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Rethinking a Human Rights-based Approach to SSR

Security Sector Reform (SSR) is an institutional development process that requires an inherent and inextricable human rights focus. States, as principal duty-bearers, have human rights obligations to fulfil within their jurisdiction. The international community has a normative obligation to ensure their support to the SSR process places the receiving State in a stronger position to fulfil these obligations and uphold the Rule of Law (RoL) in general.

In spite of substantive progress being made in promoting a rights-based and gender-responsive SSR process there is still room for improvement when it comes to translating security policy commitments to human rights into operational impact. This need for improvement becomes particularly evident in countries affected by a fragile rule of law and/or a weak system of decentralised security governance. In these contexts civil participation struggles to influence the security agenda with vulnerable persons and/or groups¹ becoming most marginalised in the process.

We argue that SSR needs to rethink how a human rights-based approach (HRBA) can be reinforced, in particular how it can be implemented more consistently with prescribed norms, and more cohesively between duty bearers. This reflection should aim to reinforce SSR's inherent principles, such as **non-discrimination, participation, transparency, accountability** and **good governance**. Additionally, SSR practitioners should re-examine the fundamental role that supporting the decentralisation of security governance plays on facilitating a HRBA for wider and more sustainable impact.

So what exactly is meant by a HRBA? The European Commission defines a HRBA as an approach that integrates human rights principles and standards into all aspects of the programme design, implementation, monitoring and evaluation.² Moreover, the Commission states that “all policies, programmes and related activities of cooperation that are implemented with a HRBA will be aimed at concretely and directly contributing to the realisation of human rights, and will integrate human rights at each step of project cycle management.”³ The Commission further specifies that “**in the security sector, a HRBA would consist of avoiding a programme that, for example, focuses exclusively on capacity building of police personnel without taking into account the rights of defendants and victims.**”⁴

¹ For the purposes of this working paper, the authors will refer to the UNODC-supported definition of vulnerable groups which states “vulnerable people are defined as those who, due to reasons of age, gender, physical or mental state, or due to social, economic, ethnic and/or cultural circumstances, find it especially difficult to fully exercise their rights before the justice system as recognised to them by law. The following may constitute causes of vulnerability: age, disability, belonging to indigenous communities or minorities, victimisation, migration and internal displacement, poverty, gender and deprivation of liberty. The specific definition of vulnerable people in each country will depend on their specific characteristics, and even on their level of social or economic development.” See UNODC https://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Issue_Paper_-_Abuse_of_a_Position_of_Vulnerability.pdf

² Operational Human Rights Guidance for EU external cooperation actions addressing Terrorism, Organised Crime and Cybersecurity Integrating the Rights-Based Approach. European Commission. 2014. P. 14 http://ec.europa.eu/europeaid/sites/devco/files/manual-hr-guidance-ct-oc-cyber-20151105_en.pdf

³ Ibid.

⁴ Ibid.



Applying a very similar definition of a HRBA to the EU, the UN characterises a HRBA as a “conceptual framework that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights”.⁵ The UN further adds that a HRBA “constructs people as key actors in their own development rather than passive recipients of development aid” and “**seeks to analyse inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress.**”⁶ In this conceptual framework, participation, empowerment, ownership and accountability are central pieces in development co-operation including in the support of SSR.

Thus, a HRBA in SSR support should be a key tool to help national authorities translate abstract human rights norms and associated obligations into operational practice. It should also provide a robust framework for rights holders and SSR supporting donors to hold duty-bearers accountable to criteria that reflects human rights due diligence.

So how can a HRBA help turn abstract human rights norms and associated obligations into clear guidance for security providers? Moreover, how can SSR-supporting donors better monitor their results so they capture behavioural change on part of the duty bearer to comply with the procedural obligations in a manner consistent with human rights norms?

For this we recommend the SSR community review the international human rights jurisprudence with the goal extracting the policy and operational norms related to security provision. International mechanisms such as the European Court on Human Rights (ECHR), Inter-American Court of Human Rights (IACHR) and UN Treaty Bodies have developed in their jurisprudence key procedural aspects for security providers to respect when compiling with their human rights obligations. This information is not only straightforward in practical terms, it is fundamental for understanding the due diligence required in any human rights mainstreaming and/or human rights based approach involving the justice and security sector.

As for reinforcing a robust framework for SSR supporting actors to hold duty-bearers accountable, we recommend starting by identifying a proven analytical methodology that breaks down a human rights problem and exposes its different aspects, including the many causal and contributing factors. The UN office of the High Commissioner for Human Rights (OHCHR) has created their Human Rights Risk Assessment Tool which distinguishes among four distinct aspects of a human rights problem: (i) threat, (ii) vulnerability, (iii) commitment and (iv) capacity as evident in the following formula.⁷

$$\text{RISK} = \frac{\text{Threat} \times \text{Vulnerability}}{\text{Commitment} \times \text{Capacity}}$$

When understood separately in the SSR context, these aspects should point the way towards entry points where SSR can support the duty bear to better respect, protect and fulfil their human rights obligations. Moreover, we argue that OHCHR’s human rights risk assessment tool can serve as a

⁵ See OHCHR, Frequently Asked Questions on a Human Rights-based Approach to Development Cooperation (New York and Geneva, United Nations, 2006). <http://www.ohchr.org/Documents/Publications/FAQen.pdf>

⁶ Ibid.

⁷ See OHCHR’s Human Rights Risk Equation tool in Chapter 8 of their Human Rights Monitoring Manual:

<http://www.ohchr.org/Documents/Publications/Chapter08-44pp.pdf>



useful system of checks and balances for the implementation of a HRBA in a programme design including its monitoring and evaluation component.

See below the expected sequence of consequences that a HRBA in SSR programming should aim for:



Societal discrimination and inequality fuelling the protection gaps, including those affecting the duty bearer's capacity enforce civil rights, should be exposed as a result. In a similar fashion, programme indicators and corresponding means of verification should be designed to adequately measure progress of the HRBA, including its gendered dimension.

Under this framework, increased citizen participation and broad consultation on security issues with affected communities (without discrimination) would become reinforced in the SSR process. As a result, the most vulnerable segments of society are more likely to become the biggest winners as a result of more meaningful collaboration between duty bearers and rights holders, particularly those with heightened risk as a result of some form(s) of societal discrimination.

Moreover, human rights organisations, such as OHCHR, can refer to any reduction in risk of human rights violations as a means to independently monitor the impact of the SSR process. This would give the implementation of the HRBA in SSR much needed coherence with the UN's human rights monitoring system. Under this framework, programme progress can be identified as positive if the project activities, deliveries, outputs and outcomes result in a qualitative and quantitative reduction of human rights violation risk. At the same time, procedural norms established in the international human rights jurisprudence can provide crucial orientation as to qualitative HRBA indicators of process.

HRBA indicators in line with current due diligence standards should help to establish the necessary yardsticks to measure the extent to which duty-bearers fulfil their obligations, as well as the extent to which people are able to enjoy their rights. This should include quantitative and qualitative data on the adherence of fundamental human rights principles, such as equality and non-discrimination. Disaggregation of information according to gender, ethnicity and region will be fundamental to the application of a HRBA, and its ability to help assess any impact of a certain policy on particularly vulnerable persons.⁸

Currently, there is no single way in which human rights perspectives are being introduced, programmed or mainstreamed into SSR processes. Nonetheless, there are important parallels between major donors that underscore the principles and importance of a HRBA. Therefore we

⁸ Report of the Special Rapporteur on the right to food, Olivier De Schutter. 19 December 2011. A/HRC/19/59/Add.5. www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-59-Add5_en.pdf



further encourage a common agreement on a HRBA to SSR be established by the international community. If such a HRBA is reinforced it would promote more commonly agreed safeguards and minimum standards thereby strengthening the accountability and coordination of SSR programmes.

This can be interpreted as indicating that results at the outcome level should thus explicitly reflect behavioural change on part of the duty bearer to better comply with the procedural obligations linked with security and justice provision in a manner consistent with human rights norms.

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