DCAF Backgrounder

Security Sector Reform and Human Rights

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Geneva Centre for the Democratic Control of Armed Forces

This document is part of the DCAF Backgrounder series, which provides practitioners with concise introductions to a variety of issues in the field of Security Sector Governance and Security Sector Reform.

What is SSR?

Security sector reform (SSR) is generally defined as a process of transforming the security sector to strengthen its accountability and effectiveness, as well as its respect for human rights and the rule of law. The security sector is a broad term used to describe the structures, institutions and personnel responsible for the management, provision and oversight of security (see DCAF's *Security Sector Reform* Backgrounder for more information).

The security sector includes a wide range of actors:

- **core security actors**: armed forces, police, intelligence services, coast guards, border guards, customs and immigration authorities
- **security management and oversight bodies**: parliament; the executive including ministries of defence, internal affairs and foreign affairs; customary and traditional authorities; financial management bodies; and civil society actors
- **justice and rule of law institutions**: justice ministries, penal institutions, prosecutors, the judiciary, other customary justice systems, human rights commissions and ombudspersons
- **non-statutory security forces**: liberation armies, guerrilla armies, private military and security companies and political party militias
- **non-statutory civil society groups**: professional associations; the media; research, advocacy and religious organisations; non-governmental organisations and community groups

What are human rights?

Simply put, the term "human rights" means the basic rights and freedoms to which all humans are entitled. Examples of human rights include the rights to life, freedom of speech, equality before the law and economic and social rights, such as the right to food and the right to health.

While there are many competing views and definitions of human rights, here they will be defined in a limited sense, referring only to those rights found in the many instruments and decisions that make up international human rights law. Examples of this body of law can be found in the table below.

What is the historical relationship between SSR and human rights?

During the 1990s, concepts such as "human security" helped to popularise the notion that security was about individuals as well as about states. In other words, states began to see their security obligations as two-fold: to protect the state itself (i.e., geographical territory and legal order) from external threats and to protect individual citizens, particularly from human rights violations.

The entry of SSR into this story came in the late 1990s when it became apparent to development actors (operating in places such as Somalia and the former Yugoslavia, for example) that their development goals required a secure environment to be successful. The resulting "security-development nexus" led to the idea that donors need to focus, not only on the capacity of the security sector but also on its accountability and responsiveness to the needs of the population. This is particularly the case with regards to human rights protection, as ongoing rights violations can undermine new institutions and lead to a return to instability (see Box 1). As the UN Millennium Declaration notes, "human security depends first on the effective application of law and order, which in turn demands a firm adherence to the rule of law."

Box 1. Justice Reform in Afghanistan

In 2005 the Afghan Judicial Reform Strategy, "Justice For All", stated that "almost nothing has been accomplished to provide resources for the justice system." Five years later, the situation is largely the same. While attention has centred on building military capacity to fight insurgents, a lack of focus, resources and coordination have left the justice sector inadequately equipped to meet the needs of the population. Ongoing problems include large geographical areas in which justice institutions have either no or very limited presence, inadequate training and resources (legal texts are often unavailable, for example), limited judicial independence, corruption, and low levels of integration with other security sector actors, particularly the police.

Reasons for the so-far disastrous reform efforts are numerous. Suffice to say that the result has been very limited access to justice for the majority of the population. This situation has serious implications for human rights, particularly the series of rights related to fair trial, and to not be arbitrarily detained. In practice, there is a direct link between the inability of the state to protect these rights and the growing insurgency. Inadequate or non-existent state institutions force many citizens to seek alternative justice and security providers, something that, in many parts of the country, means supporting the Taliban.

Major International and Regional Human Rights Instruments

Name	Created	Entry into Force	Parties
International Covenant on Civil and Political Rights (ICCPR)	1966	1976	165
International Covenant on Economic, Social and Cultural Rights (ICESCR)	1966	1976	160
Universal Declaration of Human Rights (UDHR)	1948	1948	N/A
European Convention on Human Rights (ECHR)	1950	1953	47
American Convention on Human Rights (ACHR)	1969	1978	24
African Charter on Human and Peoples' Rights (ACHPR)	1981	1986	53
International Convention on the Elimination of All Forms of Racial Discrimination	1965	1969	173
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	1979	1981	186
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	1984	1987	146
Convention on the Prevention and Punishment of the Crime of Genocide	1948	1951	140
Convention on the Rights of the Child	1989	1990	193

Security and rights: not a zero-sum game

Security itself is a fundamental human right. Indeed, Article 9 of the ICCPR states that "Everyone has the right to liberty and security…" Despite this fact, however, rights and security are often seen as a zero-sum game. Increasing recognition of human rights on the part of states has often gone hand in hand with the use of narrow security concerns as justification for their limitation. Rather than a zero-sum game, however, rights and security are mutually reinforcing concepts.

This fact was recognised by the drafters of the major human rights instruments, who divided rights into three categories: rights that can be limited ordinarily but subject to certain conditions, rights that can be derogated from during states of emergency, and rights that cannot be derogated from under any circumstances. It was thought that, by codifying the circumstances in which certain rights could be restricted, situations would be avoided in which states used security justifications to intensify crackdowns on political opponents or separatists, or as an opportunity to suggest they should be immune from criticism of their human rights practices.

Limitations

Limitations clauses are attached to many rights. In general, such limitations are only allowed when they are both prescribed by law and necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. So, for example, the right to freedom of movement can lawfully be limited in the case of a convicted criminal who the government wishes to imprison or, to take another example, states may wish to limit the right to privacy during an insurgency, in order to carry out greater surveillance of the population (see Box 2).

Derogable Rights

Derogations, in contrast, are temporary suspensions of much broader human rights obligations on the part of the state. Like limitations, provision for derogations is made in many human rights instruments, although, unlike limitations, they generally require a state of emergency to take effect. In order to derogate from a particular obligation, states must meet two conditions:

Box 2. Human Rights and Counter-Terrorism

While a great deal has been written on human rights since the terrorist attacks of September 11, 2001, particularly related to the use of torture and arbitrary detention, a recent case related to the right to privacy neatly illustrates some of the difficult dilemmas involved in balancing security and rights protection.

After post-September 11 changes, the United States Federal Bureau of Investigation (FBI)'s Domestic Investigations and Operations Guide permits agents to open an "assessment" to "proactively" seek information on whether organisations or individuals are involved in activities that might constitute a threat to national security. This means that agents can begin such an assessment without any factual justification. The manual states that the basis for an inquiry "cannot be arbitrary or groundless speculation" but does not define this phrase precisely, suggesting only that the standard is "difficult to define." Even if the resulting investigation – which can involve following or photographing targets, or infiltrating organisations – turns up nothing of interest, the collected information can be retained in government files.

This might seem to be in conflict with the right to privacy, as defined, for example, in Article 17 of the International Covenant on Civil and Political Rights, which states (in part) that: "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence…" This is precisely what the American Civil Liberties Union argued when seeking the release of the FBI manual, stating, for example, that "it raises fundamental questions about whether a domestic intelligence agency can protect civil liberties if they feel they have the right to collect broad personal information about people they don't even suspect of wrongdoing."

The FBI, however, argues that it needs greater flexibility to hunt would-be terrorists, particularly through the use of intelligence to get "ahead" of threats, and that adequate safeguards exist. Speaking to the New York Times, the Bureau's general counsel argued that "Those who say the FBI should not collect information on a person or group unless there is a specific reason to suspect that the target is up to no good seriously miss the mark […] the FBI has been told that we need to determine who poses a threat to the national security – not simply to investigate persons who have come onto our radar screens."

1. the situation must be one which "threatens the life of the nation"
2. the state must have officially proclaimed that such a situation exists by informing the relevant treaty body

After making such a declaration, a state may then derogate from some of its obligations, although only to the "extent strictly required by the exigencies of the situation." In other words, the derogation must be both necessary and proportional to the situation. Finally, derogations must not involve discrimination based "solely on the grounds of race, colour, sex, language, and religion or social origin."

Box 3. The Northern Ireland Conflict

Between 1971 and 1975, to help it combat the threat posed by the IRA, the UK government introduced a series of extrajudicial powers of arrest, detention and internment. In invoking the powers, then Northern Ireland Prime Minister, Brian Faulkner, argued that "Every means has been tried to make terrorists amenable to the law [...] But the terrorist campaign continues at an unacceptable level, and I have had to conclude that the ordinary law cannot deal comprehensively or quickly enough with such ruthless violence."

Using these powers, the security forces in 1971 subjected fourteen persons to "five techniques", including: "disorientation" or "sensory deprivation" techniques such as stress positions, hooding, subjection to noise, deprivation of sleep, and deprivation of food and drink.

Objecting to these practices, Ireland brought a case to the European Court of Human Rights in 1978. The court ruled that the "five techniques" constituted inhumane and degrading treatment and were thus illegal under the European Convention on Human Rights (ECHR). Crucially, the court did not consider questions of necessity as, under the ECHR and later conventions (such as the Convention Against Torture), such practices are among those outlawed in all circumstances, regardless of any apparent need or attempt at justification on the part of the state.

Non-Derogable Rights

There are also some fundamental human rights from which no derogation is permitted. These include the right to life, to freedom of thought, conscience and religion, the freedom from torture and slavery, and the right to a fair trial, among several others. For example, a state may never lawfully commit torture or detain people without trial, no matter what the situation may seem to demand (see Box 3).

How might SSR help to implement and protect human rights?

In very broad terms, SSR helps the implementation and protection of human rights by refocusing the security sector on its role as protector of society and then – as a function of that protection – the state. This double role – to protect the state and to defend human rights – is enshrined in the mandates of many security services worldwide. Despite this fact, however, the security sector remains a leading perpetrator of serious and systematic human rights abuse, in all types of state. This is the case even in stable democracies, as the fight against transnational terrorism, and the numerous human rights abuses that have ensued, have clearly demonstrated (see Boxes 2 and 3).

Among the key principles of SSR are effectiveness, professionalism, accountability and transparency. Such principles are important to the protection of human rights for a number of the following reasons.

Effectiveness

- By encouraging better and more efficient resource allocation on the part of states, SSR processes can help free resources for often under-funded sectors, such as health and education (and thus help states meet their relevant human rights obligations).
- Particularly in post-conflict states where states may not have the ability or resources to fulfil their human rights obligations, SSR can help build relevant state capacity (see Box 1 on page 2).
- Rights violations can lead to dissatisfaction, unrest and instability. In situations where serious human rights violations are widespread, enduring peace and security are impossible. SSR can make security sector actors better able to respond to rights violations through, for example, rule of law programmes.

Accountability

- Accountability and oversight procedures reduce impunity for human rights violators and ensure compliance with lawful standards. They are essential for the building and maintenance of public trust in security institutions. Of crucial

importance in this regard is the idea of "effective remedy", a fundamental human right that includes the right of access to an impartial tribunal, the right to a fair hearing, the right to be judged within a reasonable time, and the right of access to legal aid. Such procedures could include:

- internal measures (for example, compliance procedures, inspectors general, and whistle-blower protection)
- external measures (for example, parliamentary oversight, ombudsman institutions, the judiciary, and civil society)

- The involvement of international actors, through monitoring, field reports, investigations, reporting to treaty bodies, assessments, research, standard setting, awareness raising, support, policy advice, and other roles, can raise awareness of and bring attention to rights violations. This can, in turn, help to reduce their prevalence.

Professionalism

- Civilian control, as well as clear chains of command means that standards are more likely to be enforced throughout an institution and reduce the risk of human rights violations by "rogue" officers or units.
- In post-conflict states, vetting of new recruits to reformed security services can help build trust among the population, particularly in situations marked by a history of rights violations. This trust can be further buttressed by training that emphasises professionalism and respect for human rights standards.
- International actors can also be useful in this regard, through the provision of training and the identification of best practices.
- The creation of professional and de-politicised security forces reduces the risk that they are manipulated for narrow political gain or in the repression of civil and political rights.

Box 4. The Human Rights of Armed Forces Personnel

Armed forces personnel, subject to necessary restrictions, should be entitled to the same rights and subject to the same responsibilities as ordinary citizens. Nevertheless, practices such as torture, ill-treatment, bullying, and abuse, are often widespread and often institutionalised as part of military culture. Respect for the human rights of armed forces personnel, however, is essential for a number of reasons:

- respect for human rights contributes to the maintenance of a military that is firmly integrated into society and shares its values
- respect for human rights prevents the military from being misused by the government and turning against the civilian population
- respect for human rights protects members of the armed forces from misuse and oppression by the government and army commanders
- armed forces personnel are increasingly involved in international peacekeeping and peacebuilding operations in which human rights work may be a key part of their day to day activities

Human rights and transitional justice

Transitional justice is a way of dealing with situations in which widespread human rights violations have taken place. Its purpose is to promote peace and reconciliation, while providing recognition to victims. Transitional justice generally takes one or more of the following forms:

- Criminal prosecutions focusing on the leading perpetrators of human rights violations
- Truth commissions that investigate and record instances of past abuse
- Reparations programmes that provide compensation to victims
- Memorialisation efforts that seek to preserve public memory of past abuses
- SSR that seeks to make security sector actors accountable, transparent, efficient, and professional.

SSR efforts that neglects the issue of transitional justice is often doomed to failure, as it fails to rebuild trust in security institutions. Without addressing the needs of victims and the concerns of society at large, through a combination of the methods

described above, states can easily relapse into situations in which human rights violations are again widespread.

Some of the special challenges of post-conflict states

In post-conflict states, security sector development and consolidation are often seen as an overwhelming priority by both local and international actors. The need to establish a monopoly on the use of force is often used as an excuse to put human rights concerns on the backburner, to be dealt with at an unspecified later date. Even in states without ongoing violence, the post-conflict security sector often dwarfs other surviving institutions. It thus becomes a natural focal point for the consolidation and projection of state power.

This analysis, however, ignores two important and interrelated points.

First, SSR processes in general, and post-conflict transformation of the security sector in particular, provide an important opportunity for the integration of human rights standards and protection. In many cases, security institutions, such as the police and military, are either heavily reformed, or rebuilt from scratch in the aftermath of conflict. Human rights principles and practices should be central to the thinking of those responsible for the recruitment, vetting and training of new recruits. This should also be the case with regards to laws and mandates governing the operation of the security sector. Not only can human rights law be integrated into relevant legislation, but oversight and accountability can be improved through the creation of parliamentary oversight committees and robust independent monitoring bodies, such as ombudsman institutions.

Second, a lack of respect for human rights principles in post-conflict settings can lead to a return to violence. For example, by not respecting rights related to fair trial, and arbitrary detention, resentment of the state can fester. Economic and social rights are also of particular importance. While respect for these rights does not mean, for example, that every citizen must be provided with a house but rather that provision of government services needs to happen in an equitable and non-discriminatory manner. It is clear that inequitable resource allocation that favours a particular ethic group, for example, can have a profoundly destabilising impact on fragile peace. As the UN Millennium Declaration suggests, there is a need for recognition of inter-relatedness of security, peace, and human rights.

Box 5. Human Rights and Human Security

Human security as a concept emerged from policy discussions which took place in the early 1990s. The 1994 UN Human Development Report defined it in broad terms, encompassing economic, food, health, environmental, community, political, and personal security. The report argued that security should expand "from an exclusive stress on territorial security to a much greater stress on people's security."

From this starting point, advocates of human security split into two rough schools of thought: those who followed the UN's broad definition, conceptualising human security as about both "freedom from want and freedom from fear" and those who sought to define it more narrowly as only about "freedom from fear."

In this sense, human security has paralleled the conceptual (and legal) division of human rights into three "generations."

1. First generation rights focus on liberty and participation in political life. These include rights to free speech, to fair trial, to freedom from arbitrary detention, and so forth.

2. Second generation rights focus on the social, cultural and economic. They include the right to housing and to health, among many others.

3. Third generation rights are more controversial and generally not clearly defined in law. They include the right to development, to a healthy environment, and to cultural heritage, among others.

The broad concept of human security has been criticised for being imprecise and too inclusive and, thus, of little analytical use. Similarly, third (and to a lesser extent second) generation human rights have been criticised for moving too far from their legal roots. Many argue that human rights should only be about what is justiciable.

There is plenty of overlap between human rights (particularly third generation rights) and human security and their broad goals are largely the same. However, the question of justiciability is the key difference between the two concepts; it is perhaps most useful to think about the former as a legal tool and the latter as a conceptual one.

Further Information

Amnesty International
https://www.amnesty.org/en/armed-conflict

Human Rights Watch
http://www.hrw.org/en/category/topic/counterterrorism

International Center for Transitional Justice
http://www.ictj.org/en/tj/

International Commission of Jurists
http://www.icj.org/

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http://www.security-and-peace.de/archiv/2005-1.htm

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http://www2.ohchr.org/english/bodies/hrc/index.htm

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http://www.nytimes.com/2009/10/29/us/29manual.html?partner=rss&emc=rss

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment
http://www2.ohchr.org/english/issues/torture/rapporteur/

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David Law, Senior Fellow in DCAF's Operation Division and Senior SSR Advisor with DCAF' s International Security Sector Advisor Team (ISSAT), is the editor of the Backgrounder series.

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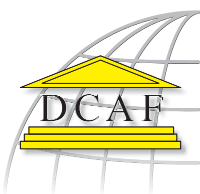

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