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Conference Services

Please find attached the presentation “*The OSCE/DCAF Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel*” by Professor Ian Leigh, Durham University, delivered to the 36th Joint Meeting of the Forum for Security Co-operation (FSC) and the Permanent Council (PC) on 29 October 2008.

The OSCE/DCAF Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel

Ian Leigh

OSCE Code of Conduct on Politico-Military Aspects of Security, 1994

'Each ... Participating State will ensure that military, paramilitary and security forces personnel will be able to exercise their human rights and fundamental freedoms ...in conformity with relevant constitutional and legal provisions and with the requirements of service'

Para. 32

OSCE Code of Conduct on Military-Politico Aspects of Security, 1994

- Political neutrality (Para. 23)
- Recruitment and call-up practices consistent with human rights commitments (Para. 27)
- Domestic legislation to reflect armed forces' human rights (Para. 28)
- Legal and administrative procedures to protect armed forces' human rights (Para. 33)

The Handbook Process

- Questionnaire
- Roundtables
- Input from NGOs and OSCE field operations
- Expert Review

The Handbook: Questionnaire Replies

Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Ireland, Latvia, Lithuania, Luxembourg, Malta, Norway, Poland, Portugal, the Russian Federation, Serbia and Montenegro, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tajikistan, Turkey, Ukraine, the United Kingdom, and the United States.

The Importance of Human Rights of Armed Forces Personnel

- International legal commitments
- Professional military culture
- Duty of care
- Public image of the armed forces

Human Rights and Key challenges

- Right to life
- Extreme bullying

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- Equal treatment
- Extreme bullying
- Discrimination and Harassment

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- Right to life
- Equal treatment
- Thought, conscience and religion
- Torture, human or degrading treatment
- Freedom of expression
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- Initiation rituals/ bullying
- Censorship

Human Rights and key challenges

- Right to life
- Equal treatment
- Thought, conscience and religion
- Torture, human or degrading treatment
- Freedom of expression
- Association
- Extreme bullying
- Discrimination and Harassment
- Conscientious objection
- Initiation rituals/ bullying
- Censorship
- Representative and political groups

The Handbook Approach

- Civil and Political Rights
- Equal opportunities and non-discrimination
- Rights related to military life
- Procedures and implementation

Civil and Political Rights

- Freedom of expression, association, assembly, right to vote and stand for election
- Key issue: proportionality of restrictions on civil and political rights
- Wide variations in legislation

Restrictions on Civ/Pol Rights: Examples

- Of OSCE participating States which responded to questionnaire:
- 24 States recognize freedom of association of armed forces personnel, 7 States do not
- 14 States recognize selective conscientious objection, 6 do not
- 12 States recognize right of armed forces personnel to join political parties, 18 do not
- 20 States allow armed forces members to stand for elections, 11 do not

Civil and Political Rights: Recommendations

- Remove restrictions on electoral rights
- Allow personnel to join legal political parties
- Restrictions on holding of office in political parties, on political campaigning, or standing for election should be prescribed in legislation, be strictly proportionate, and non-discriminatory
- Same for any restrictions on the rights of peaceful protest or freedom of speech

Civil and Political Rights: Recommendations

- Permit all members of the armed forces to join either a professional association or a trade union
- Associations or unions should be consulted in discussions concerning conditions of service
- No disciplinary action or victimization for participation in the activities of professional associations or trade unions
- Restrictions on freedom of association (e.g. industrial action) should be: prescribed by law, proportionate; non-discriminatory

Freedom of Religion

- Service should be open to everybody regardless of religion; relaxation of religious oaths of allegiance
- Wherever possible, accommodate religious practices by members, including worship, prayer, access to religious representatives, observance of holy days and fasting, and dress and dietary requirements

Freedom of Religion

- Restrictions should be based on clear legal authority and be proportionate
- Ministries of defence should distribute guidance on different religious practices and on how these can be accommodated
- Working environment free from harassment and victimization on the grounds of religion
- Collect data on the religious composition of the armed forces

Conscientious Objection

- Information available to all persons affected by military service about the right, and the means of acquiring conscientious-objector status;
- Conscientious objection should be available both for conscripts and for professional soldiers both prior to and during military service, international recommendations;
- Independent review panels where a state does not accept a statement of conscientious objection at face value

Conscientious Objection

- No repeated punishment for failure to perform military service
- No discrimination against conscientious objectors
- Alternative service should be:
 - - of a non-combatant or civilian nature, in the public interest and not punitive
 - - performed under a purely civilian administration, with no involvement by the military authority
 - - no more than 1 1/2 times the length of military service

Ethnic and Linguistic Minorities

- Effective means for raising allegations of racial discrimination (including indirect discrimination and harassment)
- Access to civilian courts or tribunals for racial discrimination claims
- Restrictions on non-nationals should be reviewed
- Accommodating significant linguistic minorities e.g. dual military structures or training provided in minority languages

Ethnic and Linguistic Minorities

- Transparent recruitment process based on fair and equitable representation of all ethnic groups
- Active steps should be taken to encourage and facilitate applications from under-represented groups
- Ministries of defence should co-operate with independent anti-discrimination bodies in monitoring and implementing these policies

Women in the Armed Forces

- Legislation on equal opportunities should be implemented in the military sector
- Recruitment and selection on the basis of actual, not presumed, capabilities
- Officers should be provided with adequate training, including on culture, gender, and complaints procedures

Women in the Armed Forces

- Zero tolerance of sexual harassment or sexual violence: effective system of sanctions;
- Complaints mechanisms for victims of harassment or violence
- Commanders responsibilities

Women in the Armed Forces

- Special advisors for women should be established in the armed forces
- Positive promotion of the benefits women bring to the military
- Armed forces should use positive advertising to recruit women
- States should improve and enhance the military's ability to recruit, retain, and advance women

Gays and Lesbians in the Armed Forces

- International human rights obligations, especially antidiscrimination and respect for private life
- Anti-discrimination and equal-opportunities legislation should be (made) applicable to the military
- Standards of social conduct should be adopted:
 - safeguarding operational effectiveness while reducing discrimination and abuse
 - should apply regardless of their sexual orientation
- The minister of defence should undertake special measures e.g. information policy, education and awareness training, and complaints and sanctions procedures for harassment and discrimination.

Children & Armed Forces

- Implementation of international obligations, esp. the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
 - Discontinue mandatory military training at general and vocational schools (violates international human rights standards)
- Recruitment:
- Involvement of Parents, or legal guardians
 - Provision of full and detailed information about all aspects of the recruitment and induction process, including the specific nature of the commitment involved in enlisting into the armed forces
 - Recruits under 18 years of age should be able to discharge as of right before the end of training

Children & Armed Forces

- Duty-of-care: special protection for persons under 18 years of age, with ultimate responsibility for guaranteeing implementation resting with C.O.s
- Preventive measures against risk of abuse, such as strict background checks of training officers or supervisors and comprehensive training programme
- Duty on all personnel to report abuse at the first instance of any sign of mistreatment
- Any complaint of mistreatment, bullying, or harassment should trigger an independent investigation, with appropriate disciplinary and/or administrative action taken, including measures to protect the complainant

Working Conditions

- Involvement of parliaments and representative associations in determining working conditions, including issues such as salaries, allowances, and pensions; working time; health; safety at work etc
- Special attention is needed for administrative measures to ensure that salaries, pensions, and allowances are paid on time. Furthermore, training in health and safety issues is important
- Access to independent arbiters (courts, tribunals, ombudsmen, committees, commissioners, etc.) with full investigatory powers to investigate or mediate working conditions disputes

Working Conditions

- Ministries of defence should provide medical care to armed forces personnel in the barracks and during military operations and exercises
- Adequate care (health, allowances, etc.) to armed forces personnel injured or killed during military service and their partners/families
- Programmes in place to support parents of young children, e.g., parental leave, nursery schools, and other child-care benefits and to assist families/partners in case of deployments abroad.

Veterans

- No discrimination against veterans on any prohibited ground
- All former servicemen and -women who have been involved in war or warlike circumstances should be included within the definition of *veteran*
- Single Veterans point of contact
- Vulnerable groups e.g., homeless people and prisoners, need to receive special attention.
- Co-ordinate veterans policy with veterans organizations/associations, as well as with other ministries and local government agencies.

Responsibility of Commanders/Accountability

- Commanders should use their position of leadership to build effective working relationships and mutual trust and respect
- Clear legal framework for commanders' responsibility and individual accountability
- Officers and NCOs should be provided with adequate training, including military law and human rights law
- Training of Commanders and Personnel should cover illegal orders
- Effective sanctions for abuse of the command function
- Illegal punishment should be outlawed, in particular collective punishment and punishment resulting in demeaning treatment, humiliation, or torture
- Complaints mechanisms should be available for armed forces personnel who have been given an illegal order

Preventing Mistreatment

- No tolerance of bullying
- Complaints mechanisms for personnel subject to harassment or violence leading to investigation and punishment of perpetrators
- An explicit ban on unauthorized initiation practices should be provided for in legislation
- Importance of NGOs and the media
- Monitoring by external institutions, e.g., ombudsmen, human rights commissioners, NGOs, or special commissions of inquiry

Discipline & Military Justice

- Where there are overlapping civilian and military courts, the choice of assuming jurisdiction should lie with the civilian court
- Safeguards should be incorporated to prevent double punishment in successive criminal and disciplinary proceedings
- Military judges and prosecutors from independent services not under command (preferably) appointed by civilian ministries of justice or prosecutor's offices. Military judges appointed to standing courts should enjoy security of tenure

Discipline & Military Justice

- Military judges and prosecution lawyers allocated by a process insulated from intervention by the chain of command
- Defendants should have access to legal advice and representation of their choice and if unable to pay should be granted legal aid on conditions no less favourable than those in normal criminal trials
- Where offences are tried before military courts they should include a civilian judge at first instance or appeal should lie to a civilian court. Final appeal should always lie to the civilian court system

Ombudsman Institutions

- Parliamentary ombudsman (e.g. Germany)
- Independent ombudsman (e.g. Ireland)
- Independent of chain of command
- Statutory authority, operational independence, adequate staff
- Appropriate mandate and powers (e.g. right to visit premises, access to secret information)
- Own initiative powers

Human Rights Training

- Included in core military and officer courses
- Use of civilian experts and CSOs
- Codes of conduct
- Military Colleges
- Centres of Human Rights excellence

OSCE/ODIHR programme

- National implementation events
- Relevant actors: military, ministry of defence, parliamentary oversight bodies, ombudsman institutions, civil society

More information

For more information:

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