

# *FBA Paper 2020*

## **An introduction to Human Rights and Security Sector Reform**



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*This paper explains how human rights are relevant to the success of security sector reform (SSR), makes recommendations on implementing a human rights-based approach to SSR, describes the nature of human rights obligations in relation to security and provides practical examples.*

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Rights and Security  
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# Introduction

Human rights is an integral part of the concept of security sector reform (SSR) as found in the resolutions and policies of the United Nations (UN), European Union (EU), African Union (AU) and other organisations.<sup>1</sup> Nevertheless, the actual implications and relevance of human rights obligations to SSR may need further clarification in order to be effectively addressed.

Many states have systems in place that seek to ensure that human rights are respected and protected by security actors and many security actors take great pride in their role as guarantors of the human rights of the people who they serve. However, the notion of human rights can spark a particular resistance amongst security actors because respecting human rights requires accountability in instances of allegations of past or present violations. Human rights obligations also ban or limit certain acts such as torture or ill-treatment, which may be perceived as necessary for combating critical security threats such as terrorism. There is a growing awareness that human rights violations by security actors, including discrimination, arbitrary arrest or extrajudicial killings, may be a cause of conflict and a trigger for joining violent extremist groups. This paper aims to provide an increased understanding of the role of human rights in SSR to demonstrate how the implementation of human rights obligations contributes to enhanced and sustainable security, peacebuilding and conflict prevention.

Human rights and security are closely linked. Human rights violations can be a cause of conflict, a result of conflict or an early warning of conflict. This paper will describe specific human rights and their link to conflict.

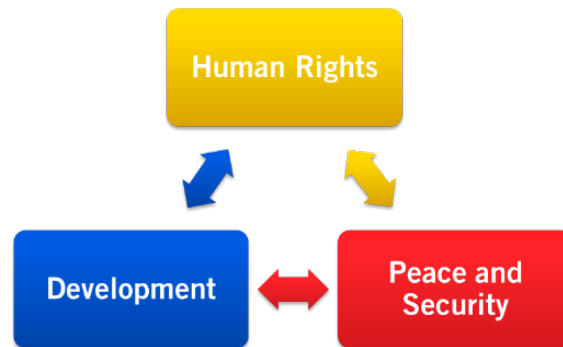
As stated by the UN Secretary General in the 2005 Report “In Larger Freedom”<sup>2</sup>:

*“We will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights.”*

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<sup>1</sup> See United Nations Security Council Resolution 2151(2014) on the maintenance of international peace and security: security sector reform: challenges and opportunities S/RES/2151 (2014) 28 April 2014; European Commission, *Elements for an EU-wide strategic framework to support security sector reform* SWD (2016) 221 final Strasbourg, 5.7.2016; *African Union Policy Framework On Security Sector Reform* (2013) adopted at the 20th Ordinary Session of the Assembly of the Union, Addis Ababa, Ethiopia, 27–28 January 2013 Assembly/AU/Dec.472(XXX). Para 21; United Nations SSR Task Force, *Security Sector Reform Integrated Technical Guidance Note* (2012).

<sup>2</sup> In larger freedom: towards development, security and human rights for all, Report of the Secretary-General, 21 March 2005, A/59/2005.



This paper will describe international human rights obligations, the concept of SSR, how human rights are relevant to successful SSR, what a human rights-based approach to SSR entails and provide practical examples of specific human rights.

# SSR

*The aim of SSR is to meet the security needs  
of men, women, boys and girls through an effective,  
affordable, accountable and transparent security sector  
that is governed by democratic principles*

— FBA SSR Programme

There are several definitions of SSR that vary in their exact wording but reiterate similar ideas. In summary, SSR should be a process of strategically and systematically reforming the wider security sector of a country and developing a holistic response to the security needs of all women, men, girls and boys. The security sector includes all relevant actors, such as the police, military, customs, judiciary, parliament, ministries and non-state actors. SSR should be guided by people's security needs in the wider concept of human security. A human-centred approach to SSR includes traditional areas of national security, such as defence and border controls, with the aim of increasing people's safety. It also includes judicial reform, improved parliamentary oversight of the security sector and civil society engagement. SSR should aim to render the security sector more effective, affordable, accountable and transparent. Core security actors (i.e. security actors with a mandate to use force or to enforce the law, such as the police, the military and correctional services), should be under civil control and democratic management.

SSR is often undertaken during periods of political transition and overall state reform, for example, after conflicts, subsequent to the transition from authoritarian regimes or during the independence or unification of states. Because of this, SSR has a particular role to play in peacebuilding and conflict prevention. The process of improving good governance in the security sector is often part of, or influenced by, the overall democratisation and rebuilding of a social contract between people and government. SSR is also part of the continuous modernisation and development of the security sector in stable and peaceful countries, often responding to new political decisions or evolving security challenges.

Many programmes and activities called SSR are of a sector-specific nature, such as community policing programmes, defence reform, the prevention of violent extremism or more technical "train-and-equip" programmes. It is essential that sector-specific reform programmes are well coordinated with other measures and actors and associated with the overall reform process. In SSR, even the most technical reform programme will be



affected by, and influence, the larger political process. Understanding this is critical to successful and sustainable reform.<sup>3</sup>

National ownership is a key principle of SSR. National ownership does not equate to state ownership but an inclusive national process, including consultation and engagement with civil society and representatives of every segment of the population.<sup>4</sup> Inclusive national ownership is essential in many ways, for example, ensuring the sustainability and long-term results of SSR. Ensuring ownership is also challenging as the process is often funded and promoted by donors and partners who may expect results over shorter time frames or may have different priorities.

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<sup>3</sup> See for example, Paul Jackson, *Introduction: Second-Generation Security Sector Reform*, *Journal of Intervention and Statebuilding*, Volume 12, 2018.

<sup>4</sup> United Nations Department of Peacekeeping Operations, *Security Sector Reform Integrated Technical Guidance Note*, National Ownership of Security Sector Reform p. 13 (2012).

# Human Rights

International human rights provide minimum standards for the relationship between the state and the people. Human rights include civil, political, economic, social and cultural rights. The people have rights and can claim them – they are “rights-holders”; the state and its representatives have a duty to respect, protect and fulfil these human rights – they are “duty-bearers”. This framework specifies responsibilities for the state to design systems, adopt policy and legislation and develop an enabling environment for the enjoyment of human rights. It entails responsibilities for state actors, including the police, the military and correctional services to provide specific services that meet a certain minimum standard.

There is evidence of various forms of human rights in many different cultures, religions and regions throughout the ages.<sup>5</sup> In 1948, the UN General Assembly unanimously adopted the Universal Declaration of Human Rights (UDHR), which became the first internationally agreed human rights. The declaration was followed by nine core human rights conventions and many other treaties.<sup>6</sup>

## Core Human Rights Conventions

- International Convention on the Elimination of All Forms of **Racial Discrimination** (1965)
- International Covenant on **Civil and Political Rights** (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- Convention on the Elimination of All Forms of **Discrimination against Women** (1979)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the **Rights of the Child** (1989)
  - Optional Protocol on the Involvement of **Children in Armed Conflict** (2000)
  - Optional Protocol to the Convention on the Rights of the Child on the **Sale of Children, Child Prostitution and Child Pornography** (2000)
- International Convention on the Protection of the **Rights of All Migrant Workers** and Members of Their Families (1990)
- Convention on the Rights of **Persons with Disabilities** (2006)
- International Convention for the Protection of All Persons from **Enforced Disappearance** (2006)

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<sup>5</sup> For example, the Code of Hammurabi (Babylonia, 1754 BC), Cyrus Cylinder (Persia 539 BC), Magna Carta (England, 1215), US Declaration of Independence (1776), French Declaration of the Rights of Man and Citizen (1789).

<sup>6</sup> See table. The list of core international human rights instruments includes all core instruments but only the selected optional protocols.

Various regions (including Africa, Europe and the Americas) have developed regional human rights treaties. As the state is responsible for ensuring the protection of human rights, it is essential that international human rights obligations are incorporated into national and local laws and policies so that people can seek justice for human rights violations through their national/local systems of law enforcement, courts, public administration or otherwise. When people are unable to receive an effective remedy through their domestic process, the international principles provide a standard which civil society and others can use to advocate for change.

So, states have an obligation to respect, protect and fulfil human rights. What does this mean?

- **Respect** – The obligation to respect human rights means that government bodies, including security actors, should not violate human rights standards. For example, the police must allow people to hold peaceful assembly such as demonstrations (in accordance with national laws and rules and within acceptable limitations) without police harassment or interference.
- **Protect** – The obligation to protect human rights goes one step beyond “respecting”. Following the previous example, the state, including the police, must protect an individual’s right to hold peaceful demonstrations by protecting such demonstrators from the harassment or violent interference of others.
- **Fulfil** – The obligation to fulfil and promote human rights requires states to take positive action to create systems and an enabling environment in which people feel free to exercise their rights. Following our example of peaceful assembly, this could involve ensuring that the administrative procedures for requesting permits for such demonstrations are accessible and understandable and ensuring all police officers are trained to be aware of the rights and their importance in a democratic society.

Human rights are universal and inalienable.<sup>7</sup> They are universal because all people in all societies have the same rights, regardless of where they live, their gender or race, or their religious, cultural or ethnic background. The term “inalienable” means that all rights are equal in importance and none

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<sup>7</sup> This is a classic way of describing human rights, see, for example, <https://www.ohchr.org/EN/Issues/Pages/WhatAreHumanRights.aspx>

can be fully enjoyed without the others. For example, if we want to ensure that people enjoy the right to a fair trial, freedom of expression or the right to participate in public affairs, it is essential to also ensure their right to education, their right to adequate living standards and their right to health. Without basic literacy, people will struggle to access the court system.

Traditionally, only states were held responsible for human rights violations.<sup>8</sup> These days, non-state actors from armed groups to transnational corporations are often accused of human rights violations.<sup>9</sup> There is an ongoing debate as to whether and how human rights obligations apply to non-state actors. As a minimum, states should ensure that non-state actors that operate within or from the relevant country can be held accountable for violations of the human rights of others under national law. Non-state armed groups that have taken control of a territory and act as authorities in the absence of a state have been called on to respect international human rights law in the areas they control.<sup>10</sup> In situations of armed conflict, international humanitarian law obligations<sup>11</sup> apply to non-state armed groups and many of the obligations under this body of law are complementary to the protection afforded under international human rights law. Companies have joined voluntary initiatives to align strategies and operations with universal principles on human rights.<sup>12</sup>

See next chapter for more detailed examples of specific human rights that are relevant to the security sector.

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<sup>8</sup> Traditionally, only states ratified conventions and were legally bound by them. In recent years, it has been recognised that entities other than states are bound by human rights as customary international law. Numerous international organisations, including the UN, have adopted policy requirements that state that the organisation's actions should be conducted in line with human rights standards. In the European Union, this development has gone a step further, whereby the EU itself is bound as an international organisation by the Charter of Fundamental Rights of the European Union, which entered into force with the Lisbon Treaty. The EU has also ratified the United Nations Convention on the Rights of Persons with Disabilities.

<sup>9</sup> See, for example, the United Nations statements on the accountability of Daesh for human rights violations (for example, First report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant S/2018/1031, 16 November 2018) or civil society calls for accountability of social media corporations (Amnesty International, *Surveillance Giants: How the Business Model of Google and Facebook threatens Human Rights*, 2019).

<sup>10</sup> See for example, *The Accountability of Armed Groups under Human Rights Law*, Katharine Fortin (Oxford University Press 2017).

<sup>11</sup> International humanitarian law, or the law of armed conflict, obliges parties to armed conflict to respect and protect those who do not take part in hostilities, such as civilians, the injured and prisoners of war, and limits the rights of parties to use armed force. This body of law applies to all parties to the conflict, including non-state armed groups. Serious violations of international humanitarian law constitute war crimes.

<sup>12</sup> See for example, UN Global Compact and the UN Guiding Principles on Business and Human Rights.

# *Human Rights and SSR*

Respecting, protecting and fulfilling human rights are part of the role of all security actors. Doing so can increase the public's confidence and trust in government institutions, which is critical to peacebuilding and conflict prevention. Using the concept of human rights in SSR can help actors like the police and the military to understand their role as duty-bearers in providing security as a public service to the people – the rights-holders. This can involve a difficult but important shift in mindset. In situations where core security actors (police, intelligence, military etc.) have previously identified a duty only to a certain leader, regime or ethnic group or have operated with limited accountability, it requires a strategic change of the organisational culture to enable the personnel to refocus and understand their primary duty to protect and serve the people.

SSR and human rights are also closely associated with the idea of democracy and the rule of law. People elect their representatives to parliament, parliament formulates legislation, which then binds everyone (the state, people and organisations). Ideally, this should be the process that drives SSR forward. For example, core rule of law principles state that all people and institutions within a state should be accountable to the same laws and that citizens should have equal access to justice and public institutions. Everyone should have the opportunity to participate in decision-making. Official decisions must be transparent and should be possible to appeal.<sup>13</sup>

Democracy is not limited to elections but also includes<sup>14</sup>:

- Citizen participation: a vibrant civil society, national and local elections.
- Representative governance: free and fair elections, universal suffrage, independent political parties.
- Rights: access to justice, enjoyment of human rights – not least freedom of expression, social and economic rights, and equality.
- Separation of powers: well-functioning parliaments, independence of judicial systems, free and independent media.

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<sup>13</sup> <https://fba.se/en/areas-of-expertise/rule-of-law/>

<sup>14</sup> Definition of democracy, Drive for Democracy, The Government Office of Sweden, see The drive to democracy takes shape <https://www.government.se/Articleicles/2019/11/drive-for-democracy-takes-shape/>

- Independent institutions: predictable execution of decisions, absence of corruption.

Human rights are crucial to the democratic process and should be included in national legislation, programmes and policies, implemented and upheld throughout the government systems, including the courts. The people should hold the state to account for its human rights obligations. A vibrant and diverse civil society has an important role in advocating for accountability.

SSR, as defined above, should strive to ensure that the security sector is effective, affordable, accountable and transparent.<sup>15</sup> Human rights is directly relevant to these four objectives:

- Effectiveness: The security sector should be effective in making people safe and secure – ensuring human security that is realised through respecting, protecting and fulfilling the human rights of the population. Such rights include the right to life, right to liberty and security of person, the absolute prohibition of torture, right to non-discrimination.
- Affordability: The cost of core security actors should be balanced with other government expenditure to enable the people to enjoy the full range of human rights, including economic, social and cultural rights, such as the right to education and health. This requires assessing whether government expenditure meets the ultimate goal – making people safer.
- Accountability: When security actors are suspected or accused of human rights violations, it should be reported, investigated and lead to appropriate action in accordance with the rule of law. This requires a functioning justice system and systems within the security organisations to review disciplinary matters and codes of conduct uphold. It is important that people are aware of the right to an effective remedy for breaches of human rights standards and that people have trust in the systems that hold security actors accountable. This includes people having access to and receiving information about accountability mechanisms. Accountability requires proactive measures to ensure violations do not occur in the first place, such as ensuring core security actors have a code of conduct, are well trained, and that recruitment processes include the vetting of prior human rights violations.

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<sup>15</sup> These four objectives are the FBA SSR programme's summary of the most common SSR definitions, policies and guidelines of international organisations and are used in FBA SSR training.

- Transparency: the right to access of information also applies to the security sector and is a prerequisite of democratic oversight in order to enable parliamentarians, civil society, media and others to assess whether security services are effective, affordable and accountable. Transparency permits scrutiny that can improve plans and amend plans that are not in the best interests of the people, as well as restore confidence and reduce concerns about the strategic direction of core security actors.

In line with the principle of inclusive national ownership, reforms that respect, protect and fulfil human rights should be developed and implemented through national processes and those actors leading the reforms should be held to account by the local population. Human rights are often mentioned when external actors (such as donors, partners) provide support to SSR. A typical example of this is providing human rights training as part of security force assistance. In such situations, it is recommended that capacity building on human rights includes the specific conventions ratified by the state, regional human rights instruments, if relevant, as well as national legislation and the human rights system. It is often very useful to include national human rights institutions or local human rights organisations in training and other programmes.

# *Human Rights-based Approach to SSR*

As outlined above, human rights are specific obligations of the state that are outlined in international, regional or national law or policies. Human rights form a legal and/or normative framework for SSR. A *human rights-based approach* to SSR is a method of translating human rights obligations into reform programmes and operationalising the normative human rights framework in order to bring about change. The UN's system and development cooperation partners have developed different tools to achieve this.

The UN defines a human rights-based approach (HRBA) as a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights<sup>16</sup>. The UN “common understanding on HRBA”<sup>17</sup> states the following:

1. All programmes of development co-operation, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.
2. Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments, guide all development cooperation and programming in all sectors and in all phases of the programming process.
3. Development cooperation contributes to the development of the capacities of ‘duty-bearers’ to meet their obligations and/or of ‘rights-holders’ to claim their rights.

A human rights-based approach to SSR is a reform programme aimed at realising the range of human right obligations relevant to human security. This could include:

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<sup>16</sup> See for example UNDG/DOCO, Human Rights-based Approach to Development Programming - Note prepared by UNDG/DOCO, (2012)

<sup>17</sup> The United Nations Development Group, *The Human Rights Based Approach to Development Cooperation*, (2003). Many organisations have used the common understanding as a basis for developing HRBA tool for their own areas of work. The Swedish International Development Cooperation Agency (Sida) focuses on the following elements: participation, links to human rights, accountability, non-discrimination, empowerment, transparency. See <https://www.sida.se/English/partners/methods-materials/human-rights-based-approach-at-sida/>



- Participation – designing inclusive processes of consultation in which the people concerned can express their security needs, provide input to planning processes and inform decision-making. Inclusive processes work towards reducing discrimination and ensuring the right to participate in public affairs.<sup>18</sup>
- Analysis – identifying human rights violations and concerns in the analysis that guide SSR. There is a multitude of different analytical tools used in SSR, such as conflict analysis, analysis of strengths and weaknesses of security actors, problem analysis, needs analysis or risk analysis. Such analysis should include human rights concerns, vulnerabilities amongst rights-holders and the capacity of relevant duty-bearers. A Do No Harm analysis may reveal that the enhanced operational capacity of core security actors leads to an enhanced capacity to violate human rights,<sup>19</sup> for example, when enhanced command and control leads to intensified use of torture or ill-treatment.
- Actor mapping - including key human rights actors in actor mapping and engaging such actors in the SSR process. This could include human rights commissions, civil society, independent media and other human rights defenders.
- Programming – including realisation of human rights standards in objectives, outcomes, activities and results. This would ensure that the assessment and evaluation of programmes actually measures the improvement in the realisation of human rights. The UN OHCHR has compiled tables of proposed human rights indicators on various levels, including the right to personal security, the right to participate in public affairs, freedom of expression, violence against women and more.<sup>20</sup>

It can also be argued that using the concept of human security in reform processes is a part of a human rights-based approach to security as it uses a more modern, people-centred and multi-disciplinary approach to identifying security needs.

The UNDP Human Development Report (1994) found that human security entails threats in seven areas: economic security, food security, health

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<sup>18</sup> International Covenant on Civil and Political Rights, Article 25, Convention on the Elimination of All Forms of Discrimination Against Women, Articles 7, 8.

<sup>19</sup> Seeing such unintended effects has led to the development of the UN Human Rights Due Diligence Policy on UN Support for Non-United Nations Security Forces (UN. Department of Peacekeeping Operations, UN. Department for Field Support, PK/G/21844, 2015), which requires all United Nations entities to be diligent in ensuring that support to non-UN security forces is compliant with and promotes respect for international humanitarian, human rights and refugee law.

<sup>20</sup> United Nations Office of the High Commissioner for Human Rights, *Human Rights Indicators: A Guide to Measurement and Implementation* (2012), Chapter 4, page 88.

security, environmental security, personal security, community security and political security. These correspond to the right to work, the right to food, the right to health, civil and political rights, minority rights, etc.

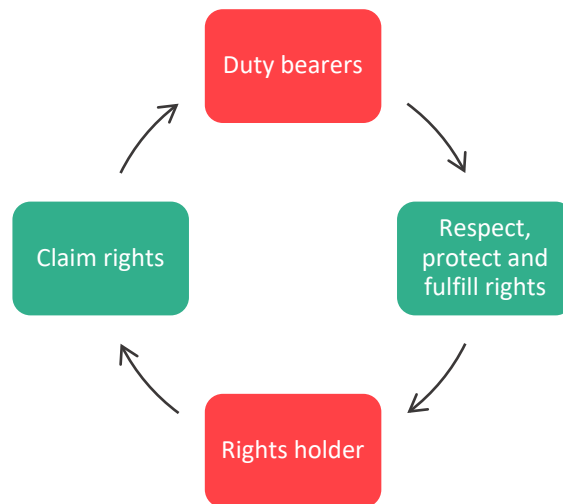
The UN General Assembly’s “common understanding on the notion of human security”<sup>21</sup> describes human security as:

*“The right of people to live in freedom and dignity, free from poverty and despair. All individuals, in particular vulnerable people, are entitled to freedom from fear and freedom from want, with an equal opportunity to enjoy all their rights and fully develop their human potential”.*

The UN General Assembly further agreed that:

*“Human security recognizes the interlinkages between peace, development and human rights, and equally considers civil, political, economic, social and cultural rights”.*

As seen above, the concept of human security actually includes the enjoyment of human rights. However, this is not always expressly stated. Sometimes, the specific characteristics of human rights obligations, such as the accountability of duty-bearers, are not visible. It is therefore advisable to complement the use of human security by also expressly referring to human rights obligations.



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<sup>21</sup> UN General Assembly resolution 66/290. *Follow-up to paragraph 143 on human security of the 2005 World Summit Outcome*, A/RES/66/290, 25 October 2012. Article 3.

# *Examples of human rights and their relevance to SSR*

## **Non-discrimination**

All the core human rights conventions include the prohibition of discrimination. People should have access to all human rights without discrimination of any kind “such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.<sup>22</sup>

It may be easier for those in power to provide services to likeminded people, or those who share the same language or religion as those in power. It may be more challenging to ensure that the same services or safeguards are provided without discrimination when it is more difficult or more expensive, such as fair conditions of detention for political opposition members, police community outreach in rural areas, and ensuring that laws and policies are accessible in languages that are understood.

Discrimination against ethnic and social groups is a breeding ground for new conflicts and violent extremism. Systematic discrimination against a group over time may lead to a violent reaction. When law enforcement agencies target a certain category of people using measures that violate their human rights, for example, through harassment, torture, or arbitrary detention, it may lead to increased resentment towards such actors and a reduction in trust.<sup>23</sup>

A study on radicalisation in Africa (2017) found that 71 percent of persons interviewed pointed to “government action”, including “killing of a family member or friend” or “arrest of a family member or friend” as the incident that prompted them to join a violent extremist group.<sup>24</sup> Grievances against security actors and politicians were found to be particularly high amongst persons who joined such groups. Positive experiences of effective service

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<sup>22</sup> Universal Declaration of Human Rights, Article 2.

<sup>23</sup> United Nations and World Bank, *Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict* (2018).

<sup>24</sup> United Nations Development Programme, *Journey to Extremism in Africa* (2017), pages 5, 73.

provision by the state was confirmed as being a source of resilience to recruitment.<sup>25</sup>

Even the perception amongst a specific group of people that the Government was treating their group unfairly seems to result in a higher levels of support for violence.<sup>26</sup> The perception of exclusion and inequality has even been found to matter more than measured inequality and exclusion.<sup>27</sup>

SSR should be based on an assessment of all the different security needs in a given society and proceed to form a strategy for responding to such needs without discrimination. This would include the security needs of women and girls, ethnic and religious minorities, rural populations, youth, human rights defenders, people with disabilities and indigenous peoples, for example.

If the security needs of different segments of the population are overlooked, it will reduce the effectiveness of security providers. The security needs of certain groups, including minority groups, may have been actively ignored. The security needs of women, such as protection from domestic violence, may be misunderstood as being a private matter. This results in less security and could reduce an active and positive contribution to peacebuilding and development.

### **Human rights of women and girls**

Women and girls are entitled to full enjoyment of all human rights. However, due to inequality in representation, resources and access to rights<sup>28</sup>, there is a need to actively focus on realising the human rights of women and girls. This includes assessing the security needs of women and girls during security sector reform to ensure such needs are known and responded to. Traditional gender roles and stereotypes may also hide a number of security needs of men and boys, requiring an active gender analysis and gender-responsive SSR.

The UN Convention on the Elimination of all forms of Violence against Women (CEDAW), as well as UN Security Council Resolution 1325 (2000) and subsequent resolutions, emphasise the right of women to participate in the field of peace and security. In the very first paragraph of UNSCR1325, the UN Security Council urges states to "ensure increased

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<sup>25</sup> Ibid., pages 5, 39.

<sup>26</sup> United Nations and World Bank, *Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict* (2018), p.122.

<sup>27</sup> Ibid.

<sup>28</sup> Ministry of Foreign Affairs *Handbook, Sweden's feminist foreign policy* (2019), page 11.

representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict”<sup>29</sup>.

This means that SSR processes must be designed to include women in consultations as well as in decision-making bodies. The reforms should be gender-responsive and have strategies in place to increase the numbers of women working in security-related fields and respond to women’s security concerns. This could include community policing programmes that involve engagement with women or SSR consultations that are designed to ensure the active and meaningful participation of women, mindful of the local context. Such measures will only be possible if all staff have been trained to be gender responsive within the organisation’s mandate and responsibilities. Appropriate training, regulations and procedures, recruitment and performance-appraisal systems are needed to ensure that staff have the requisite capacity and ability to take the necessary measures. This requires a thorough gender analysis of the organisation and a strategic plan for change.

Gender-responsive SSR is a human rights-based approach as it aims to realise women’s and girls’ human rights, as well as the human rights of men and boys. This takes into account the fact that security needs, challenges and consequences for women, men, girls and boys can vary. It emphasises the right of women to participate in public affairs, including decision-making and in the provision of security.<sup>30</sup>

### **Freedom of expression and right to access to information**

An active, stable and resilient democracy needs plurality in debates and ideas.<sup>31</sup> This is protected in the right to freedom of expression, which includes the right to express ideas that may not conform to the views of the ruling party, as long as it does not incite violence or limit other persons’ rights.<sup>32</sup> It is crucial that core security actors understand the premises of a democratic, lively public discourse and provide security to ensure such discourse is possible.

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<sup>29</sup> UN Security Council Resolution 1325 (2000), S/RES/1325 (2000), operational para. 1.

<sup>30</sup> For further information, please see FBA brief: Folke Bernadotte Academy/Frida Gabrielsson Kjäll *Gender-Responsive SSR: What Does it Mean and What are the Challenges for its Implementation?* (2016)

<sup>31</sup> See, for example, United Nations Educational, Scientific and Cultural Organization, *Press freedom and development: an analysis of correlations between freedom of the press and the different dimensions of development, poverty, governance and peace* (2007).

<sup>32</sup> See for example, United Nations Human Right Committee General Comment No. 34 on Article 19: Freedoms of opinion and expression (2011).

Freedom of expression includes the right to access information,<sup>33</sup> which is the freedom to seek, receive and impart information and ideas orally, in writing or in print, or in any other form.<sup>34</sup> This can be restricted so as to respect the rights of others (for example, hate speech) or to protect national security or public order, but only where provided by law and when strictly necessary and proportionate.

This right requires transparency and access to government information. This is challenging because, when it comes to the reform of core security actors, much of this information is considered to be confidential. While there is a legitimate need for certain information to be classified as confidential, as much information as possible should be made publicly available. The information that must be kept confidential, for example, regarding national security or safety of personnel, should be reviewed by specialised mechanisms for democratic oversight and control, such as special parliamentary committees with security clearance, or be subject to review and clearance by independent judicial committees.<sup>35</sup>

Transparency and sharing of information may contribute to greater effectiveness and professionalism through an understanding that actions will be scrutinised. It is also very beneficial when undertaking SSR, as it could enlighten the need for reform and strengthen trust in government agencies. This is particularly the case when considering the wide range of information relevant to SSR, not least, the management of public finances.<sup>36</sup>

### **Freedom of association and the right to peaceful assembly**

Everyone has the right to form and join an association and the right to peaceful assembly (to demonstrate).<sup>37</sup> These rights should only be limited for specific reasons, by law and as necessary and proportionate in a democratic society.<sup>38</sup> If there is concern that demonstrations may escalate into violence, law enforcement agencies should seek to use all other means of preventing violence without restricting the right to demonstrate. This may include in-depth dialogue between the police and organisers of the demonstration, agreement on the best time and place for the demonstration in order to reduce the risk of violence and disturbance, and preparing the police who will be deployed at the demonstration to ensure

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<sup>33</sup> United Nations Human Rights Committee, General Comment No. 34 Article 19: Freedoms of opinion and expression (2011) para. 19.

<sup>34</sup> International Covenant on Civil and Political Rights Article 19(2).

<sup>35</sup> See, for example, Hans Born and Aidan Wills (Eds.), *Overseeing Intelligence Services: A Toolkit*, The Geneva Centre for the Democratic Control of Armed Forces (DCAF) (2012).

<sup>36</sup> Harborne, Bernard and Dorotinsky, William; Bisca, Paul M. *Securing Development: Public Finance and the Security Sector*, World Bank (2017).

<sup>37</sup> International Covenant on Civil and Political Rights Article 21.

<sup>38</sup> *Ibid.*

that they remain calm, are appropriately equipped and in sufficient numbers to respond to any security challenge.

Freedom of association and the right to peaceful assembly are crucial to democracy. Individuals may not have much influence on their own but if they are united in public movements, more can be achieved. Much of the progress in democratisation and peacebuilding is due to civil society engagement. Police and intelligence services must understand this role and carefully balance any information regarding threats and risks to ensure people can organise themselves and express their agendas to the greatest extent possible without automatically being considered a threat to a specific regime, or to public order.

### **The right to a fair trial**

The right to a fair trial means that when charged with a crime or other violation of the law, a person is entitled to a “fair and public hearing by a competent, independent and impartial tribunal established by law”.<sup>39</sup>

Several more specific rules are encapsulated in this right, such as the right to be presumed innocent until proven guilty, to be informed of the charges in a language the defendant can understand, and to be tried without undue delay. This right is closely related to the right to liberty and security of person, which provides safeguards against arbitrary arrest and detention.<sup>40</sup>

To uphold the right to a fair trial, a range of different actors are involved. The court system must be organised sufficiently to function effectively and in accordance with the law. Police investigators and prosecutors must take into account the presumption of innocence and the need to gather evidence which will bear scrutiny by the accused’s defence counsel and an impartial court. The investigation should proceed without undue delay and according to rule of law principles. Security sector reform must consider all actors in the criminal justice chain to ensure that the right to a fair trial is observed. The same rules apply to military tribunals.

It is crucial that justice is not only done but is also seen to be done. This requires appropriate access to court proceedings and transparency in information. Studies on transitional justice indicate that conducting domestic criminal prosecutions for past human rights violations is significantly related to the non-recurrence of intrastate conflict.<sup>41</sup>

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<sup>39</sup> International Covenant on Civil and Political Rights, Article 14.

<sup>40</sup> Universal Declaration of Human Rights Article 3, International Covenant on Civil and Political Rights Article 9.

<sup>41</sup> United Nations and World Bank, *Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict* (2018) s. 169.

Addressing impunity for human rights violations can be a complex process, which also includes addressing corruption, potential political interference and other obstacles to justice.

### **Conditions of detention and imprisonment, prohibition of torture**

Any arrest, detention or imprisonment must be in accordance with international and national law.<sup>42</sup> This aims to set limits for the police, intelligence services, the military and correctional services from using their powers arbitrarily or for purposes such as mere intimidation or punishment. Several international conventions<sup>43</sup> and minimum standards and guidelines<sup>44</sup> set specific rules for the protection of detained and imprisoned persons. For example, detained children must be separated from adults, women separated from men and convicted persons separated from accused persons. Also, solitary confinement should only be used as an extreme measure and for short periods of time.

This framework of specific human rights rules leads to an obligation for the state to plan for a functioning detention and prison system, with adequate funding, recruitment and training of personnel, as well as accountability mechanisms. Sector-specific reform in this area could involve the ministry of the interior, ministry of finance, ministry of health, ministry of justice, prosecutors' office, judiciary, the police, ombudsman's office and civil society engagement, as well as correctional services and prison administration.

There is also a specific and absolute prohibition of torture, inhuman, cruel or degrading treatment or punishment. The legal definition of torture in human rights law differs quite significantly from the way the term is commonly used in the media or in general conversation.<sup>45</sup> The internationally agreed definition<sup>46</sup> is quite long and complex and contains the following three elements:

1. the intentional infliction of severe mental or physical suffering
2. by a public official, who is directly or indirectly involved
3. for a specific purpose (extracting information or confession, punishment, etc.)

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<sup>42</sup> International Covenant on Civil and Political Rights Article 9(1).

<sup>43</sup> International Covenant on Civil and Political Rights, Convention on the Rights of the Child, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>44</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Adopted by General Assembly resolution 40/33 of 29 November 1985, The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). General Assembly resolution 70/175, annex, adopted on 17 December 2015.

<sup>45</sup> See for example, Association for the Prevention of Torture <https://apt.ch/en/what-is-torture/>

<sup>46</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1(1).



The UN Convention against Torture provides: “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”<sup>47</sup> The prohibition of torture has wider-ranging obligations than is often understood. States must criminalise the act of committing torture, but also complicity or participation in torture, such as superiors ordering or accepting such practices. The state is under an obligation to prevent torture through systematically reviewing interrogation rules and practices. States are also prohibited from sending a person to another country where there are substantial grounds to believe that they would be at risk of being subjected to torture (the principle of non-refoulement). Again, this requires analysis and action by a range of actors, from the legislature to the funding arrangements.

### **Rights of the child, children associated with armed conflict and youth engagement**

The Convention on the Rights of the Child has now been almost universally ratified and sets an overarching rule for all reform – in all actions regarding children, the best interests of the child should be the primary consideration. Children are defined as persons under the age of 18 years. This is followed by more specific rules for the protection of children, including taking into consideration the specific security needs of children (protection from violence, abuse, neglect, etc.), as well as rules on considering the best interests of the child when it encounters the police, correctional services, judiciary and other security actors. Children also have the right to participate in relevant processes and voice their opinions, which should be considered according to the age and maturity of the child. This is particularly important for SSR in post-conflict settings in which children have been affected by insecurity and need to be able to express their needs and concerns about peacebuilding, including SSR.

The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2002) provides that persons under the age of 18 have special protection and should not directly participate in hostilities. The Protocol prohibits the forced recruitment of anyone under the age of 18.

The UN Security Council Resolution 2250 (2015) on Youth urges states to “increase inclusive representation of youth in decision-making at all levels in local, national, regional and international institutions and mechanisms for the prevention and resolution of conflict, including institutions and mechanisms to counter violent extremism, which can be conducive to

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<sup>47</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 2(2).

terrorism, and, as appropriate, to consider establishing integrated mechanisms for meaningful participation of youth in peace processes and dispute-resolution”.<sup>48</sup> Youth in the context of UNSCR 2250 are defined as persons aged 18–29 years. As youth could be important drivers of positive change or a cause of insecurity, SSR processes should always include youth engagement and perspectives.

### **Economic, social and cultural rights**

The human rights challenges described above are of a type known as “civil and political rights”. These may be the first rights to come to mind when considering human rights and security sector reform. However, there are several economic, social and cultural rights that are highly relevant to and intertwined with the challenges listed above, as well as relevant to security sector reform. These rights include, but are not limited to:

- right to adequate standard of living, including adequate food, clothing and housing<sup>49</sup>
- right to education, including free and compulsory primary education<sup>50</sup>
- right to enjoyment of the highest attainable standard of physical and mental health.<sup>51</sup>
- Right to just and favourable conditions of work<sup>52</sup>

As SSR has departed from the traditional understanding of security to embrace a people-centred approach to human security (see above), analysing and understanding these rights can be very relevant. When assessing the security needs of women, men, girls and boys, the range of security perspectives and corresponding human rights should be taken into account and responded to, in the knowledge that a lack of food or health services could potentially be more harmful to a person’s safety and survival than crime or armed conflict. There are also examples of how violations of economic, social and cultural rights cause conflict, such as the insecurity that followed the outbreak of Ebola in West Africa, or discrimination in access to work, which causes frustration and contributes to conflict. Also,

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<sup>48</sup> United Nations Security Council Resolution 2250 (2015), S/RES/2250 (2015) 9 December 2015, paragraph 1.

<sup>49</sup> International Covenant on Economic, Social and Cultural Rights, Article 11

<sup>50</sup> International Covenant on Economic, Social and Cultural Rights 13, Convention on the Rights on the Child Article 28, Convention on the Elimination of All Forms of Discrimination against Women, Article 10.

<sup>51</sup> International Covenant on Economic, Social and Cultural Rights Article 12, Convention on the Elimination of All Forms of Discrimination against Women, Article 12.

<sup>52</sup> International Covenant on Economic, Social and Cultural Rights Article 6, Convention on the Elimination of All Forms of Discrimination against Women, Article 11. Children are protected from hazardous work in the Convention on the Rights of the Child, Article 32.

the violations of such rights may be associated with insecurity resulting from violations of other civil and political rights.

# Conclusion

A human rights-based approach to SSR ensures that reforms achieve the objective of making people safe, through realising a range of human rights relevant to people's survival and well-being, as well as freedom from fear and freedom from want. The people-centred approach to human security aligns with the focus on people as rights-holders. The prohibition of discrimination obligates the state to ensure inclusive SSR, taking into account that even the *perception* of exclusion may generate conflict. The right to a fair trial, freedom of information, freedom of association, right to peaceful assembly and right to an effective remedy all play a role in holding security actors to account. A human rights-based approach to SSR highlights accountability in order to ensure that security actors are scrutinized and held responsible for any human rights abuses.

A human rights-based approach to SSR also creates a platform for a change in organisational culture and attitudes necessary to ensure that the police, the military and intelligence services and others act as public service providers. Understanding that the people have assigned core security actors responsibilities and powers that should be used with clear limitations is important with regard to respecting the rule of law and the democratic process. Successful SSR must be guided by the understanding of people as rights-holders and the state, including core security actors, as duty-bearers in providing security as a service to the people.



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