

Human Rights and Fundamental Freedoms of Armed Forces Personnel



Human rights and fundamental freedoms apply to armed forces personnel under OSCE commitments and international law. Whether professional or conscripted, they are entitled to the same rights and protections as all other persons. Certain restrictions to these rights may be imposed by military life.

The OSCE's Office for Democratic Institutions and Human Rights (ODIHR) and the Geneva Centre for the Democratic Control of Armed Forces (DCAF) have jointly published a *Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel*. It presents an overview of legislation, policies, and mechanisms for ensuring the protection and enforcement of the human rights and fundamental freedoms of armed forces personnel.

The Handbook is aimed at all individuals who play a role in promoting, protecting, and enforcing the human rights of armed forces personnel, such as parliamentarians, government officials, policy makers, military personnel, judges, professional military associations, and non-governmental organizations.

Why are the human rights and fundamental freedoms of armed forces personnel important?

Respect for human rights and fundamental freedoms for all, including armed forces personnel, is not just a moral obligation. It is part of international human rights law, and states are thus obliged to respect and protect the rights of personnel serving in their armed forces. Both the OSCE Code of Conduct on Politico-Military Aspects of Security as well as jurisprudence under the European Convention on Human Rights consider members of armed forces to be entitled to the same rights as other individuals, subject to certain restrictions inherent to military life in conformity with international human rights law. Freedom of expression, for example, may be limited to prevent military personnel from publicizing legitimate military secrets, such as operational plans.

When are the human rights and fundamental freedoms of armed forces personnel particularly relevant?

All human rights are relevant to armed forces personnel. The following rights are particularly relevant to military life:

- The *right to life*, for example in cases of extreme bullying of conscripts; inquests into unexplained deaths on military premises or during military service.
- The *right to liberty*, for example, when a member of the armed forces is detained under military justice systems.
- The *right to equality*, where there are differences in treatment of women, religious and ethnic minorities or gay and lesbian service personnel, for example through discharge following pregnancy or upon discovery of sexual orientation; sexual harassment and limits on deployment of women to combat zones.
- The *right to a fair trial and fair hearing* and the *right to an effective remedy*, for example in the case of courts martial and military justice systems.
- The *right to freedom of thought, conscience, religion or belief*; this is relevant to issues such as conscientious objection, restrictions on manifestation of religion (e.g., religious dress conflicting with military uniform requirements, religious dietary requirements, opportunities for religious worship and observance, access to co-members of religious communities and proselytism of fellow service personnel).
- The *right not to be subjected to torture, cruel, inhuman, or degrading treatment or punishment*, for example in cases of bullying of conscripts and initiation rituals.
- The *right to freedom of opinion and expression*, for example in case there are limits on public statements by members of the armed forces.
- The *freedom of peaceful assembly and the freedom of association*, for example where service personnel wish to become involved in trade unions or civil society groups.

What challenges are there to the human rights and fundamental freedoms of armed forces personnel?

As a closed, hierarchical institution, the armed forces require safeguards against superiors and others abusing their authority, for example through bullying or initiation rites. Certain groups in the armed forces may also be particularly vulnerable to discrimination, for example women, gays and lesbians, and minorities. Many states have found ways of ensuring that a culture of respect for all members of the armed forces pervades the military, for example by incorporating tolerance and diversity education in their training programmes, sensitizing the chain of command to such issues, or instituting independent watchdog bodies within and outside the military where individuals can complain when they feel mistreated or discriminated against.

Another challenge arises when excessive limitations on human rights are imposed. Some human rights, such as freedom of expression or the freedom of assembly and association can legally be restricted under international treaties. Due to the requirements of military service, many states have restricted these rights in various ways, for example by restricting participation of members of the armed forces in certain political activities. Such limitations, however, must be prescribed by a law, taken for a legitimate purpose and go no further than strictly necessary in light of that purpose. Many states have found a balanced way of dealing with these issues, imposing restrictions that do not go further than is necessary.

How can the human rights and fundamental freedoms of armed forces personnel be strengthened?

Many organizations and individuals can be engaged to monitor and improve the human rights situation in the armed forces. The main responsibility for upholding the human rights of armed forces personnel lies with state institutions, in particular civilian oversight structures such as the ministry of defence and parliament, as well as the armed forces' leadership.

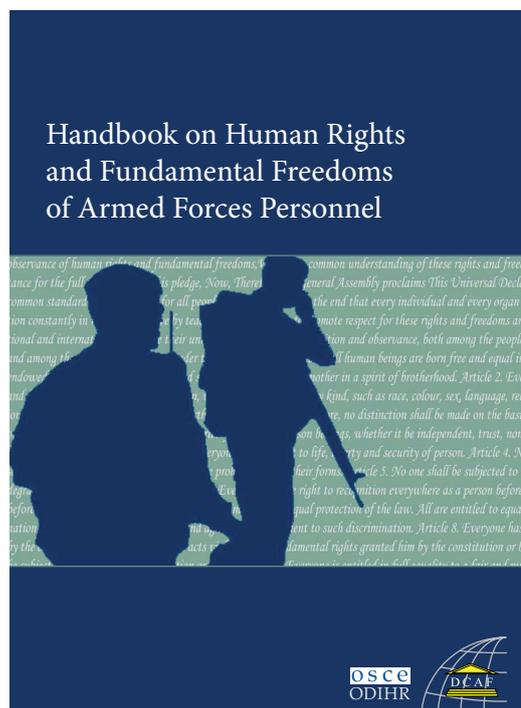
The ministry of defence or armed forces' leadership can institute professional codes of conduct, which can play an important part in achieving respect for human rights by integrating respect for human rights into the professional ethos of the armed services. By incorporating such respect into training and induction, a positive commitment in favour of constitutional values and human rights can come to pervade the armed forces. In particular commanders need to be made aware of the importance and necessity of protecting soldiers' rights. Training is a vital means of ensuring that members of the armed forces are aware of their human rights and fundamental freedoms, including rights and freedoms arising under international conventions and OSCE commitments.

- **Parliaments** can enact the necessary laws and exercise oversight of the human rights situation of armed forces personnel.
- **Civil society organizations** can monitor the human rights situation of armed forces personnel and help point to deficiencies and identify solutions in a co-operative effort with the authorities.
- **Representative bodies** (military associations or trade unions) can play a role in ensuring the rights of their members are upheld by representing their members' interests.
- Various countries also have an **ombudsman** for addressing complaints about improper or abusive behaviour in the military, shortcomings in military policy, as well as systemic problems in the military. After investigating these complaints and shortcomings, the ombudsman formulates recommendations for corrective action.

What are the advantages of strengthening respect for the human rights and fundamental freedoms of armed forces personnel?

Ensuring respect for the human rights of armed forces personnel is not merely a legal obligation on states. It is also crucial in raising awareness and creating a professional culture within the military that includes respect for human rights as part of a commitment to democratic values. When this is achieved, the armed forces are not just defenders of a state's territorial integrity, they also defend and embody its values.

Respect for human rights has a positive impact on work and life in the barracks. This can help to improve team cohesiveness and operational effectiveness. Respect for rights also contributes to trust and good working relations between peers, and between soldiers and their commanders. Ensuring that soldiers enjoy a broad range of human rights can also foster a positive public image of armed forces in society. An improved public image of the military as a responsible employer will also help ease recruitment of new personnel.



Further information

The *Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel* is co-authored by Hans Born and Ian Leigh and is published by the OSCE/ODIHR and DCAF (Warsaw, 2007, ISBN 978-83-60190-53-1).

An online version is available at: http://www.dcaf.ch/odihr/_publications.cfm and http://www.osce.org/odihr/item_11_30553.html. Hard copies can also be ordered free of charge through the OSCE/ODIHR website.

For more information about the Handbook, please contact Robert-Jan Uhl [Robert-Jan.Uhl@odihr.pl] at ODIHR or Teodora Fuior [t.fuior@dcaf.ch] at DCAF.