

Human Rights of Armed Forces Personnel:

COMPENDIUM OF STANDARDS, GOOD PRACTICES AND RECOMMENDATIONS

This is an overview of rights covered in Chapter 17 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

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)

The Role of Commanders and Individual Accountability

All commanders play a central role in upholding the rule of law and respect for human rights in the armed forces. A leadership style is needed that builds trust among personnel while ensuring

individual accountability. The principle of individual accountability underpins respect for human rights, and promotes responsible behaviour by each member of the armed forces.

Accountability of commanders

Commanders are responsible not only for abuse that they perpetrate themselves, but also for human rights breaches committed as a result of their orders. They may be subject to administrative, disciplinary or criminal sanctions for unlawful or improper orders. Commanders may also be held responsible for failing to take steps to prevent or punish offences committed by their subordinates.

Differing national approaches to the obligation to disobey orders:

- In the United Kingdom, armed forces personnel have a duty only to obey "lawful" orders;
- In Finland and Ireland, the duty to obey only applies to orders that are not "clearly" or "manifestly" unlawful; and
- In Austria, Bosnia and Herzegovina, Estonia and Montenegro, armed forces personnel are required to obey unlawful orders, except those that would result in a crime or, in Estonia and Germany, degradation of human dignity.

Accountability of subordinates

Women and men in the armed forces have a general duty to obey superiors' orders. However, the obligation to comply with orders is not absolute. Members of the armed forces have the right and the obligation not to comply with unlawful orders, including those that breach international human rights. The terms of this obligation varies significantly depending on national law.

States can introduce the following measures to ensure that service personnel are able to safely disobey unlawful orders:

- » Train personnel on national law and on international human rights law, so that they can evaluate whether an order contravenes the law;
- » Introduce a complaint mechanism to allow personnel to protest orders that they believe to be illegal;
- » Ensure that personnel who report illegal orders and behaviour are protected from reprisals; and
- » Allow personnel to invoke a superior orders plea in defence of any illegal actions taken when carrying out a superior's order.

Good practices for accountability include:

- » Clearly defining the responsibilities of commanders and subordinates in legislation;
- » Encouraging commanders to create a climate of mutual trust and respect among their troops;
- » Training commanders on military law and human rights law, and raising awareness of their duty not to issue illegal orders or impose irregular punishments;
- » Providing an effective system of sanctions if command responsibilities are abused;
- » Making armed forces personnel aware of their duty to disobey illegal orders and the complaint mechanisms available; and
- » Making adherence to ethical codes of conduct mandatory for service personnel.

International humanitarian law

States have a legal obligation to train their armed forces on international humanitarian law governing armed conflict, including the facts that:

- Commanders are criminally responsible for war crimes committed by their subordinates;
- Every combatant has a duty to disobey a manifestly unlawful order; and
- Subordinates are criminally liable for following orders that they knew – or should have known – were unlawful.

