

# Securitisation and Human Rights – Role of NHRIs (Part I)

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# Plan

- Solidifying the link between NHRIs and SSG/R
- Introducing the Triple-A framework
- Breakout group exercise

# What is security?

- “a state of being free from danger or threat” (Oxford Dictionary)
- “security is pursuit of freedom from threats” (Buzan, 1991: 18)
- “security from” (shielding from harm) and “security to” (enabling people to pursue their goals) (Crawford and Hutchinson 2016)
- “security, in an objective sense, measures the absence of threats to acquired values, in a subjective sense, the absence of fear that such values will be attacked” (Wolfers 1962: 150)

# What is security? (Baldwin 1997)

| Questions                  | Explanations                                                                                                                                                                                                                                                               |
|----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Security for whom?         | The individual (some, most, or all individuals), the state (some, most, or all states), the international system (some, most, or all international systems), etc.                                                                                                          |
| Security for which values? | These may include physical safety, economic welfare, autonomy, psychological well-being, and so on. The concept of national security has traditionally included political independence and territorial integrity as values to be protected; but other values can be added. |
| How much security?         | Absolute security is unattainable.                                                                                                                                                                                                                                         |
| From what threats?         | Depends on what we aim to protect (home from burglary, or the state from another state).                                                                                                                                                                                   |
| By what means?             | The goal of security can be pursued by a wide variety of means.                                                                                                                                                                                                            |
| At what cost?              | The pursuit of security always involves costs, i.e., the sacrifice of other goals that could have been pursued with the resources devoted to security.                                                                                                                     |
| In what time period?       | The most rational policies for security in the long run may differ greatly from those for security in the short run                                                                                                                                                        |

# Security sector governance

- Governance
- Security governance
- Security sector governance
- Security sector reform
- Principles of good governance: (1) accountability, (2) rule of law, (3) transparency, (4) participation, (5) responsiveness, (6) effectiveness, and (7) efficiency
- Good security sector governance

# Good security sector governance

- Good SSG describes how the principles of good governance apply to security provision, management and oversight by state and non-state actors.
- Good SSG means that the security sector provides state and human security, effectively and accountably, within a framework of democratic civilian control, rule of law and respect for human rights.
- Good SSG means applying the principles of good governance to a state's security sector.
- Good SSG is based on the idea that the security sector should be held to the same high standards of public service delivery as other public sector service providers.

# Human rights and security

- 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 nonstate) 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.

# Human rights and security

- Tensions between human rights and security measures are sometimes mistakenly cast in zero-sum terms, suggesting that gains in security and order necessarily come at the expense of human rights and freedoms, or that increasing freedom always diminishes security.
- The relationship between security and human rights is better understood as symbiotic rather than conflicting.
- Although many political regimes try to promote the view that more security has to come at the expense of the rights of citizens, this is more an attempt to securitize, to use extraordinary measures, to move away from ordinary democratic procedures, with the goal to consolidate political power.
- Insisting on the principles of good governance and human rights standards serves to help prevent such attempts.



# Security sector oversight

- Good SSG depends on a legal framework as well as government security policies and strategies that clearly allocate responsibility for security provision, management and oversight according to the principles of democratic civilian control of the security sector, rule of law and respect for human rights.
- Oversight within a system of civilian democratic control ensures security institutions are meeting their responsibilities effectively and efficiently, according to the principles of good governance.
- Oversight can protect the security forces from political interference while also preventing them from interfering in political affairs.
- While every security sector is different, and no single model of good SSG exists, institutional systems of security sector oversight typically share certain features.

# Contribution of NHRIs

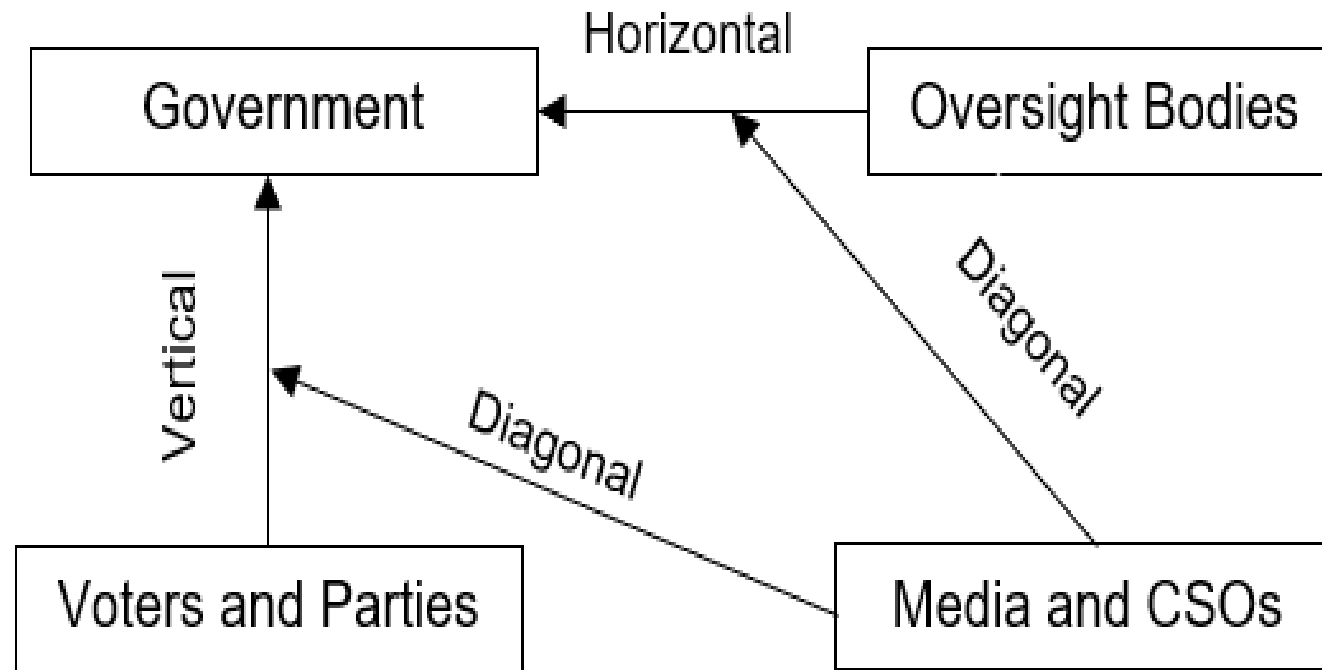
- The specific nature of NHRIs make them perfectly suited to:
  1. make a substantial contribution to the effective protection of the human rights and freedoms of the citizens affected by the activities of security providers;
  2. reinforce and complete the legal and institutional framework for democratic civilian oversight; and
  3. strengthen the democratic foundations underlying the operations of security providers, thereby improving their work and consequently increasing the public trust in them.

# International recognition

- The United Nations sees independent oversight of the security sector as essential to ensuring accountability and strengthening confidence in its governance. In its publication on security sector reform, the UN (2012: 98) stated:

*A system of independent oversight should be created to provide clear and transparent channels for substantive dialogue and cooperation between oversight institutions and statutory security sector actors. Independent bodies with specialized mandates (i.e., national human rights institutions) perform vital roles in the governance of the security sector.*

# Accountability



# Accountability

| TO                                                                                                                                                                                                                    | FOR                                                                                                                                                                                                                                                                                                                                                                                      |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"><li>• The relevant control mechanisms within the executive</li><li>• Parliament</li><li>• Judiciary</li><li>• Independent state bodies</li><li>• Public and civil society</li></ul> | <ul style="list-style-type: none"><li>• Coherent and effective implementation of national security policy and functioning of national security system</li><li>• Legality of work and alignment with constitution</li><li>• Cost-effective and transparent spending/ implementation of state budget</li><li>• Respect of human rights of citizens and security sector employees</li></ul> |

# The Triple-A Framework

- The logic of this framework is that the role of NHRIs in overseeing the security sector is contingent upon its **powers, capacity, and willingness** to hold the government and its security apparatus to account for their actions. Powers, capacity, and willingness are translated into a **triad of “authority”, “ability”, and “attitude”**.

# The Triple-A Framework

## Authority

NHRIs must have sufficient normative and legal authority to oversee the security sector. Most countries have constitutions, basic laws, regulations, or statutes that confer this authority formally, but in practice, this authority is not always exercised or respected.

## Ability

NHRIs must have sufficient resources to effectively fulfil their constitutional and legal roles, including institutional support, access to information, analytical and research capacity, specialized skills, and working relationships with security institutions, other state authorities, and civil society.

## Attitude

NHRIs must maintain a strong commitment to exercising their mandate vis-à-vis the security sector, particularly when such activities encounter resistance from within and outside the security institutions.

# Authority

## Independence:

- **Institutional:** an NHRI is independent of the government and, more specifically, that it is not part of any of the bodies that it is mandated to oversee.
- **Functional (operational):** the office's ability to decide which matters and priorities to pursue, free from interference by other institutions or actors.
- **Personal:** the security of the officeholder's position and tenure in office, including a legally established tenure of office, clear procedures for the potential removal of an officeholder from office, and a narrowly defined set of criteria stipulating the circumstances under which this can happen.
- **Financial:** an NHRI obtains and manages its funds independently from any of the institutions over which it has jurisdiction.

| AUTHORITY: FUNCTIONS AND POWERS                                                                                                                             | Yes/No |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| monitoring                                                                                                                                                  |        |
| unhindered access to documents, premises, and people                                                                                                        |        |
| Investigating upon complaint                                                                                                                                |        |
| Investigating on own initiative                                                                                                                             |        |
| issuing recommendations upon investigations                                                                                                                 |        |
| issuing opinions to parliament, government and public administration bodies                                                                                 |        |
| annual reports to the parliament                                                                                                                            |        |
| special reports to the parliament                                                                                                                           |        |
| providing mediation and good services                                                                                                                       |        |
| submitting parliamentary bills                                                                                                                              |        |
| submitting amendments to the parliament or the government                                                                                                   |        |
| advising competent authorities to prepare amendments                                                                                                        |        |
| providing opinions on draft legislation to the government/ministries                                                                                        |        |
| initiating proceedings before the Constitutional Court for the assessment of the constitutionality and legality of laws, other regulations and general acts |        |
| education and training                                                                                                                                      |        |
| awareness raising                                                                                                                                           |        |
| public outreach and advocacy                                                                                                                                |        |
| additional mandates (corruption; NPM under UN OPCAT; IMM under UN CRPD)                                                                                     |        |

# Ability

- Expert knowledge
  - Can be highly technical (e.g. ITC; criminal procedure; telecommunications)
- Do we know what are we looking for?
- What are the main obstacles to fully develop the abilities?

# Attitude

- It is closely related to (political will):
  - “the commitment of actors to undertake actions to achieve a set of objectives...and to sustain the costs of those actions over time.”
- The costs of persistent oversight of the security sector could be pretty high, but they are worthwhile.

# Breakout group exercise

# Authority: good practice

- NHRIs should ideally be established by the constitution, and have a strong mandate and powers to oversee the security sector.

# Ability: good practice

- Legislation should specify that NHRI should have access to classified information of any level, to remove any ambiguity.
- NHRIs should hire specialists, to strengthen their capacity to oversee the armed forces.
- NHRIs should join forces with other oversight bodies to ensure comprehensive oversight over the armed forces.
- NHRIs should maintain close relationship with their international peers to compare notes, good practices and lessons learned.

# Attitude: good practice

- NHRIs should:
  - actively look for complaints (if having such a mandate),
  - closely follow the media,
  - establish regular communication with CSOs and trade unions, and
  - make often public appearances,
- with the goal to
  - learn about systemic problems related to the security sector (which may, for instance, call for legislative changes); and
  - become visible and accessible to potential individual complainants from the security sector, who are known for being hesitant to address external remedies.

Thank you!