Scientia Militaria
2025, VOL. 53, NO. 1, 27-50
DOI 10.5787/53-1-1475

Bullying in the Military: Implications and Remedies

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Abstract

While it is not part of the profile of a soldier to bully other soldiers, the nature of the military and its status as a social institution make soldiers vulnerable to the events of bullying. Such vulnerability comes about because of the structural inequalities – especially hierarchical relationships – that characterise military service. It bears emphasising that soldiers operate in a unique and robust environment with a rigid and uncompromising hierarchical rank structure with specified roles and career fields. Soldiers however do not forfeit basic human rights, and should therefore be protected from treatment that degrades their sense of self-worth. The study on which this article reports, examined the possible impact of bullying in the South African National Defence Force, while also considering legal remedies available to victims of bullying. To this end, a review of relevant literature and discussions with some soldiers and defence civilians who were located in various bases throughout the Republic of South Africa were undertaken. It was concluded that bullying exists in the South African National Defence Force, and if left unchecked, may hamper morale, military discipline, and the operational effectiveness of the defence force.

Keywords: Bullying, Human Dignity, Fair Labour Practices, Ill Treatment, Military Discipline

Introduction

South Africa is a democratic country that is founded on, inter alia, the advancement of human dignity and the rule of law.[2] Importantly, the Constitution of the Republic of South Africa, (1996) stipulates that the South African National Defence Force (SANDF) is the only lawful military force in the country,[3] and it is to be disciplined.[4] SANDF members (soldiers, sailors, and airmen) are citizens in uniform, and are fully entitled to enjoy the rights in the Bill of Rights.[5] Section 2(g) of the Defence Act (No. 42 of 2002) enjoins the SANDF to respect the fundamental rights of all persons. Bullying however exists in the SANDF, and it affects several fundamental rights.[6] The focus in the current article was on the rights to dignity,[7] fair labour practices,[8] and not to be subjected to cruel, inhuman or degrading treatment,[9] since these rights are the most affected by bullying in the SANDF.

The primary aim of the research was to evaluate the concept of bullying in the military, especially with regard to its possible effect on the victims and operational readiness of the defence force.

The article commences by distinguishing between bullying and the enhancement of military discipline with due regard to the uniqueness of the military. It concludes by discussing legal remedies available to victims of bullying in the SANDF. Accordingly, remedies, such as the grievance procedure and the military justice system, are considered in this article.

The Essence of Bullying in the Military

The concept of "bullying in the workplace" has been part of academic research for many decades, but there is no uniform definition of what it really entails.[10] It is sometimes defined to consist of persistent and offensive conduct by a person toward another, which is designed to lower, inter alia, the self-esteem of the victim.[11] There are many ways in which bullying in the workplace can occur, ranging from verbal abuse to threats pertaining to employment security, denial of promotion, isolation from colleagues, and degradation.[12] Extreme forms of bullying include serious violation of a victim's mental and bodily integrity as a result of sexual harassment or rape committed over a prolonged period.[13] Importantly, a once-off incident of ill treatment does not constitute bullying, since the duration and intensity of the offending conduct are important in the determination whether a certain behavioural pattern constitutes bullying.

Bullying affects all sectors of society, including the military. This is unsurprising considering that the military environment consists of soldiers and civilians; therefore, soldiers and civilians could both be victims or perpetrators of bullying, regardless of rank or status.[14] The test to determine whether a particular conduct constitutes workplace bullying is objective. The question must be whether a reasonable person – who is not hypersensitive – would find that the behaviour complained about amounts to bullying in the workplace.[15] The rationale behind this approach is that the modern workplace is generally characterised by stress and interpersonal conflicts. Accordingly, the impugned conduct is to be judged not in accordance with the standard of angels, but of human beings with reasonable sensibilities.[16]

Sight must not be lost that a military environment has a distinct culture from the civilian society. Accordingly, the question whether a conduct amounts to bullying in the military should be judged in accordance with what is expected of a reasonable soldier. Soldiers live and operate in a subculture of their own, and must adhere to rules and etiquettes allowed in the military.[17] A consideration whether conduct amounts to bullying in the military should therefore not overlook the realities of military life and military discipline.

Drawing the Line between Bullying and Military Discipline

The main purpose of military organisations is to fight and win wars, in other words, the end game is combat.[18] Accordingly, in times of peace, the SANDF must prepare for war and give effect to the policies of the government.[19] This is to be expected considering that section 200(2) of the Constitution outlines that the primary objective of the SANDF is to protect the territorial integrity of South Africa and the liberties of its people. The SANDF must therefore be managed and structured as a disciplined military force.[20]

Military discipline is defined as 'an attitude of respect for authority … which leads to a willingness to obey an order no matter how unpleasant the task to be performed'.[21] The SANDF cannot fulfil its constitutional obligations without military discipline. Accordingly, the SANDF, like any other professional armed force, relies on a hierarchical chain of command to enhance military discipline. The chain of command, and with it rank superiority, is entrenched in virtually all spheres of military life, for example job descriptions, facilities and privileges.[22] Axiomatically, the military is a robust environment, and as a result, a soldier might deem it necessary to be more tolerant of abusive behaviour from other soldiers than civilians would be in similar circumstances. This is because soldiers undergo rigid and rigorous training that is designed to strengthen their adaptability to dynamic and stressful situations.[23] Based on this, soldiers are better conditioned than civilians to endure stressful situations.[24]

Moreover, the use of vulgar language is common in the military, and it is sometimes justified based on the exigencies of military service. The reality is that some soldiers in South Africa and elsewhere ordinarily use vulgar, insulting, and abusive language to get things done in their areas of responsibility. Whilst such conduct is not entirely acceptable, it can be understandable in the context of the military. The test that should be applied is thus whether the impugned behaviour is the kind that a reasonable soldier in similar circumstances would also find objectionable.

Fairness should be the central theme in which the relationships in the SANDF should be managed. A possibility however exists that soldiers, especially those in leadership positions could use their ranks as tools to bully other members of the military community. Research shows that recruits are more likely to be subjected to episodes of bullying than experienced soldiers.[25]

The Impact of Bullying in the Military

A soldier should be as free as possible from bullying by the chain of command, i.e. the command and accountability chain, running from the commander-in-chief to the rank and file, who must inherently be responsible for maintaining the morale, good order and operational effectiveness of the defence force.[26] The trust between soldiers is fundamental to camaraderie, *esprit de corps* and military discipline. Without that trust and confidence,

the SANDF would find it difficult to operate effectively and efficiently. In other words, if soldiers bully each other, how can we trust them to protect the lives of the citizenry when the need arises. A soldier needs to be able to trust fellow comrades-in-arms with their lives and, if they cannot do so, they will have to watch their backs whilst fighting an enemy.[27]

Military bullies, however, undermine the norms and values of a healthy SANDF. Bullying thus affects victims and society at large due to its influence on the operational effectiveness of the SANDF. Kalamdien and Lawrence observe as follows in this regard:

> The prevalence and extent of bullying in the military could contribute to an unhealthy defence force. This directly threatens the operational effectiveness of the organisation. An unhealthy military force translates into an ineffective military force. The experience of bullying by military personnel could negatively affect their work and particularly their attitude to work. This also implies an unhealthy military community as military families also present secondary victims of workplace bullying.[28]

Bullying can have devastating consequences for the victim's physical, emotional, and financial well-being. Accordingly, victims of bullying sometimes have two extreme options available to them, either to remain and endure acts of bullying or to resign from the SANDF. In *S v Nel*,[29] the accused, a recruit, was convicted in the Court of a Military Judge for absence without leave and desertion. The accused was a victim of bullying perpetrated by his superior, a flight sergeant, who vowed to grind the accused until he left the military. The accused testified that he did not complain by reason that he perceived the instructors to be a close-knit family – that they were bound to side with the flight sergeant in the event of a complaint. As a result, he chose to resign from the SANDF rather than continue enduring the abuse.[30] The accused, however, left the SANDF before permission could be granted for his resignation; therefore, absenting himself without leave, and ultimately deserting from the military. The trial court sentenced him to discharge with ignominy from the SANDF.[31] On automatic review, the Court of Military Appeals (CMA) stated that the harassment by the accused's flight sergeant was unacceptable, and that it was a major contributing factor that led to the commission of desertion. The CMA confirmed the findings but found that the imposed sentence was shockingly harsh. As a result, the CMA set aside the punishment by the trial court, and replaced it with discharge from the SANDF.[32]

Electing to resign from the SANDF might however not be an ideal solution in all instances, considering the South African socio-economic climate, where the unemployment rate is notoriously high. The concern with tendering resignation is that work is scarce in South Africa, and anyone who is employed in a government post should cherish their fortunate position.[33] Accordingly, the fear of starvation that may come about because of losing one's job may propel a soldier to endure bullying rather than to resign from the SANDF.

Bullying is clearly antithetical to the pledge that a soldier is required to protect his or her comrades-in-arms even at the risk of his or her own life.[34] One would think that persons who have accepted the occupational hazards of the military, including death in the battlefield, would be protected from the episodes of bullying. To this end, the SANDF

has a moral responsibility to protect its members from harm. After all, SANDF members deserve that much for their sacrifice. Essentially, a soldier is entitled to expect unswerving protection from South Africa in return for his or her service.

The SANDF should therefore ensure that soldiers operate in a bullying-free training and work environment if the defence force is to transform itself into a credible institution that adheres to the values that are espoused in the Constitution regarding the society it seeks to serve. After all, the image of the SANDF, as well as its role as the defender of the Constitution and the rights enshrined therein would be undermined in the eyes of the public by bullying in the defence force. Clearly, a military bully is a cancer that ravages the defence force from within. The actions of a bully do not enhance efficiency, discipline, and morale. Based on this, bullying should be nipped in the bud, wherever it germinates in the SANDF.

Constitutional Principles Affected by Bullying in the Military

The executive, legislature, and judiciary must respect, protect and promote the fundamental rights of everyone, including soldiers.[35] This injunction also applies horizontally among individuals.[36] In other words, no one should infringe on the rights of others, since the right to swing one's fist ends where the nose of the other begins.[37] Of all the rights in the Bill of Rights, the rights to dignity, fair labour practices, and the right not to be subjected to cruel, inhuman, or degrading treatment or punishment are the rights that are limited the most by bullying in the military. Section 10 of the Constitution stipulates that everyone has the right to have his or her dignity respected and protected.

The right to dignity is characterised as a fundamental right that informs the interpretation of possibly all other constitutional principles.[38] As a result, the violation of the right to dignity may also infringe other rights in the Bill of Rights. Human dignity is not respected or protected but infringed by conduct that denigrates the dignity and worth of individuals.[39] The Constitutional Court in *Khumalo v Holomisa* stated as follows:

> The value of human dignity in our Constitution is not only concerned with an individual's sense of self-worth, but constitutes an affirmation of the worth of human beings in our society. It includes the intrinsic worth of human beings shared by all people as well as the individual reputation of each person built upon his or her own individual achievements. The value of human dignity in our Constitution therefore values both the personal sense of self-worth as well as the public's estimation of the worth or value of an individual.[40]

Closely intertwined with the right to dignity is the right not to be treated in a cruel, inhuman or degrading manner as enshrined in section 12(1)(e) of the Constitution. The Constitutional Court in *S v Williams and Others* expressed that "cruel" refers to 'causing agony without pity', "inhuman" means 'destitute of pity or brutal' and "degrading" means

'lowering the character or worth, intellectual or moral debasement'.[41] It may be difficult to differentiate between the concepts "cruel", "inhuman" and "degrading".[42] The right is, however, infringed if a person is subjected to treatment that contains any one of these concepts. Certain acts of bullying could be degrading but may not qualify as cruel or inhuman treatment in the proper sense. For example, aspects, such as promotion, have salary implications, since a soldier's salary is linked to rank, and that could affect a soldier's ability to afford basic goods necessary for subsistence.[43] Moreover, military rank promotion brings about honour and prestige in a society where one's rank and status are reflected on his or her uniform. The unjust denial of promotion by a military bully may therefore amount to cruel and inhuman treatment. While being ridiculed or insulted may continuously be embarrassing or humiliating, therefore degrading, it may not, however render that treatment cruel or inhuman in all instances.

The reality, however, is that human dignity is infringed whether bullying is manifested in a cruel, inhuman, or degrading manner. The Constitution puts a very high value on the right to human dignity and the right not to be treated in a cruel, inhuman or degrading way; therefore, a very convincing justification would have to be provided for violating these rights.[44] This is to be expected considering that these rights are part of those that are non-derogable, as they continue to apply even during a state of emergency that is due to, inter alia, wars and natural disasters.[45] The rights are also protected in various international law instruments that South Africa signed and ratified including –

- The African Charter on Human and Peoples' Rights (1981);[46]
- The International Covenant on Civil and Political Rights (1966);[47] and
- The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).[48]

In ratifying these treaties and conventions, South Africa committed to treat the citizenry in a manner that respects everyone's inalienable right to human dignity, and undertook to prohibit torture, cruel, inhuman or degrading treatment.

The right to dignity and the right not to be treated in a cruel, inhuman or degrading manner apply to all persons regardless of their status and standing in the society.[49] After all, public policy requires that persons should be treated with respect, and that bullying of any type should not be tolerated.[50] The aversion against bullying is clearly one of the most important manifestations of the right to dignity and the right not to be subjected to cruel, inhuman or degrading treatment. It bears emphasising that bullying in any environment is unacceptable, and this 'is doubly so in a strict environment such as the military where respect for members … is jealously guarded by the legislation, courts and members themselves'.[51]

Section 23(1) of the Constitution provides that everyone has the right to fair labour practices. The Constitution however does not define what 'fair labour practices' entails.[52] The concept 'fair labour practice' is enigmatic, and there is little agreement about what it really means. This is perhaps why it is 'neither necessary nor desirable to define this concept', as it cannot be defined with precision.[53] The decision whether a conduct amounts to a fair labour practice requires, to some degree, the exercise of a value judgment based

on the circumstances prevailing in a particular case.[54] Such decision may also include considering circumstances that are not inherent in the worker–employer relationships, including societal interests and the economy.[55] Fairness is, however, not a one-way street where only the worker is entitled to fair labour practices. The reality is that fairness in the context of fair labour practices entails that the interests of the employer should also not be ignored in the decision.[56] In *National Education Health & Allied Workers Union v University of Cape Town and Others*, the Constitutional Court stated as follows in this regard:

> [T]he focus of section 23(1) is, broadly speaking, the relationship between the worker and the employer and the continuation of that relationship on terms that are fair to both. In giving content to that right, it is important to bear in mind the tension between the interests of the workers and the interests of the employers which is inherent in labour relations. Care must therefore be taken to accommodate, where possible, these interests so as to arrive at the balance required by the concept of fair labour practices.[57]

Military bullies can affect the work performance, mental tranquillity, and overall commitment of the victim to the SANDF.[58] In *S v Thomas*,[59] the CMA pointed out that one of the victims resigned from the SANDF due to the negative influence that the actions of the accused had on her emotional well-being. Moreover, bullying has been identified as the driving force behind certain instances of absences without leave.[60] In other words, a victim may prefer to be absent without leave to avoid a toxic work environment. Such absenteeism is likely to put strain on other soldiers who would, in addition to their own duties, be expected to fill the void left by the absent soldier.[61] The increased workload could hamper the unit from fulfilling its constitutional obligations effectively. Bullying, therefore, does not promote or advance the interests of victims, and such behaviour is destructive to the interests of the military community.

Furthermore, the Code of Conduct with which SANDF members agree to comply contains principles that are designed to harmonise relationships between SANDF members.[62] Accordingly, the Code of Conduct informs our soldiers about behaviour that is acceptable and that which is undesirable. For example, all soldiers commit to treat subordinates fairly, to respect superiors, and not to abuse one's authority.[63] The principles as laid down seek to foster a culture of fair labour practices. This culture would, however, be compromised if bullying behaviour is allowed in the SANDF.

In 1995, Parliament enacted the Labour Relations Act (No. 66 of 1995) to give effect to the purpose of section 23 of the Constitution.[64] The right to fair labour practices applies on workers and employers only, as it does not include persons who are not in an employment relationship.[65] The Labour Relations Act however does not apply to soldiers.[66] In *South African National Defence Force Union v Minister of Defence and Another*,[67] the Constitutional Court recognised that soldiers are not employed but enlisted, although their relationship with the SANDF – as well as their service benefits – mirrors the employment relationships of persons who are employed.

In seeking to find an answer to the question whether soldiers are workers, the Constitutional Court found guidance from international law instruments, such as the Freedom of Association and Protection of the Right to Organise Convention (1948) and Convention on the Right to Organise and Collective Bargaining (1949) that South Africa ratified. There, the term "worker" is defined to include soldiers.[68] The Constitutional Court concluded that soldiers are workers as contemplated in section 23 of the Constitution.[69] As workers, soldiers are guaranteed the right to just and favourable working conditions, without any discrimination. Soldiers too have the right to just and favourable remuneration that is supplemented, if necessary, by other means of social protection.[70]

On 20 August 1999, the government promulgated the General Regulations for the South African National Defence Force and Reserve, to regulate labour relations of soldiers in a manner that passes constitutional muster.[71] With that promulgation, the government sought to prohibit unfair labour practices, in other words, any unfair act or omission that arises between the defence force and its members involving unfair discrimination or unfair denial of service benefits.[72] It would therefore amount to unfair labour practice if military bullies stifle promotion prospects of deserving soldiers.

The right to fair labour practices is closely connected to the rights to dignity and not to be punished or treated in a cruel, inhuman or degrading manner; therefore, is very important in an open and democratic society.[73] In *Minister of Home Affairs v Watchenuka*, the Supreme Court of Appeal stated as follows in this regard:

> The freedom to engage in productive work – even where that is not required in order to survive – is indeed an important component of human dignity … for mankind is pre-eminently a social species with an instinct for meaningful association. Self-esteem and the sense of self-worth – the fulfilment of what it is to be human – is most often bound up with being accepted as socially useful.[74]

Similarly, in *Affordable Medicines Trust and Others v Minister of Health and Another* the Constitutional Court eloquently stated that work is part of a person's dignity, and is constitutive of his or her own dignity, as such 'work and the human personality as a whole' are related.[75] In *City of Johannesburg v Rand*, the court stated, '[the] right to work is one of the most precious liberties that an individual possesses … To work means to eat and consequently to live.'[76] The right to dignity, the right to fair labour practices, and the right not to be treated in a cruel, inhuman or degrading manner are intrinsic to the kind of society based on freedom, human dignity, and equality as contemplated by the Constitution. There can be no denial that the concept of bullying limits the essence of these rights.

The limitation of a fundamental right must be reasonable and justifiable taking into consideration, inter alia, the nature of the right and the nature and extent of the limitation.[77] The unique nature of the military should however be considered in determining whether the violation of a constitutional right is reasonable and justifiable. This is to be expected considering that section 50 of the Defence Act provides for the limitation of soldiers' rights based on the exigencies of military service.

Military bullies justify their conduct based on the enhancement of military discipline.[78] Their attitude to such a constitutionally objectionable behaviour is however unacceptable in a democratic society sensitive to acts of oppression and indignity. These bullies also fail to consider the concept of *ubuntu*. The philosophy behind *ubuntu* is that the dignity of another person is as valuable as one's own, understanding that one's own dignity is diminished when another person is degraded or humiliated.[79] After all, human beings derive their humanity from the humanity of others. A person shows *ubuntu* if he or she shows respect, care and concern for other persons.[80] Military bullies lack these attributes, therefore are bereft of *ubuntu*. *Ubuntu* is clearly not in harmony with treatment that dehumanises or degrades the self-worth of another person – and bullying assails typically the dignity and self-esteem of a victim beyond constitutionally permissible boundaries. Based on this, there is no reasonable justification for bullying in the SANDF.

Legal Remedies to Curb Bullying in the SANDF

Parliament enacted certain legislation that can serve to provide soldiers with a range of remedies to address incidences of bullying in the military environment.[81] The available remedies include the internal mechanism known as the grievance procedure and, if necessary, victims can rely on external mechanisms to hold military bullies accountable, for example the Office of the Military Ombud and the South African justice system.

Exhausting Internal Remedies: The Grievance System

Section 61 of the Defence Act provides that a soldier or civilian who works in the SANDF may lodge a grievance regarding concerns about conditions of service.[82] A grievance is defined to include a written expression of dissatisfaction by a soldier or civilian about promotion and service benefits but excludes dissatisfaction relating to matters pending before a court, forum, or tribunal.[83] The list is not exhaustive; therefore, a victim of bullying in the SANDF can lodge a grievance. On 14 October 2016, the Minister of Defence and Military Veterans promulgated the Individual Grievance Regulations to regulate the grievance process in the SANDF.[84] Importantly, regulation 3 asserts that the aggrieved person should address a grievance through his or her chain of command.

Utilising the chain of command to address disputes in the military is crucial as it gives opportunity to the hierarchy to deal with matters pertaining to the welfare of persons under their command. To this end, the chain of command may be appropriate to resolve grievances, as most of the issues generally complained about fall within the skills, expertise, and experience of the hierarchy. The grievance process thus gives effect to what is recognised in our law, namely that internal remedies must first be exhausted before a person can resort to external mechanisms.[85]

The grievance process is a five-tiered process.[86] Accordingly, an aggrieved person should lodge a grievance with his or her Unit Officer Commanding within 90 days after the occurrence of the conduct complained about.[87] The Unit Officer Commanding has 20 days to respond to the grievance.[88] If the Officer Commanding fails to resolve the grievance, it must be referred to the Formation Officer Commanding.[89] The Formation Officer

Commanding has ten days to resolve the grievance, failing which, the grievance should be referred to the Chief of a Service or Division who must cause that grievance to be finalised.[90]

The Chiefs of the Arms of Service or Division generally establish grievance committees to investigate and finalise grievances.[91] The aggrieved person may however refer the grievance to the Department of Defence Grievance Board.[92] If the grievance is not resolved within 30 days, recommendations must be forwarded to the Secretary of Defence or the Chief of the SANDF (CSANDF) who must make a decision within ten days from the date of recommendations.[93] Once the Secretary of Defence or the CSANDF has made a decision, the grievance is considered finalised, and the aggrieved person has no more internal remedy.[94] Essentially, barring any requests for extension to the secretariat of the Grievance Board (that may be granted or denied), a grievance should be concluded within 90 days. The grievance process should therefore be a swift and expeditious way to resolve disputes in the SANDF. The entire process is however notorious for long outstanding delays regarding the finalisation of grievances. In the past, instead of the prescribed 90 days, some grievances took more than four years to be finalised.[95] It bears emphasising that it is an offence punishable by imprisonment (not exceeding five years) to stifle the redress of a grievance.[96]

The inability of the chain of command to resolve grievances timeously delegitimises the grievance process. Such delays may discourage victims from reporting bullying. Long outstanding grievances are likely to prolong agony and stress, especially since most military bullies and victims are based at the same unit. The lack of urgency in resolving grievances by the chain of command should however not be construed as if the grievance system can never work. More can be done in this regard; therefore, the speed at which grievances are addressed should be improved if the grievance system is to have credibility as the internal mechanism to resolve disputes in the SANDF.

Military Ombud

Once the grievance is finalised, the aggrieved person can raise his or her continued dissatisfaction with the Office of Military Ombud (OMO). The OMO is established in terms of the Military Ombud Act (No. 4 of 2012*)*,[97] and its object is to investigate and ensure that complaints are addressed in a fair, swift, and economical manner.[98] The OMO is a creature of statute. Its mandate is limited to complaints that are lodged in writing regarding the conditions of service of a soldier or former soldier, or complaints from any person regarding the conduct of a soldier allegedly committed while exercising an official duty.[99] The OMO however does not have jurisdiction to hear complaints relating to court matters or complaints that undermine the chain of command.[100]

The head of the OMO is the Military Ombud, who is appointed by the President of the Republic of South Africa for a non-renewable period of seven years.[101] A person appointed as Military Ombud must have legal knowledge, including adequate understanding of the Constitution, and must have experience of not less than ten years in military and public administration.[102] The main function of the Military Ombud is to assess, analyse, and provide recommendations regarding complaints that are lodged with the OMO fairly,

expeditiously and without fear, favour, or prejudice.[103] Accordingly, the Military Ombud has powers to uphold or dismiss the complaint.[104] The Military Ombud must, if the complaint is upheld, however recommend the appropriate relief to the Minister.[105]

There is legal certainty that recommendations of the Military Ombud are not binding on the Minister.[106] In other words, the Minister is not obliged to implement such recommendations.[107] Accordingly, a recommendation of the Military Ombud is just some evidence that could be considered by the Minister, along with other information. This is unsurprising considering that the SANDF is regulated in terms of the Defence Act, which establishes the Military Command consisting of the CSANDF and certain heads of Services and Divisions.[108] The Military Command is established by the President of the Republic of South Africa, who is the Commander-in-Chief of the military, and therefore sits at the head of the chain of command.[109] The Minister of Defence and the Military Ombud are not members of the Military Command; therefore, they do not form part of the chain of command.[110] In *Lambede v Minister of Defence and Military Veterans and Others*, the High Court stated as follows in this regard:

> There can be no room for the office of the MO [Military Ombud] as an alternative chain of command, as this would compromise the constitutional imperative for military discipline or would undermine political control of the State over the SANDF, its only relevant function to be that of performing a support function in the governance of, in the military command over the SANDF.[111]

The OMO was clearly established to exercise oversight over the SANDF regarding aspects such as accountability, transparency, and respect for the rule of law and basic human rights.[112] One would think that an entity that is supposed to play an oversight role in the military should have binding remedial actions. This is even more so considering that complaints that are ordinarily lodged with the OMO predominantly relate to harassment and abusive behaviour by superiors. Such complaints therefore implicate the rights in the Bill of Rights to a certain extent. The reality is that the OMO as presently operating is not entirely effective, because it lacks powers to protect soldiers adequately from military bullies. The OMO is therefore deservedly characterised as a toothless tiger.[113] Lodging complaints with the OMO about bullying in the SANDF is consequently likely to amount to an exercise in futility.

The Role of Military Police, Adjutants and Officers Commanding

The Defence Act authorises the CSANDF to appoint a soldier to serve as a military police official.[114] Military police officials have similar powers as members of the South African Police Service. Accordingly, they are empowered to prevent, combat, and investigate offences.[115] There are also officers commanding who generally task adjutants to investigate offences that are allegedly committed by unit personnel, including interviewing and taking of statements from possible witnesses. This is to be expected considering that officers commanding are accountable for the discipline and welfare of men and women under their command. Accordingly, complaints about bullying in the SANDF may be opened at the military police detachment or lodged with the adjutant of the unit.

The assigned military police official or adjutant would investigate the matter. Once the investigation is concluded, the docket is submitted to the assigned military prosecution counsel for decision whether to prefer charges or to decline to prosecute. If the decision is to charge, and all the pre-trial procedures are completed, the prosecution counsel will then frame a charge sheet, and the matter will be enrolled for trial before the military courts.

In a democratic dispensation, such as ours, the defence force is obliged to take appropriate action against military bullies. Experience shows however that there have been instances where the military police, unit adjutants, and officers commanding failed or delayed to investigate complaints regarding bullying.[116] This inaction by some officials is prevalent, especially if the complaint is against a soldier who is higher up in the chain of command.[117] This is not to impugn the integrity of military police officials, adjutants and officers commanding, of whom many execute their functions impartially, fearlessly, and vigorously, regardless of their proximity to military bullies. It must however be accepted that some officials fail to investigate bullying complaints due to factors, such as their own friendship with a military bully or the friendship of their commanders with such bully. The SANDF would suffer from legitimacy and credibility crises, if structures that are established to protect victims of bullying, are themselves lawbreakers. After all, confidence in the administration of military justice is not enhanced but undermined when military bullies are shielded from having their day in court. A designated official who fails to investigate complaints about bullying behaviour therefore neglects his or her duties.

The Military Justice System

Granted, there is no crime known as "bullying" in South Africa. Bullying behaviour, which may include verbal insults and riotous or unseemly behaviour, may however be tried as an offence. In other words, a military bully can be prosecuted for violating various laws if his or her conduct is in compliance with the definitional elements of an offence. For example, section 105(1) of the Defence Act provides for the imposition of imprisonment for five years on a soldier or civilian who denigrates, humiliates, or shows aversion to any other person based on the listed grounds, including race and gender. According to the Military Discipline Code, a military bully can be charged for offences including ill-treating a subordinate,[118] scandalous behaviour unbecoming the character of an officer,[119] and for causing actual or potential prejudice to good order and military discipline.[120]

One would be hard-pressed to insinuate that there are insufficient statutory provisions in the defence legislation to punish military bullies. Accordingly, section 6 of the Military Discipline Supplementary Measures Act (No. 16 of 1999) establishes the military court system consisting of the Court of Military Appeals (CMA), Court of a Senior Military Judge, Court of a Military Judge, and the commanding officer's disciplinary hearing to try soldiers for common-law crimes, as well as offences that are contained in the defence legislation and other relevant legislation. For example, *S v Fourie*[121] dealt with a flight sergeant, an instructor, who was convicted in the Court of a Senior Military Judge of ill-treating two female recruits as well as six counts of unseemly behaviour. The accused had been charged for subjecting two female recruits to egregious forms of bullying. He continuously hurled insults, and humiliated, degraded and sexually assaulted one of the

recruits. The court sentenced him to dismissal from the SANDF, which was an invalid sentence, since it is only officers who may be sentenced to that punishment. In other words, warrant officers, non-commissioned officers and privates cannot be sentenced to dismissal from the SANDF. On automatic review, the CMA confirmed the convictions, but found that the sentence of the trial court was invalid; therefore, justified interference. The CMA observed the following:

> Just as in the case of the first complainant, the accused shouted and screamed at the second complainant during training. He bullied her and humiliated her in the presence of other trainees. This happened to the extent that the accused completely undermined the complainant's confidence and self-esteem … After the accused's constant bullying of her and hurling abuse at her, the second complainant was terrified … and became completely submissive. This resulted in the accused forcing himself onto the complainant when he had sexual intercourse with her. After having intercourse, he ejaculated on her. This incident, the first of four such incidents, took place in the duty room. Before the first incident, the complainant was a virgin.[122]

The CMA pointed out that the accused abused his authority. Through his conduct, the victims endured emotional, physical and psychological trauma for his own gratification and sadistic pleasure. Essentially, he subjected the victims to a terrifying, cruel and degrading treatment, something which they did not expect when they joined the SANDF. Accordingly, the punishment imposed by the trial court was not only invalid, but it was also totally disproportionate to the gravity of the offence. The CMA concluded by setting aside the trial court's punishment, and substituted it with imprisonment for three years and discharge with ignominy from the SANDF.[123]

The current author has trouble fathoming the reasons why less serious charges were preferred considering that the facts indicated that the accused could have been charged for rape. I say this because the impact caused by rape on the victim is much greater than sexual violation, although at the heart of this abhorrent crime is the exertion of authority manifested in a sexual manner.[124] Historically, the death sentence was an available sentencing option that courts could impose on rapists.[125] Since the abolition of the death sentence in 1995, following the decision in *S v Makwanyane and Another*,[126] Parliament enacted the Criminal Law Amendment Act (No. 105 of 1997) to provide for the prescribed minimum sentences that the High Courts or regional courts must impose on a specified category of offenders who committed the prescribed offences, for example murder and rape.[127] Accordingly, the prescribed punishment that must be imposed for two or more counts of rape is life imprisonment,[128] unless there are substantial and compelling circumstances, which warrant the imposition of a lesser punishment.[129]

The military courts however lack jurisdiction to try soldiers for rape allegedly committed in South Africa. Such matters are prosecuted by the National Prosecuting Authority (NPA).[130] The prosecutor in *S v Fourie* indicated that such referral was indeed done, but the NPA declined to prosecute. The reason for declining to prosecute however remains

a mystery, as it was not revealed. In hindsight, the accused could have been charged for multiple counts of rape; thus, triggering the imposition of life imprisonment. The fact that the accused received imprisonment for three years for his heinous crimes resulted in miscarriage of justice. This averment is not designed to scandalise the CMA. The reality is that the CMA imposed the maximum sentence allowed in terms of the Military Discipline Code for the said offences.[131]

Furthermore, in *S v Thomas*,[132] the accused, a chief petty officer and a gunnery instructor, was convicted in the Court of a Military Judge of conduct that prejudiced good order and military discipline, and on twelve counts of ill-treating or assaulting recruits. The recruits testified that the accused would hit some of them with a "troop moering tool", which could have been a broken broomstick, a branch from a tree, a rifle sling or a belt. The accused would call the recruit to the podium in front of the class, and would hit the victim three times on the buttocks, while other recruits were required to shout the words "troop moering tool" each time a hit was administered. Moreover, the accused referred to females as "hoere" or "jentoes", meaning prostitutes, and he addressed the male recruits as "trille" or "piele" meaning penis.[133] Moreover, he touched the breasts of some female recruits and/or pressed his body against their buttocks. The trial court sentenced him to discharge with ignominy from the SANDF. On automatic review, the CMA pointed out that the accused clearly abused his authority as an instructor, and his lack of remorse indicated that he was not a candidate for rehabilitation. The CMA concluded by confirming the convictions and found no reason to interfere with the punishment meted out by the trial court.[134]

What is clear is that the two cases – *S v Fourie* and *S v Thomas* – are alike to a certain extent. Both cases relate to extreme incidences of bullying that occurred in the training environment, although in different training units. It is therefore not far-fetched to deduce that recruits are vulnerable to episodes of bullying. This is despite the fact that the majority of instructors treat recruits with care and respect.[135]

It bears repeating that bullying can also be directed at a soldier who does not form part of the training unit. For example, in *S v Sompani*,[136] the accused, a female with a rank of lieutenant colonel, was convicted in the Court of a Senior Military Judge for ill-treating her subordinate and conducting herself towards the subordinate in an unseemly manner to the prejudice of good order and military discipline. The complainant, a corporal, testified that the accused bullied and victimised her at various occasions over a six-month period. In this period, the accused denied the corporal lunch breaks and bathroom breaks, and gave her instructions unrelated to her job description, for example, to carry the accused's handbag while she would have been busy shopping.

The trial court sentenced the accused to reduction to the lower rank of major. In other words, she kept her job but lost the authority she had (the previous higher rank), and her salary was reduced to reflect her lower rank. The accused appealed the convictions and the sentence.[137] She however did not comply with the prescribed timeframe for lodging an appeal, since she had to do so within six months from the date of conviction and sentence. Notwithstanding, the CMA proceeded to consider the matter anyway relying on its review

competency.[138] On review, the CMA was satisfied regarding the guilt of the accused on many of the charges, and only refused to confirm her guilt on a single count of attempting to convince the complainant to have a sexual relationship with another person.[139] The CMA remarked that the accused failed in her role as an officer – whose responsibility it is to display care and respect for subordinates, and to be exemplary in character. The CMA proceeded with confirming the trial court's punishment.

It is undeniable that there have been very few trials connected to bullying in the SANDF. This suggests that bullying is not prevalent considering that the SANDF is comprised of more than 80 000 personnel. Anecdotal evidence however reveals that bullying is prevalent in the SANDF, even though not all instances are reported.[140]

Civil Remedies

Section 34 of the Constitution guarantees everyone access to courts, which includes the right to have any dispute resolved by the application of law decided in a fair public hearing by an independent and impartial court, forum, or tribunal. In *Erasmus v Minister of Defence*,[141] the High Court however pointed out that the intervention of civil courts in the processes of the SANDF should generally be limited to instances when there is a violation of a fundamental right. The High Court observed as follows in this regard:

> It is possible that if relief is granted, the floodgates might be opened and each and every disgruntled soldier may in future elect to run off to our civil courts in order to obtain relief from what they regard as oppressive or unfair conduct by superiors. This may lead to preposterous results and an infringement of military discipline and the concomitant command structure of the military. Soldiers may later on be complaining about having to sleep in sleeping bags in the veld during cold, frosty Free State nights, or lack of sufficient food rations during military operations, or lack of sleep due to training requirements, to mention a few examples.[142]

Notwithstanding, a soldier has a right, as already indicated, to be protected by government. The corollary is that a soldier is entitled to claim for damages based on the vicarious liability of the SANDF for the conduct of a military bully. Vicarious liability is a common law principle, which allows blame to be put on an employer for the harm caused by such employee in the scope of his or her employment.[143]

The SANDF can only act through the instrumentality of soldiers and other officials forming part of it. Based on this, the conduct of a soldier can be imputed on the SANDF, as if it is the SANDF's own acts. The SANDF could thus be held liable for damages if the connection between a military bully's conduct is sufficiently intertwined with his or her role in the SANDF. This may happen although the SANDF did not or could not have sanctioned the conduct complained about. A soldier can however not hold government accountable if bullied by another in their private capacity without there being a sufficient link between the conduct complained about and their role in the military.

Civil remedies that may flow from bullying in the SANDF can also be pursued by a person who has since ceased to be a soldier based on the principle of constructive dismissal. Constructive dismissal arises in circumstances where the employee terminates the contract of employment due to continued working conditions that the employer or another employee must have made unbearable. The onus rests on a former employee to show on a preponderance of probabilities that, but for the employer's or another employee's conduct towards him or her, the resignation would not have occurred.[144] Put differently, although an employee may have resigned, it would actually have been the conduct of an employer that triggered it, such that the resignation should be characterised as a dismissal.[145] The inquiry should therefore be whether the employer had without reasonable and proper course conducted him- or herself in a manner calculated to destroy or seriously damage the relationship of confidence and trust with the employee.

The test to determine whether an employer's conduct amounts to constructive dismissal is objective, and the question in such cases is whether its effect, judged reasonably and sensibly, is such that no employee could have been expected to put up with it.[146] In *Murray v Minister of Defence*,[147] the Supreme Court of Appeal dealt with a former officer who had attained the rank of commander but had resigned due to ill treatment he received at the hands of the hierarchy in the South African Navy. The plaintiff articulated his sense of grievance in the following terms:

> I have been subjected to a board of inquiry, a procrastinated investigation carried out arbitrarily and with ignorance of my rights, as well as two courts martial. After all these events, I have a clean disciplinary record as an employee of the SANDF. However, I have been removed from my post and placed in a position where … I have been literally without a desk and have not received a single responsibility, task or function commensurate with my rank, experience, skills and expertise. I have been deprived of any prospect of aspiring to higher goals, of achieving any promotion or of furthering my career in the SA navy … For this I have not received any reasonable explanation.[148]

The Supreme Court of Appeal pointed out that the plaintiff endured hardship and truly miserable times in the navy, as he was shunned and sidelined and was subjected to an atmosphere of marginalisation.[149] The cumulative impact of the conduct of the SA Navy judged as a whole was such that no reasonable soldier could have been expected to put up with it.[150] The plaintiff was therefore justified to resign from the SANDF.[151]

Conclusion

It was shown in this article that bullying exists in the SANDF, and it is mostly perpetrated by soldiers who use their positions of authority to disregard the dignity, peace and mental tranquillity of another person systemically. The article commenced with drawing a line between bullying and the enhancement of military discipline. There it was found that, military discipline is not enhanced but undermined by bullying behaviour in the defence

force. It is further determined that bullying in the military has adverse implications for victims and may hamper the operational efficiency of the SANDF. The article further showed that bullying behaviour offends various fundamental rights, and there is no reasonable justification for it.

The article concluded by considering remedies available to victims of bullying in the SANDF and found that perpetrators could be prosecuted for a range of offences, and could also be held liable for civil damages. Moreover, the SANDF could be held vicariously liable for damages resulting from acts of bullying that are perpetrated by soldiers in their scope of military service. Aspects, such as delays in finalising grievances and the fact that the OMO lacks binding remedial powers, could however render these remedies futile, especially with regard to addressing bullying behaviour. Nevertheless, the conclusion is unavoidable that there is no place for bullying in the SANDF.

Endnotes

[1] Bulelani Tsewu, LLB, LLM, LLD (UNISA) is a military law practitioner in the South African National Defence Force.

[2] See section 1 of the Constitution of the Republic of South Africa (1996).

[3] Section 199(2) of the Constitution.

[4] Section 200(1) of the Constitution.

[5] See *Minister of Defence v Potsane; Legal Soldier (Pty) Ltd and Others v Minister of Defence* 2002 (1) SA 1 (CC) at para 36. From henceforth, a reference to a soldier includes a seaman or an airman.

[6] See *S v Fourie* CMA 210/2001; *S v Thomas* CMA 41/2014; *S v Mkhize* CMA 49/2017; *S v Sompani* CMA 27/2022.

[7] Section 10 of the Constitution.

[8] Section 23(1) of the Constitution.

[9] Section 12(1)(e) of the Constitution.

[10] K Calitz, 'Bullying in the Workplace: The Plight of South African Employees', *Potchefstroom Electronic Law Journal*, 25, (2022), 3.

[11] See *Standard Bank of South Africa v Makuleni* [2021] ZALCJHB 309 at para 69.

[12] *Standard Bank of South Africa v Makuleni* [2021] ZALCJHB 309 at para 69.

[13] See *S v Fourie* CMA 210/2001; *S v Thomas* CMA 41/2014.

[14] D Kalamdien & A Lawrence, 'A Proposed Typology of the Military Bully', *Scientia Militaria*, 45, 1 (2017), 128.

[15] *Standard Bank of South Africa v Makuleni* [2021] ZALCJHB 309 at para 69.

[16] See *Visser v Amalgamated Roofing Technologies t/a Barlow World* (2006) 27 ILJ 1567 (CCMA) at 1569.

[17] *Minister of Defence v Potsane; Legal Soldier (Pty) Ltd v Minister of Defence* 2002 (1) SA 1 (CC) at para 31.

[18] See *R v Généreux* [1992] 1 SCR 259 at 326.

[19] *Minister of Defence v Potsane; Legal Soldier (Pty) Ltd v Minister of Defence* 2002 (1) SA 1 (CC) at para 38. See also JB Fay, 'Canadian Military Criminal Law: An Examination of Military Justice', *Chitty's Law Journal*, 23 (1975), 120–138.

[20] Section 200(1) of the Constitution.

[21] Fay, 'Canadian Military Criminal Law', 123.

[22] See *S v Cilliers* CMA 87/2019.

[23] See M Sohail & G Ahmad, 'Resilience, Psychological Well-being, and Emotional Regulation: A Comparative Study of Military Personnel vs. Civilian Population', *Pakistan Journal of Psychological Research*, 36, 1 (2021), 38.

[24] Sohail & Ahmad, 'Resilience, Psychological Well-being, and Emotional Regulation', 39.

[25] See *S v Fourie* CMA 210/2001; *S v Thomas* CMA 41/2014; *S v Nel* CMA 54/2000; *S v Mkhize* CMA 49/2017; *Machard v Minister of Defence and Military Veterans and Others* [2025] ZAWCHC 135.

[26] For more on the chain of command, see *Davids v Minister of Defence and Military Veterans and Others* [2023] ZAGPPHC 160 at para 20.

27 See *S v Lentswe* CMA 3/2014.

28 Kalamdien & Lawrence, 'A Proposed Typology of the Military Bully', 138.

29 CMA 54/2000.

30 *S v Nel* CMA 54/2000.

31 *S v Nel* CMA 54/2000.

32 Discharge with ignominy from the SANDF may be defined as a dishonourable way of expelling warrant officers, non-commissioned officers and privates. It is executed on parade under the atmosphere of humiliation, and it is generally imposed on soldiers who tainted the image of the SANDF by committing serious offences, for example, sexual assault and theft. See, in general, *S v Gqotholo* CMA 50/2010; *S v Shongwe* CMA 8/2017 at para 35.

33 See *S v Mrwadi* CMA 6/2014.

34 This solemn pledge is recited often in the SANDF, see K Gina, 'A Soldier's Oath, Till Heaven Calls', *AD Astra Magazine*, 1, 1 (2025), 14.

35 Section 7(2) of the Constitution.

36 See section 8(2) of the Constitution.

37 See Z Chafee, 'Freedom of Speech in War Time', *Harvard Law Review*, 32, 8 (1919), 957.

38 See *Dawood v Minister of Home Affairs; Shalabi v Minister of Home Affairs; Thomas v Minister of Home Affairs* 2000 (3) SA 936 (CC) at para 35.

39 See *Khumalo v Holomisa* 2002 (5) SA 401 (CC). See also R Steinmann, 'The Core Meaning of Human Dignity', *Potchefstroom Electronic Law Journal*, 19 (2016), 14.

40 *Khumalo v Holomisa* 2002 (5) SA 401 (CC) at para 27.

41 *S v Williams Others* 1995 (2) SACR 251 (CC) at para 24.

42 See *S v Dodo* 2001 (3) SA 382 (CC) at para 35.

43 See *S v Goodall* CMA 15/2022 at para 13.

44 *S v Williams Others* 1995 (2) SACR 251 (CC) at paras 76-77.

45 On the list of non-derogable rights, see in general section 37 of the Constitution.

46 The African Charter on Human and Peoples' Rights being the Organisation of African Unity Document CAB/LEG/67/3 rev. 5 (adopted by the Organisation of African Unity on 27 June 1981). On 9 July 1996, South Africa ratified the African Charter on Human and Peoples' Rights.

47 The International Covenant on Civil and Political Rights being the General Assembly Resolution 2200 A (XXI) (adopted by the United Nations General Assembly on 16 December 1966). South Africa ratified the International Covenant on Civil and Political Rights on 10 March 1999.

48 United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment being General Assembly resolution 39/46 (adopted by the United Nations General Assembly on 10 December 1984). South Africa ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 10 December 1998.

49 See *S v Williams Others* 1995 (2) SACR 251 (CC) at paras 28 and 77.

50 The Labour Court in *Kylie v Commission for Conciliation, Mediation and Arbitration and Others* 2008 (29) ILJ 1918 (LC) at para 22 stated that "[p]ublic policy is informed by the Constitution and since the Constitution has ordained that everyone has the right to fair labour practices, this right 'sets the paradigm of public policy".

[51] *S v Bloem* CMA 64/2019.

[52] See *Association of Mineworkers and Construction Union and Others v Royal Bafokeng Platinum Limited and Others* [2020] ZACC 1 at paras 51 and 166.

[53] *Association of Mineworkers and Construction Union and Others v Royal Bafokeng Platinum Limited and Others* [2020] ZACC 1 at para 51.

[54] *National Education Health & Allied Workers Union v University of Cape Town and Others* 2003 (2) BCLR 154 (CC) at para 33.

[55] *Association of Mineworkers and Construction Union and Others v Royal Bafokeng Platinum Limited and Others* [2020] ZACC 1 at para 53.

[56] See *National Education Health & Allied Workers Union v University of Cape Town and Others* 2003 (2) BCLR 154 (CC) at paras 38 and 40.

[57] *National Education Health & Allied Workers Union v University of Cape Town and Others* 2003 (2) BCLR 154 (CC) at para 40.

[58] See *S v Fourie* CMA 210/2001; *S v Nel* CMA 54/2000; *S v Thomas* CMA 41/2014; *S v Gwazela* CMA 84/2019.

[59] CMA 41/2014.

[60] See *S v Nel* CMA 54/2000.

[61] For more on the impact of absence without leave, see *S v Seobi* CMA 48/2014.

[62] See PC Bester & AG du Plessis, 'When Military Leaders Differ from Their Political Leaders: Overcoming Leadership', in D Lindsay & D Woycheshin (eds), *Overcoming Leadership Challenges: International Perspectives* (Canadian Defence Academy Press, 2015), 215.

[63] See *S v Kwakwa* CMA 27/2014; *S v Gwazela* CMA 84/2019 at para 26; *S v Cilliers* CMA 87/2019.

[64] Section 1(a) of the Labour Relations Act.

[65] See *Kylie v Commission for Conciliation, Mediation and Arbitration and Others* 2008 (29) ILJ 1918 (LC) at para 54.

[66] Section 2 of the Labour Relations Act.

[67] 1999 (4) SA 469 (CC) at paras 24 and 30.

[68] *South African National Defence Force Union v Minister of Defence and Another* 1999 (4) SA 469 (CC) at para 26.

[69] See *South African National Defence Force Union v Minister of Defence and Another* 1999 (4) SA 469 (CC) at para 30.

[70] See article 23 of the Universal Declaration on Human Rights being General Assembly Resolution 217 A U.N. Doc A/810 (Proclaimed by the United Nations General Assembly on 10 December 1948).

[71] See Republic of South Africa, 'Amendment to the General Regulations for the South African National Defence Force and Reserve', Government Notice No. R988, *Government Gazette*, 20376, 410 (20 August 1999).

[72] Regulation 3 (a) of the General Regulations.

[73] See *Minister of Home Affairs v Watchenuka* 2004 (4) SA 326 (SCA) at para 27; *Affordable Medicines Trust and Others v Minister of Health and Another* 2006 (3) SA 247 (CC) at para 59; *City of Johannesburg v Rand* 2007 (1) SA 78 (W) at para 64.

[74] *Minister of Home Affairs v Watchenuka* 2004 (4) SA 326 (SCA) at para 27.

[75] *Affordable Medicines Trust and Others v Minister of Health and Another* 2006 (3) SA 247 (CC) at para 59.

76 *City of Johannesburg v Rand* 2007 (1) SA 78 (W) at para 64.

77 See section 36(1) of the Constitution.

78 See *S v Fourie* CMA 210/2001; *S v Thomas* CMA 41/2014.

79 See S *v Makwanyane and Another* 1995 (3) SA 391 (CC) at para 225.

80 *S v Makwanyane and Another* 1995 (3) SA 391 (CC) at para 263.

81 See, for example, the Defence Act (No. 42 of 2002), Military Discipline Supplementary Measures Act (No. 16 of 1999), Military Discipline Code, Military Ombud Act (No. 4 of 2012*).*

82 See *Erasmus v Minister of Defence and Others* [2017] 4 All SA 434 (FB) at para 28.

83 Section 1 of the Defence Act.

84 Department of Defence, 'Defence Act, 2002: Individual Grievances Regulations', Government Notice No. R. 1263, *Government Gazette*, 40347, 606 (14 October 2016).

85 See regulation 17 of the Individual Grievance Regulations. See also M Nel, S Els & VE Sibiya, *Applied Military Justice for Practitioners* (Cape Town: Juta, 2024), 511.

86 Regulation 3 of the Individual Grievance Regulations.

87 Regulation 6 of the Individual Grievance Regulations.

88 Regulation 5(a) of the Individual Grievance Regulations.

89 Regulation 5(b) of the Individual Grievance Regulations.

90 Regulation 5(c) of the Individual Grievance Regulations.

91 See regulation 14(1) of the Individual Grievance Regulations.

92 See Regulation 5(d) of the Individual Grievance Regulations.

93 Regulation 5(d) of the Individual Grievance Regulations.

94 Regulation 5(e) of the Individual Grievance Regulations.

95 See *Davids v Minister of Defence and Military Veterans and Others* [2023] ZAGPPHC 160 at para 42.

96 Section 104(17) of the Defence Act.

97 Section 2(1) of the Military Ombud Act (No. 4 of 2012).

98 Section 3 of the Military Ombud Act.

99 Section 4 of the Military Ombud Act. See also Nel *et al*., *Applied Military Justice for Practitioners*, 538.

100 See section 7 of the Military Ombud Act.

101 Section 5(1) of the Military Ombud Act.

102 Section 5(2) of the Military Ombud Act.

103 Section 6(4) of the Military Ombud Act.

104 Section 6(7)(a) of the Military Ombud Act.

105 Section 6(7)(b) of the Military Ombud Act.

106 See *Davids v Minister of Defence and Military Veterans and Others* [2023] ZAGPPHC 160 at para 8; *Lambede v Minister of Defence and Military Veterans and Others* [2021] ZAGPPHC 858 at para 35.

107 E Heydenrych, 'Re-evaluating Oversight of South African Defence Procurement: Can Combined Assurance Help Extract Full Accountability from the Department of Defence?', *Scientia Militaria*, 52, 2 (2024), 35.

[108] See section 4 of the Defence Act as amended by section 4A of the Defence Amendment Act (No. 22 of 2010).

[109] Section 202(1) of the Constitution.

[110] See *Lambede v Minister of Defence and Military Veterans and Others* [2021] ZAGPPHC 858 at para 34; *Mashabane v Minister of Defence and Military Veterans and Others* [2023] ZAGPPHC 2270 at para 10.

[111] *Lambede v Minister of Defence and Military Veterans and Others* [2021] ZAGPPHC 858 at para 34.

[112] See *Mokheseng v Minister of Defence and Military Veterans and Others* [2022] ZAGPPHC 919 at para 22. See also M Montesh & B Mmusinyane, 'An Analysis of the Gaps in the Newly Established South African Military Ombud', *Scientia Militaria*, 41, 1 (2013), 92.

[113] Montesh & Mmusinyane, 'An Analysis of the Gaps', 98.

[114] Section 30(1) of the Defence Act.

[115] Section 31(1) of the Defence Act.

[116] This is the author's personal experience as a military prosecution counsel wherein soldiers and defence civilians who were allegedly victims of bullying routinely sought advice on how to expedite complaints that the military police officials or adjutants failed to investigate.

[117] This information was gathered from informal discussions with some soldiers who were based at various units in Cape Town and Simon's Town.

[118] Section 16.

[119] Section 32.

[120] Section 46.

[121] CMA 210/2001.

[122] *S v Fourie* CMA 210/2001.

[123] *S v Fourie* CMA 210/2001.

[124] See *S v Chapman* 1997 (3) SA 341 (SCA) at paras 3–4.

[125] See section 277(1) of the Criminal Procedure Act (No. 51 of 1977), before it was amended.

[126] 1995 (3) SA 391 (CC).

[127] See section 51(2) of the Criminal Law Amendment Act.

[128] Part 1 of Schedule 2 of the Criminal Law Amendment Act.

[129] Section 51(3)(a) of the Criminal Law Amendment Act.

[130] Section 3(3) of the Military Discipline Supplementary Measures Act.

[131] See section 92 of the Military Discipline Code.

[132] CMA 41/2014.

[133] The derogatory and offensive language used by the accused are presented here in their original form to accurately reflect the context and behavior under study. The author does not endorse or condone this language.

[134] *S v Thomas* CMA 41/2014.

[135] The information was gained from informal discussions the current author had with several soldiers who were located in different units throughout South Africa.

[136] CMA 27/2022.

[137] See section 8 of the Military Discipline Supplementary Measures Act and rule 72(1) of the Military Discipline Supplementary Measures Act.

138 See section 8 of the Military Discipline Supplementary Measures Act.

139 In contravention of section 10(1)(a) of the Sexual Offences Act (No. 23 of 1957).

140 This perception is gathered from informal discussions with non-commissioned officers, privates and defence civilians who function under the auspices of the Defence Legal Services Division.

141 [2017] 4 All SA 434 (FB) at para 43.

142 *Erasmus v Minister of Defence* [2017] 4 All SA 434 (FB) at para 48.

143 *Murray v Minister of Defence* 2009 (3) SA 130 (SCA) at para 8.

144 *Murray v Minister of Defence* 2009 (3) SA 130 (SCA) at para 12.

145 *Murray v Minister of Defence* 2009 (3) SA 130 (SCA) at para 7.

146 *Murray v Minister of Defence* 2009 (3) SA 130 (SCA) at para 12.

147 2009 (3) SA 130 (SCA).

148 *Murray v Minister of Defence* 2009 (3) SA 130 (SCA) at para 3.

149 *Murray v Minister of Defence* 2009 (3) SA 130 (SCA) at para 43.

150 *Murray v Minister of Defence* 2009 (3) SA 130 (SCA) at para 66.

151 *Murray v Minister of Defence* 2009 (3) SA 130 (SCA) at para 68.