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Human Rights and Fundamental Freedoms of Armed Forces Personnel



1.

Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel

Objectives of the Handbook

Focus on the human rights and fundamental freedoms enjoyed by members of the armed forces:

- ▷ Implementation of existing standards
- ▷ Models or good practices of how to integrate human rights
- ▷ Take into account necessary limitations
- ▷ Guidance for OSCE participating States

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2.

Key insights from the Handbook

The Importance of HR and FF of Armed Forces Personnel

Ensuring HR in the Armed Forces means:

- ▷ Citizen in uniform approach
- ▷ Military is integrated in society
- ▷ Prevents military from being misused
- ▷ Protects members of armed forces from being misused and oppressed

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Approaches to HR in AF

Institution Model

VS

Occupation Model

...or somewhere in between

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Human Rights Limitations in the Armed Forces

Any limits or restrictions placed on military personnel's rights:

- ▷ Must have a military need
- ▷ Must be based on law
- ▷ Must be proportionate
- ▷ Should not be discriminatory
- ▷ Must be demonstrated by the Armed Forces and no other actors to be necessary

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Human Rights Sources

- ▷ Universal Declaration on Human Rights (UDHR)
- ▷ International Covenant on Civil and Political Rights (ICCPR)
- ▷ European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)
- ▷ OSCE Code of Conduct on Politico-Military Aspects of Security

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3.

Civil and Political Rights

Civil and Political Rights

Issues at stake:

- ▷ The right to join a political party
- ▷ The right to stand for elections
- ▷ The right to freedom of association
- ▷ The right to freedom of expression
- ▷ Conscientious objection and right to alternative service
- ▷ The freedom of religion

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Different Approaches to Civil and Political Rights (2008)

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	The Right to Join a Political Party	The Right to Stand for Elections	The Right to Freedom of Association	The Right to Freedom of Expression
Recognized in Legislation	Austria, Belgium, Canada, Denmark, Germany, Luxembourg, Norway, Portugal, Sweden, Switzerland, United Kingdom, United States of America	Austria, Azerbaijan, Belarus, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Latvia, Luxembourg, Norway, Poland, Russian Federation, Slovenia, Sweden, Switzerland, Ukraine	Austria, Belgium, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Ireland, Lithuania, Luxembourg, Norway, Poland, Russian Federation, Serbia and Montenegro, Slovenia, Sweden, Switzerland, Ukraine, United States of America	Austria, Azerbaijan, Belarus, Belgium, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Ireland, Lithuania, Luxembourg, Norway, Poland, Portugal, Russian Federation, Serbia and Montenegro, Slovakia, Slovenia, Sweden, Ukraine, United Kingdom, United States of America
Prohibited or Not Recognized	Azerbaijan, Belarus, Bosnia and Herzegovina, Croatia, Czech Republic, Estonia, Finland, France, Georgia, Ireland, Latvia, Lithuania, Poland, Russian Federation, Serbia and Montenegro, Slovakia, Slovenia, Spain, Ukraine	Bosnia and Herzegovina, Canada, Croatia, Ireland, Lithuania, Portugal, Serbia and Montenegro, Slovakia, Spain, United Kingdom, United States of America	Azerbaijan, Belarus, Bosnia and Herzegovina, Latvia, Slovakia, Spain, United Kingdom	Spain

The right to freedom of association is recognized in Spain's Constitution but not military law.
 The right to freedom of expression is recognized in Spain Constitutions but not in military law.



Military Unions and Associations

Issues at stake:

- ▷ The Freedom to associate

International HR commitments:

- ▷ Art. 20 UDHR; Art. 21 ICCPR, Art. 11 ECHR, Art. 8 ICESCR, Art. 5/6 ESC

Approaches:

- ▷ Paternalistic vs. Non-autonomous arrangements vs. Authorized & autonomous vs. Association with trade unions



Conscientious Objection

Issue at stake:

- ▷ Growing acceptance
- ▷ Links to freedom of thought, belief and conscience

International HR commitments:

- ▷ Various levels of commitment in ICCPR, ECHR, CoE and national constitutions

Reasons, approaches and procedures:

- ▷ Religious, Ethical, Emotional and other
- ▷ Alternative service, selective conscientious objection, deciding bodies



Religion in the Armed Forces

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Issues at stake:

- ▷ How to accommodate religious freedom
- ▷ Religious discrimination and limitations on religious freedom

International HR commitments

- ▷ Art. 18 UDHR, Art. 18. ICCPR, Art. 9 ECHR

Approaches:

- ▷ Depending on the general approach to religion (e.g. France)
- ▷ Access to representatives of religions, religious dress, guides (e.g. France, Denmark)





4.

Equality, Non-Discrimination, and Equal Opportunities

Ethnic and Linguistic Minorities in the Armed Forces

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Issues at stake:

- ▷ Assimilationist vs. multiculturalist

International HR commitments:

- ▷ Art. 2 UDHR, Art. 26/27 ICCPR, Art. 14 ECHR, Art. 1 of Protocol 12 to the ECHR,
- ▷ International Convention of the Elimination of All Forms of Racial Discrimination, EU Directive 2000/43

Approaches:

- ▷ Complaints procedures, equal opportunity
- ▷ Personnel policies, training, nationality, linguistic minorities



Women in the Armed Forces

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Issues at stake:

- ▷ Full participation as citizens, equal representation, non-discrimination, gender & operational effectiveness

International HR Commitments:

- ▷ CEDAW (UN), CoE, OSCE

Approaches:

- ▷ Special units, exclusion, combat positions
- ▷ Policies against harassment and for promoting equality



Gays and Lesbians in the Armed Forces

Issues at stake:

- ▷ Principle of equality vs. cultural beliefs
- ▷ Harassment and discrimination

International Human Rights Commitments:

- ▷ Art. 26 ICCPR, Art. 14 ECHR, Council of EU
- ▷ Right to privacy

Approaches:

- ▷ Exclusion, full participation, don't ask don't tell, etc.
- ▷ Policies against harassment and for promoting equality

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5.

Issues of Military Life

Children Associated with Armed Forces

Issues at stake:

- ▷ Voluntary recruitment U18 children
- ▷ Children associated with AF

International HR Commitments:

- ▷ Optional Protocol to the Convention on the Rights of the Child; ILO, ICC, UN SC, EU
- ▷ Committee on the Rights of the Child

Approaches:

- ▷ Safeguards, monitoring, duty of care, support
- ▷ Child care, training and accountability

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Preventing Mistreatment of Armed Forces Personnel

Issues at stake:

- ▷ Factors of mistreatment

International HR Commitments:

- ▷ Art. 2-6 ECHR; Art. 6,7 ICCPR; CoE, OSCE

Approaches:

- ▷ Prevent bullying, external monitoring organizations
- ▷ Complaints procedures

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Working Conditions

Issues at stake:

- ▷ Enjoyment of just and favourable conditions of work

International HR Commitments:

- ▷ ICESCR, ILO, ESC, EU, OSCE

Approaches:

- ▷ Working time and compensation, remuneration, health
- ▷ Safety at work, family life

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Veterans

Issues at stake:

- ▷ Duty of care, veteran policy, transition, post-conflict situation

International HR Commitments:

- ▷ Veterans are like any other citizen

Approaches:

- ▷ Definition of veteran, who receives support, who provides support, what type of support
- ▷ Transition from military to civilian life

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6.

Promoting/Enforcing Human Rights in Armed Forces

Human Rights Education

Issues at stake:

- ▷ The importance of human rights training
- ▷ UN Convention on the Elimination of All Forms of Racial Discrimination

Approaches:

- ▷ Professional Codes of Ethics or Conduct
- ▷ Military Colleges

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The Responsibility of Commanders and Individual Accountability

Issues at stake:

- ▷ First line of defence within the barracks

Approaches

- ▷ Make subordinates respect leadership vs. Moral leadership
- ▷ Illegal and improper orders
- ▷ Responsibility for subordinates' behaviour
- ▷ Individual accountability

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Discipline and Military Justice

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Issues at stake:

- ▷ Role of military justice system
- ▷ Comparability of rights, independence of military courts

International HR Commitments:

- ▷ Art. 9, ICCPR; Art. 10/11.1 UDHR, Art. 5/6 ECHR

Approaches

- ▷ Criminal offences & military discipline, type of court, composition of military court
- ▷ Prosecution and defence, appeals



Ombuds Institutions

Issues at stake:

- ▷ The need for independent and impartial oversight of the military

Approaches

- ▷ Models (internal, specialized, general human rights ombudsman)
- ▷ The functioning of ombuds institutions (independence, effectiveness, protection against retaliation)





7.

Update of handbook

The Need for an Update

- ▷ Published in 2008
- ▷ Well-received in the field
- ▷ Continued efforts in promoting human rights in armed forces
- ▷ International law and national legislation are not static
- ▷ New statistics, facts, case laws, trends

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Recent developments in human rights of armed forces personnel?



Developments in Human Rights in Armed Forces

- ▷ Civil and political rights
- ▷ Equality and Non-discrimination
- ▷ Issues of military life
- ▷ Promoting/enforcing human rights

- ▷ New rights?

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Thanks!

Any questions?

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