The Honourable Jason Kenney
Minister of Citizenship and Immigration
Ottawa, Ontario
K1A 1L1

September 27, 2010

Dear Minister,

I am writing to share Amnesty International's concerns with respect to Operational Bulletin 202, released by CIC on 2 July 2010, which 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.

The bulletin fails to recognize 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. As noted in UNHCR's Amicus brief in the Sepet and Bulbul case before the UK House of Lords:

> [A] refusal to serve in the armed forces of the State for reasons of conscience or political disagreement with the fact of such service has always been a proper foundation of the tradition of asylum, whether the objection is general in scope or relevant only in a particular political context (such as civil war, suppression of co-religionists or participation in unjust wars.) It is not necessary to distinguish between absolute or relative conscientious objection.

For decades, Amnesty International has maintained that the right to refuse to perform military service for reasons of conscience is part of freedom of thought, conscience and religion, as recognized in Article 18 of the Universal Declaration of Human Rights and Article 18 of the International Covenant on Civil and Political Rights, to which Canada is a state party. As such it is quite appropriate for individuals to advance refugee claims based on conscientious objection or military desertion for reasons of conscience.

Amnesty International considers a conscientious objector to be any person who, for reasons of conscience or profound conviction, either refuses 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. Amnesty International also considers conscientious objectors to be prisoners of conscience if they are imprisoned for leaving the

armed forces without authorization for reasons of conscience. If there are reasonable steps open to them to secure release from military obligations they should first pursue those options. If those steps are not reasonable or effective they should not be required to do so. Amnesty International does not generally believe that there are reasonable options open to individuals who conscientiously object to military service with US forces in Iraq. As such, Amnesty International is opposed to the forced removal from Canada of individuals who conscientiously express their opposition to serving with US forces in Iraq.

Amnesty International therefore considers it to be a violation of international refugee law to suggest that deserters are automatically inadmissible to Canada because desertion is an offence in their own country. Correct procedure requires that the cases of those individuals seeking refugee status to 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 that the Bulletin instructs decision makers reviewing Humanitarian and Compassionate applications to seek guidance from their supervisors when processing a war resister case. The Bulletin offers no indication as to why that guidance should be sought in war resister cases as opposed to other humanitarian applications or what form the guidance would take. The Bulletin also fails to lays out a clear assurance that such guidance would be consistent with international human rights standards.

Amnesty International believes that 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 immediately to withdraw the bulletin.

Sincerely,

Alex Neve
Secretary General
Amnesty International Canada
(English branch)