



The Honourable John McCallum  
Minister of Immigration Refugees Citizenship Canada  
House of Commons  
Ottawa, Ontario  
K1A 0A6

31 March, 2016

Dear Minister McCallum,

I am writing to share Amnesty International's concerns with respect to the manner in which refugee and immigration cases involving individuals who have deserted from the US military are handled. In particular we are urging that Operational Bulletin 202 dealing with this topic be withdrawn and that there be fair and independent review, on an individual basis, of all outstanding cases dealing with US military desertion.

#### Operational Bulletin 202

Operational Bulletin 202<sup>1</sup>, introduced by Citizenship and Immigration Canada (as it was then called) in July 2010, deals with the processing of military deserters who claim refugee status in Canada. The bulletin advises that military deserters from other countries who claim refugee status in Canada may be inadmissible to Canada under section 36(1)(b) or 36(1)(c) of the *Immigration and Refugee Protection Act*. The bulletin specifically references deserter cases from members of the United States Armed Forces, and implies that these cases should be treated differently than deserters from other countries.

This bulletin fails to note that military desertion for reasons of conscience is in fact clearly recognized as a legitimate ground for refugee protection, including by the United Nations High Commissioner for Refugees. This includes both conscientious objection to all military service and conscientious objection that may be limited to service in particular military conflicts.

For decades Amnesty International has maintained that the right to refuse to perform military service for reasons of conscience is a part of freedom of thought, conscience and religion, as recognized in Article 18 of Universal Declaration of Human Rights and Article 18 of the International Covenant on Civil and Political Rights, to which Canada is a state party.

---

<sup>1</sup> <http://www.cic.gc.ca/english/resources/manuals/bulletins/2010/ob202.asp>



Amnesty International considers a conscientious objector to be any person who, for reasons of conscience or profound conviction, refuses either to perform any form of service in the armed forces or applies for non-combatant status. This can include refusal to participate in a war because one disagrees with its aims or the manner in which it was being waged, even if one does not oppose taking part in all wars.

Wherever such a person is detained or imprisoned solely for these beliefs, Amnesty International considers that person to be a prisoner of conscience. AI also considers conscientious objectors to be prisoners of conscience if they are imprisoned as a consequence of leaving the armed forces without authorization for reasons of conscience, if they have taken reasonable steps to secure release from military obligations. Amnesty International considers it to be a violation of international refugee law to suggest that deserters are automatically inadmissible to Canada because desertion is an offense in their own country. Correct procedure requires that the cases of such individuals seeking refugee status should be referred to the Immigration and Refugee Board, where each individual case should be considered on its own merits, free from political direction or interference, by a member of the IRB. We are concerned that the Bulletin strongly suggests a fettering of an immigration officer's discretion prior to referral to the IRB.

Amnesty International is also concerned that the Bulletin instructs decision makers reviewing Humanitarian and Compassionate applications to seek guidance from their supervisors when processing cases involving military desertion. The Bulletin offers no indication as to why that guidance should be sought in cases involving desertion as opposed to other humanitarian applications or what form the guidance would take. The Bulletin also fails to lay out a clear assurance that such guidance would be consistent with international human rights standards.

Amnesty International believes the Operational Bulletin 202 misstates the law and seeks to intrude on the independence of both IRB members and Immigration Officers. To be consistent with Canada's international obligations under both human rights and refugee law, Amnesty International urges you to immediately withdraw the bulletin and let each case proceed on its own merits.

### The Need for Case Review

Amnesty is further concerned that various decisions and action taken by the previous government may have interfered with the fair adjudication of applications made by U.S. military deserters. This includes concerns that past decisions by the previous government:

- failed to take into account the instructions and guidance from a number of Federal Court and Federal Court of Appeal rulings,

---

**National Office:**

312 Laurier Avenue East, Ottawa, ON K1N 1H9  
Tel: (613) 744-7667 Fax: (613) 746-2411  
members@amnesty.ca

**Toronto Office:**

1992 Yonge St, 3rd floor, Toronto ON M4S 1Z7  
Tel: (416) 363-9933 Fax: (416) 363-3103  
toronto@amnesty.ca

**Vancouver Office:**

Suite 430, 319 West Pender, Vancouver, BC V6B 1T3  
Tel: (604) 294-5160 Fax: (604) 294-5130  
vancouver@amnesty.ca



- were further negatively influenced by OB 202, and
- were possibly prejudiced by comments by a former immigration minister who referred to individuals who had made claims based on military desertion as 'bogus refugee claimants' while their cases were under consideration of the IRB or the Federal Court. In light of these concerns, we ask that you ensure there is a fair and independent re-examination, on a case by case basis, of all cases involving desertion from the US military.

Thank you for your careful consideration of these concerns and recommendations.

Sincerely,

Alex Neve  
Secretary General  
Amnesty International Canada  
(English Branch)

cc:  
The Honourable Jody Wilson-Raybould  
Minister of Justice and Attorney General of Canada  
284 Wellington Street  
Ottawa, Ontario  
K1A 0H8

Alyssa Manning  
Staff Lawyer  
Refugee Law Office  
20 Dundas Street West Suite 202  
Toronto, ON  
M5G 2H1