

# HUMAN RIGHTS AND SSG/R

Mapping out the role of human rights standards in the provision, management and oversight of security

## ABOUT THIS SSR BACKGROUNDER

This SSR Backgrounder explains how human rights are conceptually related to SSG/R and how human rights standards apply to the provision, management, and oversight of security. As there are many contexts where security sector actors infringe upon human rights in spite of their mandate to protect them, the Backgrounder places particular emphasis on oversight mechanisms, which are being continuously expanded and refined in order to ensure accountability for human rights in all structures, processes, and practices of the security sector. Finally, an analysis of the specific challenges to the observance of human rights in transition, post-conflict, and fragile contexts provides an overview of how SSR can support the enduring institutionalization and implementation of such rights.

## THIS SSR BACKGROUNDER ANSWERS THE FOLLOWING QUESTIONS:

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## ABOUT THIS SERIES

The SSR Backgrounders provide concise introductions to topics and concepts in good security sector governance (SSG) and security sector reform (SSR). The series summarizes current debates, explains key terms and exposes central tensions based on a broad range of international experiences. The SSR Backgrounders do not promote specific models, policies or proposals for good governance or reform but do provide further resources that will allow readers to extend their knowledge on each topic. The SSR Backgrounders are a resource for security governance and reform stakeholders seeking to understand and also to critically assess current approaches to good SSG and SSR.

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## WHAT ARE HUMAN RIGHTS?

Human rights are defined as the basic rights and freedoms inherent to any person by mere virtue of her or his existence, irrespective of gender, race, origin, beliefs, language, nationality, residence, or any other status. Examples of substantive human rights include the right to personal integrity, the right to freedom of speech, and the right to education. In addition, procedural human rights confer guarantees that ensure a person's access to the justice system, thereby providing for the effective remedy of violations of rights. Based on their historical development and scope, human rights are divided into three generations:

- **Civil and political rights**, or freedoms, demand that the state **respect** certain rights entitling individuals to participate in the civil and political life of that society and state without discrimination or repression. Three types of rights of this kind can be distinguished:
  - a. Absolute** rights are guarantees upon which a state cannot infringe under any circumstances. An example is the prohibition of torture and degrading treatment.
  - b. Derogable** rights may be formally suspended when weighed against overriding public interests or in a state of emergency. An example is restrictions on the right to peaceful assembly during a pandemic.
  - c. Non-derogable** rights, such as the right to life, cannot be suspended, but there is nevertheless provision for limitations in the common application of such rights. In practice this means that, in specific situations and subject to review, security providers can resort to the use of force, even though this may lead to severe injuries and loss of lives. Such circumstances would then be the object of formal investigations.
- **Social and economic rights** emerged in the latter half of the nineteenth century and derive from the concept of human dignity. In contrast with the previous category, they require the state to **take steps**, both individually and with international assistance and cooperation, and to the maximum of its available resources, to fulfil the standard laid out by treaty provisions. Examples include the right to health or the right to an adequate standard of living.
- A third generation, framed as **collective human rights**, has emerged more recently in international agreements. Unlike the rights in the two previous generations, enjoyment of these rights is based on membership of a group or community, such as a minority or an indigenous people. Examples of such rights include the right to self-determination, the right to a healthy environment, or the right to participate in a cultural heritage.

All human rights share a set of common values which shape the way in which states should approach their realization: human dignity, equality, universality, inalienability, indivisibility, interdependence, participation, and inclusion.

The global system of human rights is multi-layered, linking global, regional, and national levels of institutionalization, codification, and implementation. Human rights are primarily enshrined in international treaties, which bind the states which choose to become parties to them. These treaties provide human rights standards and lay down oversight mechanisms, such as specific treaty monitoring bodies. Judicial systems and human rights commissions provide oversight on the national level. International organizations themselves have progressively become arenas where human rights norms are developed, and their application is monitored. In addition to the UN's treaty monitoring bodies, there are also special procedures of the UN Human Rights Council (UNHRC), which through resolutions provide independent human rights experts with a mandate to monitor human rights in thematic areas and in countries suspected of gross violations of human rights. These violations may lead to humanitarian crises or state failure. The Office of the UN High Commissioner for Human Rights (OHCHR) also supports further special procedures, such as country visits, sending communications to states in cases of reported violations, conducting thematic studies as well as engaging in human rights advocacy and awareness raising. The mandate-holders for these special procedures contribute directly to the implementation of human rights in the security sector through their work on legislative and police reform, judicial process, and conflict prevention.

Some regional organizations also play a key role in the development of human rights, by adopting comprehensive human rights charters and legal conventions, such as: the European Convention on Human Rights (ECHR), the American Convention on Human Rights (ACHR), and the African Charter on Human and Peoples' Rights (ACHPR). Some of these treaties provide for judicial mechanisms that ensure a binding effect upon signatory states. Thereby, regional human rights systems localize international human rights norms, significantly contributing to their interpretation and the harmonization of states' compliance with them in regional contexts.

Human rights are applicable to all people, irrespective of whether they have been recognized by a state or not. However, in practice their justiciability – i.e. the ability of any individual to claim their rights against a state – requires that they be incorporated and implemented within domestic legal, institutional, and policy frameworks.

A state which has made a human rights commitment must transpose the standards it contains into domestic measures, legislation, and legal avenues allowing rights-holders to seek remedy in national courts, and subsequently in regional courts where available. In doing this, states abide by two types of obligation, which may coexist depending on the human right in question:

- A general negative obligation to 'respect' human rights, i.e. to refrain from unlawfully infringing them;

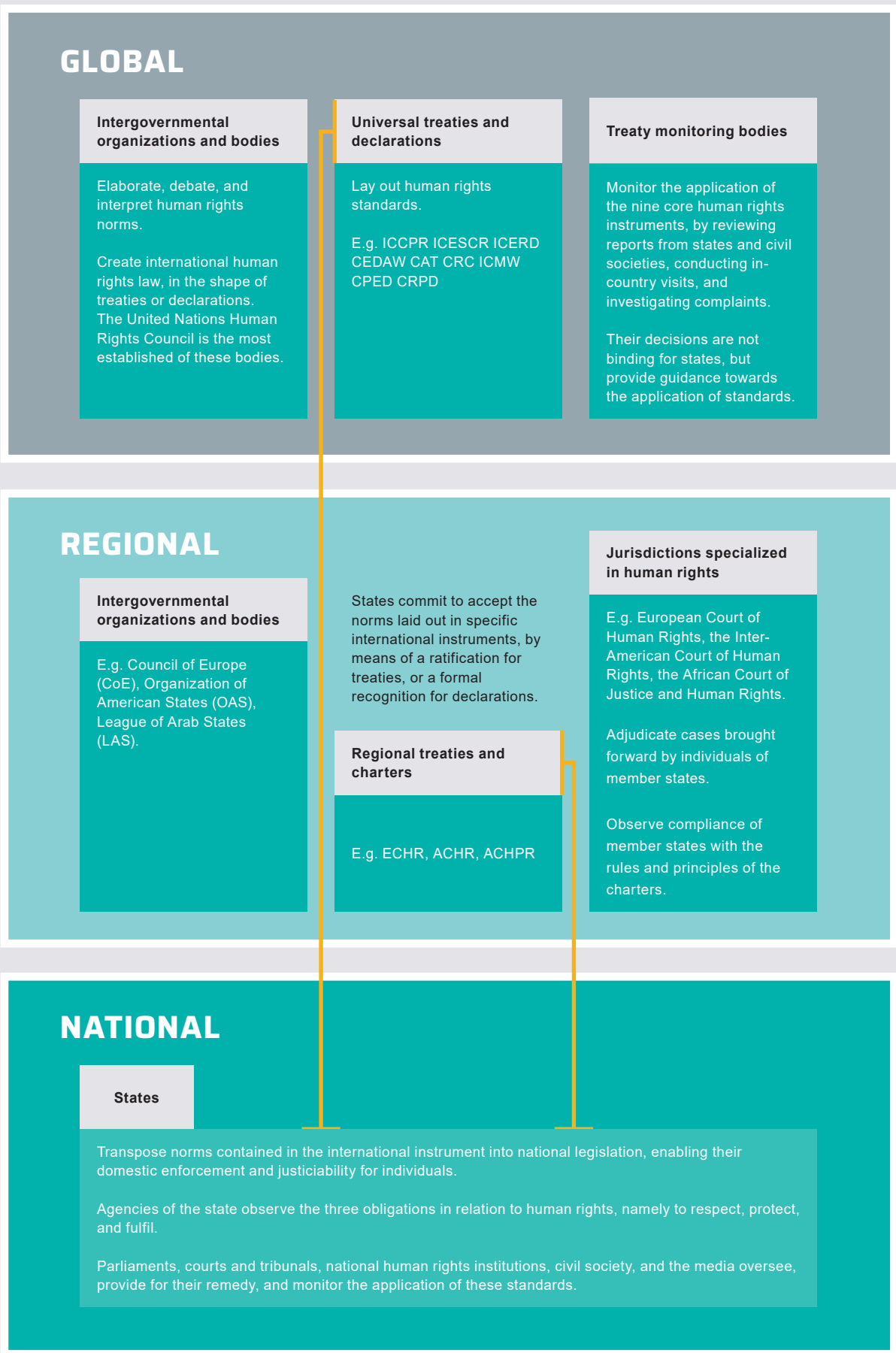
- Two positive obligations to 'protect' and 'fulfil' human rights: the first designates the active protection of individuals and groups against human rights abuses perpetrated by state and non-state actors, including accountability and remedy in cases where such a violation does take place; while the second requires states to take purposive action to allocate resources and to create legal frameworks and positive discriminatory policies, as well as to enable access to social and economic resources and participation in decision-making to empower rights-holders.

### CORE HUMAN RIGHTS TREATIES

In addition to the Universal Declaration of Human Rights (UDHR) (adopted by the United Nations General Assembly in 1948), there are nine United Nations-based core human rights treaties:

- International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) of 1965;
- International Covenant on Civil and Political Rights (ICCPR) of 1966;
- International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966;
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) of 1984;
- Convention on the Rights of the Child (CRC) of 1989;
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) of 1990;
- International Convention for the Protection of All Persons from Enforced Disappearance (CPED) of 2006; and
- Convention on the Rights of Persons with Disabilities (CRPD) of 2006.

**FIGURE 1 THE HUMAN RIGHTS FRAMEWORK AT INTERNATIONAL, REGIONAL, AND GLOBAL LEVELS**



## HOW ARE HUMAN RIGHTS LINKED TO SSG/R?

Human rights provide standards of appropriate behaviour and practices for the security sector in all its forms of interaction with individuals and communities in the exercise of their duties. As part of the principles of good SSG, human rights ensure that the legal mandate of security institutions to use coercive force - and in certain circumstances even deprive people of their rights - is subject to democratic control, and thus serves to protect individuals and communities rather than to threaten them. Security sector actors (state or non-state) must abide by human rights standards in their activities and make sure that any restrictions of human rights in the provision of security always respect the legal conditions of derogation, are limited in time and scope, and are monitored by independent oversight bodies.

States' human rights obligations relate to SSG in two ways:

- Because human rights are **justiciable** (i.e. rights serve directly as the legal basis of claims), potential human rights abuses by security sector actors can be remedied, and can serve as legal precedents; and
- As part of their human rights-related obligations, a number of different oversight actors should observe and monitor the actions of the security sector (for further information, see the section "How do security sector management and oversight actors contribute to the respect of human rights?" below).

In this way, security sector actors are accountable for and ideally contribute to the respect of first-generation human rights, especially those related to personal and physical integrity. But the relationship of mutual reinforcement between human rights and security is not always guaranteed and requires constant work. In cases where human rights directly oppose security objectives, a careful balancing act is required. This is especially true during states of emergency, when derogations from human rights standards are accompanied by an additional transfer of powers to the executive, which also implies a wider mandate and responsibility for security sector actors.

By enabling inclusivity, non-discrimination, and participation, respect of human rights is conducive to security, as shown by post-conflict and fragile contexts. Furthermore, strong accountability of security provision reinforces human rights by creating a stable and safe context in which they can flourish. The respect of human rights by security sector actors also increases the public's trust in government institutions and effectively prevents conflict.

### SECURITY SECTOR GOVERNANCE

The term 'security sector governance' (SSG) defines the rules, structures, actors, processes, and values that shape the provision of security by a state on its territory.

Good SSG is a normative standard based on the principles of accountability, transparency, rule of law, participation, responsiveness, effectiveness, and efficiency. Applying good SSG to the security sector makes security provision contingent upon democratic civilian control, compliance with the rule of law, and respect for the human rights of individuals and communities. As part of good SSG, human rights have both preventive and remedial effects in relation to security challenges and provision.

→ For more information on SSG/R, see the SSR Backgrounder on "Security Sector Governance: Applying the Principles of Good Governance to the Security Sector".



## HOW DO SECURITY PROVIDERS INTERACT WITH HUMAN RIGHTS?

**Security providers with internal mandates** – police forces, gendarmeries, border guards, or private security companies – are regularly tasked with protecting values intrinsic to human rights, such as personal and physical integrity, or public assets and private property. As security providers are authorized, within circumstances defined by law, to use force and to limit certain rights, they should always strive to balance security objectives and human rights standards. For example, surveillance practices may breach an individual person's private sphere, but this breach can be deemed lawful if it protects rights or values which are comparatively more important, such as the right to life or public safety. State-imposed restrictions on freedom of speech – for instance, as applied to information and communication technologies (ICT) industries in the regulation of online forums – may be justified by security objectives such as countering radical extremism. The actions of law enforcement institutions, especially in contexts of deficient SSG or unfinished SSR, may also breach human rights. Examples include torture of detainees, excessive use of force on demonstrators, and sexual abuses, all of which point to the importance of good SSG for the attainment of and respect for human rights.

Security providers can directly strengthen human rights in the society in which they operate and within the security sector itself, by adopting conducive policies and behaviours, such as:

- Elaborating codes of conduct for different branches of the sector, emphasizing respect for human rights guidelines, and ensuring that internal policies are in line with human rights standards;
- Providing human rights training to individual members or small groups of security sector personnel; this should include scenarios where a balancing act between a human right and a security objective, or between different human rights, must be performed either by an individual agent or by a commanding officer. Such trainings should also examine how an agent can disobey an order deemed to lead to the violation of a human right;
- Developing efficient internal accountability mechanisms and seeking to develop an institutional culture based on the respect of human rights.

**Security providers with external mandates**, such as armed forces or some intelligence services, often operate outside of their state's borders. This raises significant questions about the extent to which they can be kept accountable on the observance of human rights standards. Human rights obligations apply within a state's domestic jurisdiction, and the extra-territorial effect of human rights treaties and conventions has been recognized only in specific circumstances, for example where a state's armed

forces exercise effective control over a territory in a foreign state. Other legal frameworks such as international humanitarian law may apply instead and may also protect core human rights values.

When these actors are called upon to fulfil internal security mandates, they can also potentially infringe the human rights of individuals and communities on the territory of their own state. Such situations may occur in emergency situations when the military is asked to strengthen police forces. Furthermore, the veil of secrecy under which intelligence services work may easily lead to unauthorized – and sometimes even authorized – internal operations which undermine human rights, but are difficult to expose. Sometimes security legislation, especially in the context of combating terrorism, may go against constitutional and international standards of human rights protection even in consolidated democracies, a situation that requires enhanced parliamentary and public oversight efforts as well as judicial review.

Non-state actors, such as private businesses and security companies, may be indirectly compelled by states to apply human rights standards in their relationships with other non-state actors. Businesses, especially in the extractive sector, have been the subject of increased regulation efforts due to the way that some have conducted their activities in complex or fragile environments, posing additional security and human rights-related risks to individuals and communities living in such areas. Such environments have therefore been the focus of considerable SSG/R efforts, as illustrated by the Voluntary Principles on Security and Human Rights and the efforts of the UN Working Group on Business and Human Rights.

## FIGURE 2 VOLUNTARY PRINCIPLES ON SECURITY AND HUMAN RIGHTS

The Voluntary Principles on Security and Human Rights are a multi-stakeholder initiative which aims to guide companies operating in complex and fragile environments, host governments overseeing these operations, and state/non-state security actors providing services in these areas. Private actors commit to these principles in a similar way that states do to human rights treaties, e.g. by undertaking to respect them and to demonstrate their implementation.

Examples of human rights-compliant actions for companies include:

- Committing to human rights standards, whether international or (if available) in national legislation, before beginning activity, and incorporating these standards into agreements with host governments;
- Vetting potential members of company security personnel for compliance with human rights and for any past abuses;
- Conducting their own investigations into human rights violations which are alleged in the course of economic activity, or relay such allegations to the competent authorities;
- Conducting risk impact assessments for economic activity among local communities;
- Ensuring that there is comprehensive outreach with local communities and interest groups.

The Voluntary Principles are also endorsed by the UN Working Group on Business and Human Rights, which has produced reports and guidance on corporate human rights due diligence and the responsibilities of companies operating in conflict areas. For more information, please see the DCAF Toolkit “Addressing Security and Human Rights Challenges in Complex Environments”.

## HOW DO SECURITY SECTOR MANAGEMENT AND OVERSIGHT ACTORS CONTRIBUTE TO RESPECT OF HUMAN RIGHTS?

State actors involved in the **management of the security sector** possess both the political mandate and the policy expertise required to tailor and implement human rights standards in local contexts, as well as to initiate human rights-related reforms of existing SSG mechanisms and structures. They define and implement security- and human rights-related policies, codes of conduct, and rules and regulations and monitor their application, all of which defines the content of human rights obligations for security providers. At the same time the government, as well as security-related ministries and agencies, adds another layer of political, civilian, and technocratic oversight of the security sector and thus directly has the power to enhance accountability in the observance of human rights. As these institutions are under the direct authority of elected governments, they are also sensitive to political shifts which can reinforce or, under unfavourable circumstances, undermine the principles of good SSG and human rights standards.

Against this background, oversight actors play an essential role in ensuring that both the provision and management of security take place according to principles of good SSG and human rights.

**Parliaments** have the capacity to decisively shape and strengthen the relation of security providers with human rights through their core functions:

- **Legislative function:** Parliaments ratify human rights treaties and transpose the obligations they contain into national legislation and human rights strategies. They also create the legal basis for possible restrictions on

human rights in emergency situations and ensure that such restrictions do not undermine the democratic constitutional order and are limited in time.

- **Oversight function:** Parliaments monitor the observance of these standards throughout all governmental policies, including security provision. Lawmakers can address written and oral questions to the government and undertake interpellations, parliamentary debates, fact-finding enquiries, and hearings. Parliaments can also support the work of human rights monitoring bodies, at both the national and international levels.
- **Representative function:** Lawmakers support the implementation of human rights legislation in practice, for example by ensuring that security sector institutions and their management structures are aware of their duties under human rights law, by disseminating information on human rights and the legal protection of these rights in their circumscription and in public debates, and by supporting human rights-related initiatives by citizens.
- **Budgetary function:** When approving budget proposals from the executive, parliaments take into account the financial impact on existing human rights policies and the consequences for the future implementation of positive obligations contained in human rights treaties. Moreover, when reviewing such budgets, parliaments are key in holding governments accountable for their financial decisions.

**Ombuds institutions** are independent bodies established by a state on its territory, mandated to protect the people against violation of rights, abuse of power, negligence, unfair decisions, and maladministration emanating from state entities. Ombuds institutions can conduct

investigations of their own, access relevant information for handling complaints, make recommendations for improvement to the state, and evaluate the state's implementation of recommendations or lack thereof.

- **National Human Rights Institutions (NHRIs)** are entitled to receive complaints from individuals or groups, to conduct wide-ranging investigations, to monitor the general situation of human rights within a state, and to contribute to the elaboration of national human rights-related legislation. NHRIs interact with the security sector's handling of human rights in many ways, such as through monitoring anti-terrorism measures or the compliance with human rights standards of border controls relating to migrants. Furthermore, in many countries NHRIs also serve as National Preventive Mechanisms (NPMs) established under the Convention against Torture (CAT), which empowers them to visit detention centres, to advise the state, and to educate security personnel, as well as to cooperate with civil society, all of which is meant to prevent torture and other degrading treatments.
- **Ombuds institutions for the armed forces** have a specific mandate to receive and investigate complaints from within the armed forces or in relation to them, in their respective jurisdictions. Human rights-related complaints may include, but are not limited to, abuses of power, material workplace conditions such as housing and food, inappropriate treatment of physical and mental health risks associated with membership of the armed forces, and protection of individual members from any reprisals for having raised complaints. Such institutions are crucial in terms of the wider issue of securing the human rights of security sector personnel themselves.

**Civil society** plays an essential role as an informal overseer of the security sector's interaction with the population. A free, organized, and participative civil society can monitor and uncover systemic as well as irregular human rights abuses involving the security sector, mediate between communities and the security sector in order to develop inclusive and best human rights practices, and raise the alarm, both nationally and internationally, in cases of human rights violations. In contexts where formal oversight mechanisms are not developed or not functioning, civil society may be the only actor capable of filling this void and monitoring the actions of security providers, especially those in the private sector and related to gender-based violence (GBV).

Moreover, human rights defenders must have their human rights guaranteed. In particular, the freedoms of association and of expression are critical to an empowered civil society. States must protect civil society from pressure, threats, and intimidation, whether from security sector actors or from other state or non-state actors.

## THE SECURITY SECTOR

The security sector encompasses a wide range of actors and activities. In addition to security providers, which include state (e.g. police or armed forces) and non-state (e.g. private security, militia) actors, the security sector comprises:

- State (e.g. parliament, the justice sector, ombuds and national human rights institutions) and non-state (e.g. civil society organizations, media, think tanks) actors fulfilling oversight functions.
- State (e.g. Ministry of Interior, Ministry of Defence, police councils, etc.) agencies fulfilling security management functions.

→ For more information on the security sector, please see the SSR Backgrounder on "The Security Sector".



## HOW CAN SSR IMPROVE RESPECT OF HUMAN RIGHTS IN LOCAL CONTEXTS?

Security sector reform (SSR) is the process of improving the provision of state and human security in an effective and efficient manner, within a framework of democratic civilian control. SSR generally takes place in contexts of widespread human rights violations and state fragility (post-conflict, peace processes, major political transitions, disarmament, etc.), in which, most often, the security sector operates with limited or no oversight and potentially abuses its power. Implementing human rights standards is particularly challenging and necessary in these contexts. Human rights are key to peacebuilding. Restoring systematic respect for them requires security sector actors and institutions **to take responsibility for any violations committed in the past, as well as to undertake necessary steps to prevent future abuses.** The key objective of this process is to shift security sector actors from a previous status of autonomy and independence to one of duty-bearers towards the civilian population and oversight bodies.

Orientating SSR processes around human rights and human security enhances the capacity of civil society, communities, and individuals to determine the goals and means of the reform process and to participate to it. A human rights approach to SSR also ensures **local ownership** of the reform process, increasing its legitimacy and effectiveness with the people who are meant to benefit from its impact. Human rights also fit with a **multi-stakeholder** approach to SSR, enhancing **inclusivity** and **non-discrimination**, principles that ensure the right of communities to participate in public affairs. Furthermore, human rights lay down criteria for identifying local problems to be addressed, as well as local actors to be included in SSR efforts. SSR has the potential to restore and consolidate respect for human rights by emphasizing these rights as long-term goals in SSR programming, and by comprehensively monitoring and evaluating their implementation.

### SSR AND GENDER EQUALITY

SSR may also address deficiencies of security sectors in democracies or contexts not characterized by fragility or gross human rights abuses. A key example is achieving gender equality. This contributes to:

- Increasing the participation of women within security sector personnel, institutions, and oversight mechanisms as laid down in key global, regional, and national human rights instruments;
- Improving security provision, by ensuring that the different needs of men, women, girls, and boys are met;
- Providing appropriate responses to GBV;
- Securing the human rights of security sector personnel themselves;
- Enabling security sectors to be more representative of society as a whole; and
- Ensuring that all subsequent SSG/R processes are gender-sensitive.

➔ For more information, please see the “DCAF Gender and Security Toolkit”, and the SSR Backgrounder on “Gender Equality and Security Sector Reform”.

## WHAT TO READ NEXT

For further information on human rights

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- James Nickel  
**Human Rights**  
in *The Stanford Encyclopaedia of Philosophy*, edited by Edward N. Zalta, 2019. <https://plato.stanford.edu/archives/sum2019/entries/rights-human/>
- Joseph Raz  
**Human Rights in the Emerging World Order**  
*Transnational Legal Theory* 1, 31-47, 2009.
- International Justice Resource Center  
**Overview of the Human Rights Framework**  
<https://ijrcenter.org/ihr-reading-room/overview-of-the-human-rights-framework/>
- United Nations  
**Universal Human Rights Index**  
<https://uhri.ohchr.org/en/>

For more information on the interactions between human rights and security sector actors

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- Aloysius Toe and Jean Conte  
**Applying Human Rights Principles to the Liberian Security Sector: Practical Guidelines for Legislators**  
DCAF, 2020.
- DCAF – Amnesty International  
**International Police Standards: 10 Basic Human Rights Standards for Law Enforcement Officials**  
DCAF, 2009.
- OSCE/ODIHR, DCAF  
**Human Rights of Armed Forces Personnel: Compendium of Standards, Good Practices and Recommendations**  
DCAF, 2020.
- ICRC  
**International Rules and Standards for Policing**  
ICRC, June 2015.

For more on human rights in SSG/R processes

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- Linda Borgheden  
**An introduction to human rights and security sector reform**  
FBA paper. Folke Bernadotte Academy, 2020.
- Christoph Bleiker, Marc Krupanski  
**The Rule of Law and Security Sector Reform: Conceptualising a Complex Relationship**  
SSR Paper 3. Geneva: DCAF, 2012.
- David M. Law  
**Human Security and Security Sector Reform: Contrasts and Commonalities**  
*Security and Peace* 23 (1), 2005: 14–20.
- DCAF – ICRC  
**Addressing security and human rights challenges in Complex Environments – Toolkit**
- Rhoda E. Howard-Hassmann  
**Human Security: Understanding Human Rights**  
*Human Rights Quarterly* 34 (1), 2012: 88–112.
- DCAF  
**Regulating the Use of Force by Private Security Providers. A Guidance Tool for States**  
2019.
- **Security and Human Rights Knowledge Hub**  
<https://www.securityhumanrightshub.org>

### MORE DCAF SSR RESOURCES

DCAF publishes a wide variety of tools, handbooks and guidance on all aspects of SSR and good SSG, available free-for-download at [www.dcaf.ch](http://www.dcaf.ch)

Many resources are also available in languages other than English.

The DCAF-ISSAT Community of Practice website makes available a range of online learning resources for SSR practitioners at <http://issat.dcaf.ch>

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Helping to improve the way national security sectors are governed



Guiding the development of sound, sustainable security governance policies



Promoting locally owned reforms that are inclusive, participatory, and gender responsive

DCAF's engagement consists of:



Providing technical expertise to nationally led SSG/R processes



Capacity building for state and non-state actors



Publishing research and knowledge products



Promoting internationally recommended good governance practices



Advising on security sector-related legal and policy questions



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