

# Human Rights of Armed Forces Personnel:

COMPENDIUM OF STANDARDS, GOOD PRACTICES AND RECOMMENDATIONS

This is an overview of international law covered in Chapter 3 of HUMAN RIGHTS OF ARMED FORCES PERSONNEL: COMPENDIUM OF STANDARDS, GOOD PRACTICES AND RECOMMENDATIONS, developed by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) together with the Geneva Centre for Security Sector Governance (DCAF) to safeguard and strengthen the rights of people working in the armed forces. For more information, see: [osce.org/odihr/ArmedForcesRights](https://osce.org/odihr/ArmedForcesRights)

Civil and political rights

Equal opportunities and non-discrimination

Rights related to military life (e.g., working and living conditions)

Procedural rights (e.g., military justice and oversight mechanisms)

## International Human Rights Law

Human rights are explicitly articulated in international standards that carry very real and meaningful implications for every individual. They include the 1948 Universal Declaration of Human Rights – the bedrock of international human rights law – the International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

The importance of human rights in the context of the armed forces is profound. Instilling a culture of respect for human rights within each unit generates trust, helping to cement co-operation and military effectiveness, while improving public perception of the armed forces.

In particular, knowledge of human rights makes modern-day militaries better able to deal with the complex operational demands they regularly face, including on multinational missions.

### Good practices include:

- » Cultivating respect for human rights within the armed forces, including via human rights training, awareness-raising initiatives and codes of conduct; and
- » Establishing practices and procedures to ensure that service personnel can seek redress if their rights under international law are violated.

## Citizens in uniform

Armed forces personnel should be treated as “citizens in uniform”, and must therefore be allowed the same civil and constitutional rights as other citizens, insofar as is consistent with military life. This entitles them to the most important civil and political rights, including freedom of expression; the right to respect for private life, home and correspondence; freedom of thought, conscience, religion or belief; and freedom of association.

Encouraging members of the armed forces to regard themselves in this way enhances respect for human rights within the armed forces. It also helps to ensure that personnel seek redress if their rights are violated.

Examples of human rights potentially relevant to service personnel	
Right to life	The extreme abuse of conscripts; non-independent or ineffective inquests into deaths on military premises or during military service and training
Right to equality	Discrimination in the treatment of women, religious and ethnic minorities, and LGBTI service personnel; equality in employment and occupation; equal remuneration
Fair trial rights	Court martial and military justice systems; due process procedures
Right to freedom of thought, conscience, religion or belief	Conscientious objection; restrictions on religious rites and practices
Right not to be subjected to cruel, inhuman or degrading treatment	Misuse of disciplinary measures; informal punishments and sanctions

## Restrictions on the rights of service personnel

Certain restrictions may be imposed on the exercise of human rights in the military. Such restrictions can take the form of reservations, derogations or limitations:

### Reservations

Definition: The exclusion or modification of certain provisions of a human rights treaty. With respect to their military justice systems, several OSCE participating States have entered reservations to Article 5 (right to liberty and security) and Article 6 (the right to a fair trial before an independent and impartial tribunal) of the ECHR

### Derogations

Definition: A temporary restriction on the enjoyment of a right during a particular (usually emergency) situation. Certain rights are "non-derogable" and cannot be suspended even in case of a public emergency, including the right to life; the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment; and the right to freedom of thought, conscience and religion or belief.

### Limitations

Definition: Rights that have a particular significance to the armed forces may be limited provided that certain conditions are met. Limitations must be in accordance with law, proportionate and necessary to achieve a legitimate aim, such as national security, the prevention of disorder and the protection of the rights and freedoms of others. Some rights may not be subject to limitations.

Rights are fully applicable unless a reservation or derogation has been made by a state.

## Domestic implementation of international human rights law

The implementation of international human rights law depends on the constitutional provisions in place in a particular state. In some states, treaty obligations are automatically part of domestic law and are sometimes given priority. In other states, treaties do not automatically become part of domestic law, and specific legislation must be introduced to adjust domestic

rights and duties to international law. Where this is the case, states may introduce legislation to give international human rights obligations a particular domestic legal status. Even in the absence of specific constitutional or legislative provisions, domestic courts are nevertheless able to refer to international human rights standards.

Example: The Constitution of Bosnia and Herzegovina refers directly to the ECHR, stating that the rights and freedoms set out in the Convention "shall apply directly in Bosnia and Herzegovina [and] shall have priority over all other law."

## Ensuring compliance with international human rights law

International compliance mechanisms exist to support state parties in meeting their obligations under international law. Such mechanisms are attached to a particular treaty or covenant, and include expert committees, regional courts, reporting by states and individual petitions.

Example: ICCPR's Human Rights Committee monitors state parties' efforts in implementing their obligations. The Committee is comprised of 18 experts who are elected by state parties. The Committee considers reports submitted by state parties, and can also request ad hoc reports. Where the Committee finds that a state party has violated the Covenant, it specifies a particular remedy or action to be taken by the state concerned and publishes its findings.

