



# **OMBUDSMAN'S REPORT ON THE INSPECTION OF MILITARY CELLS 2023**

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## **INTRODUCTION**

Lesotho is a state party to numerous international human rights instruments that are intended to promote and protect the welfare and fundamental human rights of persons deprived of their liberty including inmates detained at Military cells. These instruments necessitate that it plays an active role in the implementation of minimum standards contained therein. It is against this backdrop that the Office of the Ombudsman, conducted inspection visitation at Military cells, to assess the conditions of the facility and detainees therein. This exercise was pursued in line with the Office of the Ombudsman's strategic objective aimed at intensifying advocacy for increased adherence by government authorities for the implementation of minimum standards in the promotion and protection of human rights.

Under Lesotho's national laws and international human rights law, and in particular, the Human Rights Act No 24 of 1983, detainees retain their fundamental human rights and freedoms, except for such restrictions on their rights necessitated by their incarceration. These rights include the right to humane treatment and respect for their inherent dignity as human beings. Being treated humanely requires that detainees are kept under humane conditions of detention which do not aggravate the suffering inherent in imprisonment. The Ombudsman is further guided by provisions of Section 10 of the Ombudsman Act No.9 of 1996, which provides thus

*“In the exercise of his powers and the discharge of his duties under the Constitution and this Act, the Ombudsman or any officer authorised by him, at any reasonable time and upon sufficient notice to the specified authority concerned*

*(b) enter and inspect police, military or prison cells, government hospitals, asylums, or any other places or centres where any person is detained or kept whether for safe custody or in terms of any law.”*

In pursuance of this provision, the Ombudsman embarked on an inspection programme on the 20<sup>th</sup> July 2023 of the Military Cells. The objective of the inspections was to establish whether the conditions prevailing at this institution are conducive to or fit for human habitation.

### **Guidelines**

The Ombudsman's inspection of the military cells was guided by the Minimum Standard Rules for the Treatment of Prisoners, commonly referred to as the Mandela Rules, adopted by the UN General Assembly in 2015 and other relevant instruments such as the Universal Declaration of Human Rights (UDHR), which provides, in relevant parts, the common minimum standards of measure in the administration of justice by UN Member States. Cognisance was also given to *inter alia* the Constitution of Lesotho 1993, Human Rights Act No 24 of 1983, the Lesotho Defence Force Act No 4 of 1996 and the LDF imprisonment and Detentions Regulations of 2000.

## **Military Police and Detention Unit**

This is the unit within the Lesotho Defence Force (LDF) mandated to oversee the detention centre and undertake *inter alia*, the following functions:

- (a) To ensure and enforce discipline within the workforce.
- (b) To investigate crimes committed by members of the LDF. This is undertaken in conjunction with the Lesotho Mounted Police Service (LMPS), since Military Police (MP) is not bestowed powers to bring offenders to justice.
- (c) To maintain relations between members of the LDF and the public.
- (d) To detain members of the LDF who have committed crimes in contravention of the military laws and regulations.
- (e) To instil adherence to any other directive that may be issued by the Commander.

Procedurally, the Ombudsman established that a member of the force who has committed an offence is ordinarily charged by the unit within which he or she is deployed. In a case where the unit is not aware of such, the MP has a responsibility to alert the concerned unit and recommend that he/she be charged. Upon receipt of the charge the MP detains the suspect, for up to 48 hours. The detention period can be extended to 14 days or more pending investigations, with the approval of the Commander. It was further established however, that the suspect cannot stay in detention for more than 42 days irrespective of an application for further detention. Soldiers who have to appear before the Court Martial as established by section 127 of the Constitution of Lesotho and the Lesotho Defence Force Act No. 4 of 1996, have the opportunity to seek legal representation and in cases where they cannot afford such, they are at liberty to request legal representation from the LDF. If found guilty, either by the Court martial or a duly constituted disciplinary committee, the officer is kept at the Detention Centre to serve the sentence meted out and which cannot exceed a period of two (2) years. Even in detention, an officer is still entitled to his or her salary and will go back to his or her deployed unit upon completion of the sentence.

### **The focal point was on the following:**

The Ombudsman devoted a large part of her time examining material conditions under which detained officers are held. Among detention conditions, overcrowding remains one of the most critical and important factors considered, moreso, as it has a negative influence on all other aspects of detention and general climate within the establishment. Other focal conditions include *inter alia* cleanliness, buildings and cells, hygiene, bedding, ablution facilities, lighting and heating, security, feeding, clothing, healthcare services, retention of detainees' properties, discipline and sanctions strategies, information to and from detainees, contact of detainees with the outside world, detainees' recreation or pastime, their challenges and staff welfare.

## **1.0 Population**

At the time of the inspection, there were six (6) detainees, four (4) of which were sentenced and two (2) were awaiting their trials at Makoanyane Military Detention Centre.

## **1.1 Overcrowding and accommodation**

The Ombudsman observed that there is no structure designated for detention and rather, an old house and its servants' quarters have been converted into a detention centre. There are four (4) cells at Makoanyane Military Detention Centre, and one (1) at Ratjomose barracks, which is utilised for detaining female offenders. Capacity of the cells range from two (2) to three (3) people per cell. Overcrowding was reportedly in rare cases and the overall quality of life within the establishment has, *ex facie*, not being compromised or lowered to an extent of deeming it as inhuman or degrading from a physical perspective.

## **1.2 Feeding**

In accordance with the minimum uniform standards of measure (Mandela Rules) laid out, at the usual hours, detainees have to be provided with food of nutritional value adequate for health and strength, of wholesome quality, variety and be well prepared and served. This is meant to ensure that detainees do not succumb to the medical conditions that may accompany poor nutrition.

The Ombudsman established that detainees are provided with three (3) meals per day and they are given the same food eaten by all the soldiers from the military mess and as such, from a health and safety point of view, the detainees are not compromised. It was further established that detainees are not allowed outside support and the food provided from the mess could not therefore be complemented by that provided by families. Often, this may result in those requiring special diets due to illnesses being compromised as they therefore suffer.

## ***Recommendations***

(a) The quality of food provided should, as far as possible, take into account detainees health and for those under medical treatment, should align with their medical practitioners prescribed diet(s).

## **2.0 Health and access to medical services**

It was indicated that when in need of medical attention, detainees are sent to Makoanyane Military Hospital (MMH) where medical care and treatment is provided whenever necessary and free of charge. Sick detainees requiring specialist treatment are normally transferred to specialised institutions or government hospitals and in the event of any such referral, it is processed from MMH at the LDF's cost. MMH also pays visits to the detention centre and provide counselling services as and when necessary.

It was observed that the quality of care provided to detained officers is no less than that offered to officers outside the penal system. The Ombudsman did not come across grievances of detainees being denied medical attention or there being any undue delays in accessing medical doctors' assistance. There were no contagious diseases reported and neither did the Ombudsman establish any recordal of deaths during this visitation.

### **3.0 Hygiene and ablution facilities**

As per the norms, ablution facilities have to be adequate to enable detainees to comply with nature needs when necessary and within a clean, hygienic and decent environment. The Ombudsman observed that there was a proper water system toilet in each cell which was working well and provides adequate privacy. The detainees could easily access the toilet facilities and they seemed well maintained. There were also no unreasonable restrictions placed on their access to toilets.

#### **3.1 Personal Hygiene**

The uniform standards of measure (Rule 13 of the Mandela Rules), dictates that adequate bathing and shower installations have to be provided to enable detainees to have baths or showers at a suitable temperature to the climate and as frequently as necessary for general hygiene.

The Ombudsman observed that there was hot water for bathing, and in the absence of which, detainees warmed water using firewood. It was indicated that although authorities were expected to supply articles necessary for them to maintain bodily hygiene, detainees were expected to bring their own toiletries as they were not provided such. There was one shower used by all detainees.

#### ***Recommendations***

(a) The LDF should provide and supply bathing articles necessary for detainees to maintain bodily hygiene.

#### **3.2 Clothing and Bedding**

It was observed that there were beds in some cells while in others, detainees slept on mattresses on the floor. Each detainee slept on a separate bed and had sufficiently clean bedding. There were adequate blankets and mattresses and during winter, detainees were reportedly provided with three (3) blankets, and two (2) in warmer inclement.

With regard to clothing, while the expectation is that detainees are not allowed to wear their own clothing have to be provided with adequate outfit of clothing suitable for the climate to keep them in good health, it was established that in the case of the military, detainees wore their normal army uniforms with gumboots. This was primarily because detainees' clothing was inadequate due to lack of finances and the LDF has resorted to allowing detainees to use their own military uniform which was rather old though.

The Ombudsman was informed that the footwear is what differentiates them from the rest of their colleagues. Their clothing was clean and although old, it was in proper condition. It was further highlighted that detainees are able to do their own laundry on a regular basis. It was further established that under circumstances where detainees have to be removed outside the LDF barracks for an authorised purpose, such as referrals to hospitals outside the institution, they still wear their own army clothing with gumboots.

### **3.3 Lighting and Ventilation**

It remains a uniform standard of measure that in all places where detainees are required to live or work, there should be sufficiently large enough windows to enable them to read or work by natural light. The windows were relatively big and allowed detainees to have access to natural light and fresh air.

The Ombudsman observed, with concern, that there were no electricity bulbs in the cells and that they seemed to have been removed as only wires were left hanging. This has led to detainees being left in the dark during the night.

### ***Recommendations***

(a) Adequate lighting should be provided to the cells sufficient enough to ensure that they are able to read and move without sustaining any injuries to their eyesight. This should be implemented within thirty (30) days of the issuance of this report.

### **3.4 Cleanliness**

The cells were fairly clean due to the fact that cleaning materials were provided, however, the building itself was very old.

### **4.0 Retention of detainees' property**

The Ombudsman was informed that upon arrival at the detention centre, the detainee's properties such as cellular phones, were registered for safe keeping, while other properties including money, were given to their families.

### **5.0 Discipline and sanction strategies**

If soldiers committed offenses while in detention, they were charged in the same manner as though they were in their respective units. This resulted in their sentences being increased because of multiple charges. There were no reported instances of inhuman treatment or torture.

### **6.0 Information to and from detainees, visitations and their complaints**

Detainees have an embedded right (Rule 37 of Mandela Rules), to be visited by and to correspond with, in particular, members of their families and be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law.

It was established that there were no means of communication for detainees in the sense of provisioning of communication mediums such as telephones and private mail. They only got time to communicate with their families during visitations, which were allowed only on

Sundays. Detainees raised concerns around restrictions imposed on visitations and the fact that they were only allowed visitors on Sundays alone, which often at times led to their family members not being able to pay them any visits. The detainees are allowed and are entitled to communicate and consult with their legal counsels and there were no concerns around this right being infringed anyhow.

In cases where they have complaints, the Ombudsman was informed that there are processes to follow to ensure that such complaints reach the officer commanding (OC) MP at the detention centre and they can finally be reported to the Commander. The OC sometimes pays visits to the detention centre and detainees are at liberty to voice their grievances during such visits.

### ***Recommendations***

(a) Detainees should be allowed access to make phone calls in a regulated manner.

## **7.0 Contact with the outside world**

To accord with the uniform standards of measure (Rule 39 of Mandela Rules), detainees are kept informed regularly of news by reading newspapers and are allowed to have radios in their cells. At the time of inspection, there was no television as it was reported to have been taken for repairs.

## **8.0 Detainees' pastime activities**

It was established that there were no varied and purposeful activities for detainees' pastime except for manual work and morning exercises. It was concerning to note that detainees are not provided with leisure activities as this remains an inherent right intended to ensure that their mental wellbeing is not compromised.

The LDF should encourage the personal development of the detainees not just from a vocational point of view but leisurely as this is a way of facilitating reintegration back into the army following their release.

### ***Recommendations***

(a) For detainees' physical fitness and mental well-being, they should be allowed to spend time outside their cells engaged in purposeful activities of a varied nature and not just manual work.



## **9.0 STAFF WELFARE MATTERS**

### **9.1 Staff complement**

The Ombudsman had occasion to engage staff on their general wellbeing; moreover as the key to a humane place and detainees' treatment lies in the quality of the relationship between staff and detainees. At the time of the inspection, the staff complement in the military police and detention centre was not adequate to perform duties considering the needs in that department.

#### ***Recommendations***

(a) Adequate staff needs of the military police and detention centre should be met within three (3) months of the issuance of this report.

### **9.2 Office accommodation and furniture**

The Ombudsman observed that office accommodation was not adequate for office space since this structure was not intended for office purposes.

The furniture was also in tatters and needed replacement. This was attributed to a very limited budget.

#### ***Recommendations***

(a) Office furniture and equipment should be procured on behalf of staff within this unit and this should be implemented within twenty-four (24) months of the issuance of this report.

### **9.3 Transport**

The MP and detention centre was operating with only three (3) vehicles which were old and needed replacement. Management indicated that ideally, the number of vehicles necessary for this department to function effectively was five (5).

#### **Recommendations**

(a) The LDF should ensure that appropriate number of vehicles necessary for the department to deliver efficiently are budgeted for and procured within twenty-four (24) months of the issuance of the report.

### **9.4 Security**

It was indicated that though the area and buildings were not originally designed and designated for detention purposes, they were reported safe due to the fact that it is within the military barracks which is heavily guarded by the military personnel. There was,

however, no adequate office space since this structure was not intended for office purposes.

Soldiers detained are usually those who have committed minor offences such as being absent from work without permission. There was only one reported escape since the establishment of this centre.

### ***Recommendations***

- (a) The Ministry of Defence and National Security (MODNS) should ensure that a new structure for the detention centre is constructed within thirty-six months (36) of issuance of this report.
- (b) MODSN and LDF should ensure that the MP and Detention Unit is capacitated with five (5) vehicles to enable the department to execute daily activities with ease.
- (c) Visiting periods should be increased to at least three (3) days per week.
- (d) Food restrictions should be eased to allow families of the detained soldiers to bring them food, more particularly detainees with special dietary needs.
- (e) The LDF and MP should ensure that there are additional recreational activities for detainees on a daily basis besides manual work and morning exercises.
- (f) The LDF should provide MP and Detention Unit with adequate staff to enable the unit to perform more effectively.

## **10. Conclusion**

The Ombudsman is hopeful that government and the LDF will use the report to inform intervention measures and ensure that there is an improved adherence to minimum standards of measure in the administration and treatment of detainees at military cells.