members of the executive; armed forces personnel; military unions; civil society and human rights advocacy organisations; the media; other ombuds institutions; and international actors or fora (such as ICOAF).

3.1 Phases of Capacity Development

Capacity development consists of four phases: 1) needs assessment, 2) decision-making and planning, 3) implementation, and 4) evaluation. Each of these phases is essential for success.

Needs Assessment

Capacity development is an on-going process. However, because ombuds institutions exist in various states of development, from those that have newly formed or are in the process to being established to those that have existed for many decades, they will each have different needs. The first step in developing capacity is identifying these needs. For both old and new organisations, these needs will flow from the overall strategic goals of an institution as well as from an assessment of what is happening on the ground. For newly formed institutions, an important early task will also be to identify the expected number and types of complaints. This will then help in determining the funding required and in hiring an appropriate number of staff, as well as in properly allocating other resources. Similarly, if a state has many troops stationed abroad, for example, it might be important for the office to be explicitly given the power to conduct regular site visits abroad.

For well-established institutions, needs assessments are no less important. The nature of complaints can change rapidly according to the problems being faced by members of the armed forces. Ombuds institutions must be careful to not become complacent, and constantly be prepared to handle all manners of complaints. For example, as military budgets are cut, ombuds institutions may need to be adequately prepared to address increased complaints pertaining to benefits and finances.

One important needs assessment tool is the use of mapping studies. Such studies may involve research and analysis of relevant stakeholders and the environment within a state, as well as the identification of similar institutions at home and abroad which may offer examples of good practice that can be applied. Such studies enable institutions to identify strengths, weaknesses, opportunities and threats and integrate this knowledge into their capacity development plan. Furthermore, a comprehensive mapping study may provide ombuds institutions with a useful baseline against which they can measure the success of later capacity development processes.

Decision-making and planning

Upon determining the specific needs of an ombuds institution, it is important to develop a plan to address these needs. Some ombuds institutions have developed a blueprint or multi-year plans with measurable benchmarks. These serve to focus institutional goals and allow the officeholder to determine how successful he or she has been in achieving these goals. Some officeholders have implemented thematic mandates during their term in office. These can be particularly effective at giving focus to the work of ombuds institutions and at addressing specific areas that are in need of greater attention.

For new ombuds institutions, the identification of achievable short and long-term goals (for example, one and five year plans) can help guide the progress of an institution through what may be difficult early years. Such goals may include technical things (such as setting up an electronic complaints management system) as well as more abstract things (such as increasing awareness of the institution and its powers among members of the armed forces). Planning should also be a long-term endeavour. An office might, for example, plan to produce recommendations after a few years of operation on how to improve the functioning of the office.

Another key element at the planning stage is the development of in-house regulations governing the way the office will function. Such regulations might cover, for example, internal guidelines for complaint-handling and the number and means of notifications that the office will send to a complainant about the progress of a case. These ensure that complaints are handled in a standardized way. Defining such in-house regulations can also help an office to calculate staffing and resource needs.

Implementation

Some types of capacity development can be difficult to implement. In particular, large-scale reforms, such as legislative amendments or increases in budget or powers, may take a long time to achieve. Small-scale capacity development can, however, be both easy and relatively inexpensive. Specific capacity development activities can include: seminars and workshops, regular staff meetings, training events, technical assistance, legal advice, needs assessments, technical support, organising meetings with relevant stakeholders (see above), policy advice as well as contributing to setting international standards and identifying good practice. Capacity development can be both external (involving or relying on contributions from third parties) or internal (generated from within an institution itself). Ideally, both external and internal processes will occur together and contribute to the same goal. Capacity development cannot be externally forced upon people or institutions. In other words, external partners cannot "do" capacity development, at best they can support capacity development processes.

Evaluation

Annual or thematic reports play a key role in capacity development, by providing an opportunity for self-evaluation

and performance review, while also establishing goals for the following year. Many institutions also use them as a way of pushing for progress in achieving their goals (for example, legislative reform, increasing cooperation with the military, and so forth). These can be useful to identify successes and failures and to focus efforts for the following period. Indicators are essential for evaluation. They allow an institution to measure progress against benchmarks that have been set in the past (for example, time taken to respond to a complainant, satisfaction of those who approach the office). Unfortunately not everything can be measured in a useful way and evaluation should also take into account intangible factors and involve qualitative as well as quantitative research. In a comparative perspective, little is known about when and how the work of ombuds institutions is evaluated in terms of aims, benchmarks, methodology and type of measurement. It would be beneficial for capacity development to exchange experiences and viewpoints between ombuds institutions about how their work is evaluated. Indeed, without measurement of capacities against agreed benchmarks, it would be difficult to decide which capacities need to be developed.

3.2 Levels of Capacity Development

Capacity development is much more than improving the skills and experience of individuals within an office. It depends on the quality of the ombuds institution and, in turn, the capacity of ombuds institutions is influenced by what has been called an "enabling environment."[6] This includes the structures and powers of other institutions.[7] These elements constitute the three levels of capacity development which will be elaborated below: the environment, the organisation and the individual.

The environment consists of the legal, cultural and political context, as well as the capacity and capabilities of other bodies

with whom an ombuds institution will be required to interact. This context determines, to a large degree, the effectiveness of the ombuds institution. Of particular relevance is the over-all capacity of other institutions within a state, for example, the executive, legislature and the armed forces. Regardless of an ombuds institution's own capabilities, if the military is unable to implement its recommendations, for example, it will ultimately be ineffective. In addition to improving the overall effectiveness of other institutions, capacity development activities should also focus on improving awareness of why the ombuds institution is important and how it can contribute to greater respect for human rights and the rule of law. Both senior and junior ranks in the military may need to be made aware of the ombuds institution's contribution to individual complaint handling as well as the governance of the armed forces as a whole. Furthermore, the executive and the parliament may need to be convinced of the importance of a well-functioning ombuds institution. Capacity development at the context level can be greatly aided by international and multilateral efforts (such as ICOAF, UN, DCAF, OSCE) that share good practices and develop norms and standards (for example, the Paris Principles).[8] Such activities can help ombuds institutions to convince local partners that their work is important and relevant or that their powers or budget, for example, should be modified to be in line with international standards.

At the organisational level, capacity development priorities will change depending on whether the institution is new or well-established. For new institutions, capacity development should focus on creating a blueprint for how the office should be run, as well as on the development of internal procedures and guidelines covering all aspects of an office's work, such as: which complaints they can receive and which they cannot, an organisational chart showing the roles and responsibilities of each staff member, how and when to respond to complaints, standardised reporting procedures, and

standardised investigation methods. The institutionalisation of these rules and procedures ensures that all complaints are dealt with in a fair and uniform manner. For institutions that are already well-established, capacity development in this area might focus more on the review and adaptation of these internal procedures and guidelines, as well as on the setting and implementation of strategic goals for the organisation. Cooperation between institutions in different countries can be a useful capacity development tool at the organisational level. Workshops, seminars and training events involving different organisations can help them to solve problems and identify solutions to common issues, such as how to handle unsatisfied complainants, for example. Such events can also provide a useful opportunity for networking among staff.

Alongside the context and organisational factors described above, the importance of capacity development at the individual level should not be underestimated. This includes both capacity development within the ombuds institution itself but also within the institutions with which it interacts.

Capacity development activities at the individual level may include: staff training, regular meetings, mentoring or twinning arrangements between ombuds institutions (for example, exchange of personnel and interns), and regular performance appraisals. Some ombuds institutions use interactive methods, such as role playing, to train staff, as well as offering regular courses on key topics, such as mediation. This ensures that all staff have a similar understanding of the institution's practices in key areas. It may also be good practice to involve junior staff in core activities, such as investigations and site visits in order to familiarise them with the methods of the office and the settings and individuals with which it works. Regular meetings of all staff can also be a good way of ensuring that everyone is familiar with what is going on and provides a forum for staff to raise problems or difficulties they might have. The meetings

can also serve to assist staff in identifying others who may have worked on similar issues. Regarding capacity development of individuals in other institutions, some ombuds institutions run training courses and information sessions for members of the armed forces. These can be particularly effective as they familiarise new officers and NCOs with the role of an ombuds institution.

4. Challenges and Opportunities for Capacity Development

4.1 Challenges

This section will briefly examine some of the challenges and opportunities for capacity development of ombuds institutions for the armed forces. Some of these are environmental in nature and relate to the legal and political context including: patronage, party politics, low levels of transparency and accountability, authoritarian government, weak parliamentary scrutiny of government.[9] Ombuds institutions may also face strong resistance to change from the military, executive or even from staff within the ombuds institution itself. Cooperation from the government and/or armed forces is thus essential to successful capacity development.[10]

Staffing is a more practical challenge to capacity development. In particular, many institutions do not have very much flexibility in hiring staff and rely on secondments from within the government's civil service. As a result, in some cases they may end up with unmotivated or uninterested individuals. These problems may be compounded in some states by poor public service conditions (such as low salaries), which can lead to high turn-over among qualified staff. This last point is also relevant to the office-holder him or herself. There is a need for policies

that govern how to transfer power from one office holder to the next in a way that ensures that institutional knowledge is not lost and, especially, that there is not a disruption in the functioning of the office.

A related problem is funding. Many institutions face unpredictable funding or an overall lack of financial resources, particularly to pay for necessary infrastructure (including IT) and appropriate numbers of qualified staff. The economic crisis has negatively affected the capacities of ombuds institutions in many states. While ensuring that the budget of ombuds institutions remains independent from the defence budget, it may leave the office more vulnerable to cuts if they happen across government.

It may also be difficult for ombuds institutions to identify capacity development needs. As was noted above, effective assessments and evaluations can be difficult. Feedback is often skewed depending on the outcome of their complaint (that is, those whose complaint was resolved to their satisfaction would provide positive feedback, while those whose complaint was not resolved to their liking would often provide negative feedback), and it may be hard to separate these issues and identify areas that need strengthening. When establishing an institution, it may also be very hard to calculate future needs, when the current situation is unknown (for example, the military may not have any idea how many complaints can be expected). It may thus be very difficult to open the office with sufficient physical (staff, funding, office space, and so forth) and technical resources (for example, staff with appropriate knowledge or experience).

A final challenge to capacity development is the simple fact that it must inevitably take place in addition to fulfilling the institution's existing mandate. Given the funding and staffing shortages that many institutions face, this may be a formidable obstacle.

4.2 Opportunities

A number of different situations can provide openings for a capacity development process to begin. As with the establishment of an institution, capacity development can be driven by strong demand for improved complaint handling mechanisms from soldiers, parliament, NGOs or military associations. Similarly, scandals within the armed forces may create public demand for improving independent oversight.

International or bilateral support can also provide a useful opportunity for capacity development. ICOAF is a useful forum in this regard. It provides an opportunity to network with other institutions and share good practices and learn about different models and approaches to complaint handling. ICOAF can also serve as a useful capacity development tool in that international practices can be used back home to demonstrate that certain proposed changes are not extraordinary and are in line with international norms. Some ombuds institutions also find it reassuring to learn that other institutions are facing similar problems. ICOAF may also serve a useful role as a platform for capacity development through, for example, the setting up of bilateral/twinning arrangements (for example, exchange of personnel, interns) and regional or thematic initiatives (for example, seminars on specific topics).

5. Conclusions

Capacity development is important for a number of different reasons. The process fosters institutional learning, makes ombuds institutions better able to adapt to changing environments, and improves their credibility, efficiency and effectiveness. Capacity development is relevant to all institutions, both those in their infancy, as well as those have existed for many years. As such, it is a persistent, ongoing effort.

For it to be successful and sustainable, capacity development should be an endogenous process, supported by external actors. While external actors can support capacity development, they cannot take over ownership from the ombuds institution: local ownership is not simply a yes/no question, but a matter of process, trends and dialogue.

Currently, capacity development activities among ombuds institutions appear to take place at an isolated, ad-hoc and reactive manner, replying to specific requests by states. Capacity development could be much more effective if it was coordinated, involved the pooling of resources and included systematic follow up of initial contacts, requests, and activities. As a forerunner to better coordinated capacity development, there is a clear need for a more systematic and comprehensive mapping study of the work of ombuds institutions that would outline the needs and current state of affairs, as well as allowing us a better understanding of national and regional contexts.

Notes

1. Benjamin Buckland and William McDermott, *Ombuds Institutions for the Armed Forces: A Handbook*, DCAF, Geneva, 2012, pp. 3-4.

2. OECD, "The Challenge of Capacity Development: Working Towards Good Practice," DAC Guidelines and Reference Series, Paris, 2006, p. 12

3. Hans Born, Aidan Wills and Benjamin S. Buckland, "A Comparative Perspective of Ombudsman Institutions for the Armed Forces," DCAF, Policy Paper No. 34, Geneva, 2011, Annex.

4. Second International Conference of Ombuds institutions for the Armed Forces, Vienna Memorandum, 25-28 April, Vienna, 2010, p. 2. available at: http://icoaf.org/events/vienna/Vienna%20Memorandum%202010%20FINAL.pdf

5. UNDP, "Ownership, Leadership and Transformation," 2003, p. 13, as quoted in OECD, "The Challenge of Capacity Development: Working Towards Good Practice," DAC Guidelines and Reference Series, Paris, 2006, Annex B.

6. OECD, 2006, p. 7.

7. OECD, 2006, p. 20.

8. Principles relating to the Status of National Institutions (The Paris Principles), adopted by United Nations General Assembly resolution 48/134 of 20 December 1993. Endorsed by the UN, these principles affirm the importance of independent and strong national human rights institutions that promote and protect human rights. available at: http://www2.ohchr.org/english/law/parisprinciples.htm

9. OECD, 2006, p. 17.

10. Born, et al, 2011, Annex.

About the Authors

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