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Project on Internal Displacement

Case Studies on Transitional Justice and Displacement

# Linkages between Justice-Sensitive Security Sector Reform and Displacement

Examples of Police and Justice Reform from Liberia and Kosovo

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### **Transitional Justice and Displacement Project**

From 2010-2012, the International Center for Transitional Justice (ICTJ) and the Brookings-LSE Project on Internal Displacement collaborated on a research project to examine the relationship between transitional justice and displacement. The project examined the capacity of transitional justice measures to respond to the issue of displacement, to engage the justice claims of displaced persons, and to contribute to durable solutions. It also analyzed the links between transitional justice and other policy interventions, including those of humanitarian, development, and peacebuilding actors. Please see: [www.ictj.org/our-work/research/transitional-justice-and-displacement](http://www.ictj.org/our-work/research/transitional-justice-and-displacement) and [www.brookings.edu/idp](http://www.brookings.edu/idp).

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ICTJ assists societies confronting massive human rights abuses to promote accountability, pursue truth, provide reparations, and build trustworthy institutions. Committed to the vindication of victims' rights and the promotion of gender justice, we provide expert technical advice, policy analysis, and comparative research on transitional justice measures, including criminal prosecutions, reparations initiatives, truth seeking, memorialization efforts, and institutional reform. For more information, visit [www.ictj.org](http://www.ictj.org).

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## Introduction

As with most post-conflict challenges, displaced populations and weak security institutions profoundly affect each other. While the causes of displacement have been addressed in greater detail elsewhere, a common one in post-conflict environments is a lack of physical security, either because formal security institutions fail to ensure it, or, in some cases, because those institutions themselves undermine it. Displaced individuals will not voluntarily return in great numbers if the same security threats that made them leave (or new ones) are present in their home areas. Furthermore, the displaced may include members of the security sector—for example, educated individuals who previously held security sector management roles—leading to a knowledge and capacity gap in security institutions. Displacement itself is a source of instability that requires a heavy investment of security resources that might otherwise be invested in reform projects. Transforming a weak security sector depends on (re)building public confidence in security institutions and instilling a sustainable sense of public service, effectiveness, and accountability in those institutions. The public includes all those under the purview of security institutions, but no group has more at stake in this transformation than vulnerable populations, including those who have been displaced. Given the frequent role of the security sector in driving displacement, the displaced often have among the highest levels of distrust toward security institutions and a strong resistance to using those institutions.

Given these effects, it seems clear that security sector reform (SSR) should take into account the needs of displaced populations and opportunities to support durable solutions, even viewing these issues where possible as providing a window of opportunity to reinforce SSR objectives. A first step would be to support justice-sensitive approaches to SSR, which emphasize security sector transformation beyond effectiveness and capacity to include accountability, public service mentalities, democratic norms, and citizen ownership. Due to a research and policy gap, however, the relationship between displacement and SSR has rarely been informed by coordinated strategies, and the tensions between SSR processes and the needs and concerns of displaced populations are seldom mitigated. Research on the synergies and tensions between durable solutions and SSR will likely generate a better understanding of if, how, and when refugees and internally displaced persons (IDPs) should be included in SSR initiatives, and if, how, and when SSR initiatives can contribute to durable solutions.<sup>1</sup>

This paper looks at examples drawn primarily from two post-conflict areas undergoing SSR—Liberia and Kosovo—to understand previous experiences with these linkages. It focuses on: first, ways in which SSR initiatives either incorporated or failed to incorporate justice-sensitive approaches to durable solutions; and second, whether and how these linkages enhanced or impeded the implementation of durable solutions and SSR initiatives. The focus is on rule of law reform, especially with regard to police and justice systems, set in the wider context of SSR strategies and initiatives. Police and justice reform are directly connected to durable solutions because: first, effective rule of law is essential for a secure environment, and therefore a necessary precondition for the return, resettlement/repatriation, and local integration of displaced populations; and second, they are the most visible public security institutions for local populations, and are therefore critical for demonstrating integrity and building legitimacy with displaced populations.

## Basic Parameters of Justice-Sensitive SSR and Its Relationship to Durable Solutions

This section sets out the basic parameters of justice-sensitive SSR and considerations for undertaking such reforms vis-à-vis durable solutions. Justice-sensitive SSR includes four overlapping and reinforcing areas of reform: integrity, accountability, legitimacy, and empowerment of citizens.<sup>2</sup> In the security sector, integrity consists of adherence to the rule of law in the provision of safety and security, referring not only to the capacity and professionalism of individuals and institutions but also to the multiple accountability mechanisms needed to prevent and address human rights violations. Accountability is used in a holistic sense in justice-sensitive SSR, including accountability both for past abuses and for current and future abuses by security sector personnel. Coherence with other transitional justice measures is therefore an implicit part of justice-sensitive SSR. Legitimacy refers to the level of public confidence in a security institution as effective and accountable; in post-conflict environments, building legitimacy often means overcoming a legacy of human rights violations. Legitimacy often grows unevenly and slowly through effective service provision, accountability, and representation within the security sector. The final area of reform is the empowerment of citizens, achieved through increasing transparency and prioritizing the security needs of local populations. Context-appropriate and justice-sensitive SSR strategies should include these elements, and such strategies may contribute to durable solutions; conversely, durable solutions may offer reinforcement to or conflict with these reforms.

The role of security actors in causing displacement, directly and indirectly, is well-documented. Security sector actors—both leaders and rank-and-file individuals—often commit human rights abuses, including forced displacement or other abuses that lead to displacement. Security institutions may be ineffective or corrupt and may have limited capacity, will, or authority to prevent or respond to displacement. Alternatively, they may have a role in fueling conflict that contributes to displacement. Refugees face a two-fold risk exposure: they may have been displaced by the security actors in their home state only to be targeted by security actors in their current state of residence, whether because they are viewed as overburdening resources in that state or simply because they are vulnerable. In many

conflict-affected areas, public confidence in security institutions is extremely low—and it is even lower among particularly vulnerable populations, such as displaced persons. In such contexts, justice and accountability mechanisms for addressing grievances are ineffective at best and result in human rights abuses of their own at worst. Understandably, therefore, all four of the characteristics necessary for a justice-sensitive security sector are often weak or absent in the relationship between security sector actors and displaced populations.

Much less studied are the linkages between the often lengthy efforts to undertake justice-sensitive SSR and those taken to implement durable solutions for displaced populations. These linkages are conceptually obvious: justice-sensitive SSR cannot be successful without confidence from the entire population, and displaced populations are among those with the highest levels of distrust in the security sector. Durable solutions, meanwhile, require direct involvement of security sector actors to facilitate returns, provide and foster an environment conducive to reintegration through protection and effective law enforcement, and promote reintegration directly through citizen empowerment within the security sector.

While their benefits are mutually reinforcing in the long term, justice-sensitive SSR and durable solutions generate inherent tensions in implementation and complicate already complex situations. Part of this may be geographic: SSR initiatives focus on the reform of security institutions within state borders, and including refugees' voices in the process is logistically difficult. Sequencing may contribute to the gap: although both are considered long-term processes, an initial rush of spontaneous returns dwindles into a more sustained, protracted process, whereas the security sector may not show significant improvements for years. If both are long-term processes and one (a justice-sensitive security sector and effective law enforcement) is a necessary precondition of the other (returns and reintegration), how can the latter take place while the former is ongoing? For the notoriously difficult process of evaluating the progress of justice-sensitive SSR, what qualifies as “secure enough” to facilitate durable solutions? And finally, given the need for SSR to comprehensively meet the security needs of all populations and prevent further displacement amid limited resources, how can displaced populations' needs for durable solutions be met, or even prioritized? These issues of access, sequencing, prioritization, and scope are addressed through the case examples in the next section and subsequent concluding analysis.

## Case Examples from Liberia and Kosovo

Given the scale of SSR efforts in the following case studies, this paper foregoes a comprehensive review of each country in favor of highlighting case examples that either directly link justice-sensitive SSR to durable solutions or reveal unintended, indirect connections that have arisen in practice. The first part of this section looks at the linkages between national security sector strategy development and durable solutions, primarily using the case of Liberia. As a country's national strategy establishes its overarching SSR plan, that strategy is the most obvious tool for strategically emphasizing justice-sensitive principles and directly linking (or not) justice-sensitive SSR to durable solutions.

The subsequent parts of this section use case examples to illustrate the component principles of justice-sensitive SSR—integrity, accountability, legitimacy, and citizen empowerment—and their linkages to durable solutions. Justice-sensitive SSR initiatives commonly have multiplier effects. Vetting, for example, primarily aims to ensure accountability and, in doing so, improves integrity (by establishing professional standards), legitimacy (by contributing to civic trust and democratic norms), and citizens’ empowerment (if their testimonies are included in the process). These multiplier effects are acknowledged but not always explored in depth due to the limited scope of this paper; the case examples are used to illustrate each justice-sensitive SSR principle, but those principles should not be considered mutually exclusive.

### **National Security Sector Threat Assessments and Strategies: Understanding Justice-Sensitive SSR Needs and Possible Linkages to Durable Solutions**

Common initiatives in states undertaking comprehensive SSR include a threat or risk assessment (provided by various intelligence collection and analysis actors) and the subsequent formulation of a national security strategy (NSS). The NSS is a government’s overarching plan for ensuring the country’s security in the form of guidance for implementing a national security policy. Considered essential for the integration and coordination of activities by various national security actors, the NSS defines the role of each national actor in dealing with national security needs, determines processes (and chains of command) for making decisions when responses to threats or crises are required, and delineates conditions for using security forces.<sup>3</sup> Ideally, an NSS should be embedded in a wider development strategy with mutually reinforcing protection mechanisms, coordination, and short- and long-term security priorities. The security concerns of displaced persons and durable solutions are a natural component of security strategies. Furthermore, these strategies are the documents that most directly and strategically guide justice-sensitive reform by emphasizing integrity, accountability, legitimacy, and citizen empowerment.

Perhaps the most direct challenges to NSS complementarity with durable solutions are timing and sequencing. While many displaced people return home immediately following the cessation of conflict, an NSS might not be developed for several years. Liberia’s national security strategy was developed only in 2008, even though the conflict ended in 2003; the “emergency phase” of the work of the Office of the UN High Commissioner for Refugees (UNHCR) ended in 2006; and by 2008, more than 300,000 of those in IDP camps had already returned to their home areas.<sup>4</sup> Other post-conflict situations have faced similar delays: the international community’s work in Kosovo began in 1999 and included an influx of returnees, but a comprehensive security sector review was not undertaken until 2005; Sierra Leone’s Defence White Paper was written in mid-2003, despite British support that began in 1999; and a Ugandan threat assessment was delayed two years and almost did not happen.

Often the most significant causes of such delays include ongoing insecurity (donors prefer supporting multiyear strategy development when threats and security dynamics do not change daily), the difficulty of developing consensus among many stakeholders, and a lack of political and security infrastructure (the heavy emphasis on local ownership necessitates such structures). These environmental challenges need not be entirely negative. In Sierra Leone, for example, a fully comprehensive strategy at too early



a stage in such a stabilization environment was seen to impede the flexibility needed later to cope with problems that were identified only once the SSR process had begun. In fact, displaced populations finding housing throughout abandoned buildings in Freetown placed substantial demands on international security forces, which could not begin to address longer-term reform.<sup>5</sup> Such challenges do suggest, however, that in cases where a decision is made to support or undertake SSR in a conflict-affected environment, stakeholders should understand short-, medium-, and long-term implications. A threat assessment may help with this, but should include analysis of whether a comprehensive strategy would be most appropriate, balancing the need for justice-sensitive reform with the financial sustainability of the security sector.

In the case of Liberia, all of these environmental challenges played a role in the NSS and its linkages to durable solutions. Upon taking office in 2003, President Ellen Johnson Sirleaf reactivated the National Security Council—which would be responsible for leading the strategy consultation and formulation and for monitoring its implementation—but the council had no support staff. Meanwhile, the UN Mission in Liberia (UNMIL), the primary actor responsible for police and justice reform, spent the bulk of its effort in early years on the immediate provision of security and on substantial operational support to the Liberian National Police (LNP). The security sector had been discredited by years of war, and reconstruction programs began from an almost total “absence of police, functioning courts, detention facilities and legal assistance for victims.”<sup>6</sup> Outside of Monrovia, there was estimated to be one LNP officer for every 20,000 Liberians and significant deficiencies in infrastructure and basic equipment.<sup>7</sup> These significant political and security gaps, along with more substantial donor attention to developing the armed forces, meant that much attention and time was devoted to developing basic rule of law infrastructure and capacity ahead of the NSS.

Exacerbating this was ongoing insecurity and crime, fostered by the lack of attention to rule of law components in the immediate post-conflict years. Immediately after the conflict in 2003, for example, it was estimated that 60 percent of women had been victims of sexual and gender-based violence (SGBV); by 2007, that had increased to 90 percent.<sup>8</sup> The very limited police presence received reports of eight rapes on average every week, meaning the actual number was likely significantly higher. Although SGBV is one of the most rampant serious crimes in Liberia, it is by no means the only one; others include trafficking, robbery, and crimes arising from property disputes.

The above factors led to an NSS formulated after the Liberian IDP returns process was largely completed, with many of those who remained displaced being unwilling or unable to return. Displacement was recognized as an effect of the conflict and as a possible future source of regional insecurity (if people from neighboring states were to seek Liberia as a safe haven), but it did not factor, strategically or directly, as a significant current internal security threat in the NSS.

Instead, the NSS linkages between justice-sensitive SSR and displacement were focused on reintegrating displaced Liberians and planning for the eventual return or resettlement of Sierra Leonean refugees: disputes over citizenship and land or property were identified as two of the primary internal security threats. SSR processes that address such threats must be justice-sensitive, particularly to the needs of displaced persons. Land and property disputes should be resolved through an effective and transparent



judicial mechanism subject to human rights standards (accountability and integrity), and LNP officers should protect Sierra Leonean refugees from local resentment, refrain from pressuring them to leave involuntarily, and coordinate with UNHCR, the Sierra Leone National Police, and others to promote durable solutions for refugees. If done in a justice-sensitive manner, these SSR initiatives will overlap with and reinforce Liberian reintegration priorities for Liberians already repatriated to their home areas and return priorities for Sierra Leonean refugees residing in Liberia.

The need to address other internal security threats offers similar opportunities for justice-sensitive SSR that is linked to durable solutions. In Liberia, these include lack of respect for the rule of law, economic problems such as poverty and unemployment, poor natural resource management, deactivated ex-servicemen, ex-combatants, corruption, robbery, drug abuse and trafficking, illegally held arms, ethnic hatred or tensions, illiteracy, overcrowded prisons and a poor justice system, and HIV/AIDS. Although these challenges are not unique to contexts of displacement, they may be a factor in areas affected by large-scale displacement or be exacerbated due to the insecurity resulting from displacement. SSR actors, therefore, can promote justice-sensitivity by designing initiatives that take into account displacement challenges and how they might affect the SSR process. They can begin by including in program design and implementation civil society leaders who can speak on behalf of those displaced, as a form of displaced-citizen empowerment.

Despite its acknowledgement of the threats linked to displacement and inclusion of justice-sensitive reform principles, the Liberian NSS did not strategically or explicitly incorporate durable solutions into its priorities and plans. In a wider context, Liberia's SSR process was embedded in the National Poverty Reduction Strategy, which has also been criticized as neglecting the most vulnerable populations. The biggest challenges to reintegration and security continue to pose problems: that land disputes have a "tendency to escalate over time toward large-scale clashes indicates that interventions by administrative and police officials are often inadequate. The slow pace of consultation and decisions about land policy at the national level has also contributed to this problem."<sup>9</sup>

It is quite possible that one of the biggest challenges to the development (and accuracy) of the Liberian NSS was an internal security threat that was never accounted for due to a policy decision on displacement. The Liberian government decided, pragmatically, to limit resettlement assistance to those registered by the World Food Programme (WFP) in IDP camps for food distribution purposes, figuring that those most in need would be in camps. As a result, many of those who would be considered displaced under a broader definition—including a residual number in IDP camps who for various reasons never registered with WFP, the urban displaced, and those living with families in rural noncamp environments—were not included in the resettlement strategy.<sup>10</sup> Although the NSS consultations aimed to be centered on the populace and inclusive of civil society, the lack of a strong, established Liberian civil society meant that these particularly vulnerable voices often were lost. It is quite possible, therefore, that the NSS underestimated the threat of displacement by underestimating the numbers of those still displaced and not explicitly including the problem as a possible threat.

## Integrity: Establishing a Secure Environment and Coordination

As previously stated, and as is quite intuitive, secure conditions are an accepted prerequisite to return or resettlement,<sup>11</sup> examples of which are provided in the table below.

BENCHMARKS FOR SECURITY PRECONDITIONS PRIOR TO RESETTLEMENT	
COUNTRY	BENCHMARK
East Timor	“[The] judiciary and police force are able to maintain continuing security and administer due process of law to the returnees.” <sup>12</sup> In particular, assessments should look at “vulnerability to physical retaliation for involvement in the events of 1999, with absence of visible violence taken as the main indicator of successful return and reintegration.” <sup>13</sup>
Liberia	<p>“a) General Security Security is a state of affairs whereby the resident population in a given area can live free of fear of being harassed, injured, kidnapped, forced against their will, or even killed by armed individuals and groups. Security benchmarks for safe return will include:</p> <ul style="list-style-type: none"> <li>• Full deployment of UNMIL along main roads and in major towns</li> <li>• Regular static and mobile UNMIL patrols in all other areas</li> <li>• Disarmament of all previously armed Liberian elements (AFL, government militias, police, LURD, MODEL, and others)</li> <li>• General absence of hostilities</li> <li>• Few, if any reports on security incidents</li> </ul> <p>“b) Restoration of State Authority Restoration of state authority at the county and district level will remain a high priority for NTGL, this will further enhance the confidence of displaced people to return to their original homes. Key benchmarks are:</p> <ul style="list-style-type: none"> <li>• Reopening of police stations</li> <li>• Reopening, on-going rehabilitation or plans for rehabilitation of courts and prisons factoring in adequate human resource capacity.”<sup>14</sup> </li></ul>
Sierra Leone	<p>“The basic criteria . . . that should be met throughout the country are:</p> <ul style="list-style-type: none"> <li>• Complete absence of hostilities;</li> <li>• Completion of disarmament and demobilisation, and ongoing reintegration;</li> <li>• Law and order maintenance by the police;</li> <li>• Security maintenance by UNAMSIL and/or Sierra Leone Army;</li> <li>• Stability after free and fair elections.”<sup>15</sup></li> </ul>

Although daunting challenges exist in post-conflict environments, the goals listed above are relatively modest ones by SSR standards, aiming for a basic level of security provision and assuming international support for the various security sector components. Yet they have taken years to achieve in all three cases. Even quantitative indicators that are in principle more measurable—for example, crime rates—are often unreliable or unavailable in environments where records have been destroyed.

Furthermore, the benchmarks in the table above do not allude to justice-sensitive principles of SSR. The maintenance of security falls under the umbrella of the principle of integrity, but integrity implies much more than capacity and capability to provide security; otherwise, an effective police service

might maintain security at the expense of human rights standards, transparency, and oversight. The principle of integrity entails maintaining security in accordance with a code of conduct that adheres to a human rights framework, with violations subject to proportional disciplinary standards.

This gap between the ideal preconditions for durable solutions and realistic criteria is a source of tension that is not easily corrected, since justice-sensitive SSR principles are long-term aims and likely not achievable during the implementation phases of resettlement strategies. Introducing benchmarks that require security sector individuals to undergo vetting and human rights training at an early stage would further delay implementation of a resettlement strategy. Furthermore, insofar as they might be used as benchmarks, vetting and training are evidence of effort rather than outcome. Since vetted and trained personnel would likely perform in a more justice-sensitive manner, however, this argument is not against vetting but is rather in favor of a more justice-sensitive and performance-oriented benchmark than mere numbers vetted or trained.

Looking to SSR monitoring and evaluation mechanisms for an appropriate justice-sensitive benchmark provides little insight.<sup>16</sup> Those used in developing the Kosovo Police Service (KPS) illustrate the difficulty in capturing SSR progress. Crime rates, as in the resettlement strategies above, were used by the UN Mission in Kosovo (UNMIK) to measure SSR progress but proved unreliable due to a lack of record-keeping and sophisticated criminal analysis, as well as the nonreporting of crimes because of a lack of public trust in police. When rates for some crimes increased or stayed the same, UNMIK Police advanced this as evidence of increased reporting rates, police integrity, and public trust (police legitimacy). In reality, it remains difficult to know whether such changes are due to an increase in crime or an increase in reporting crime. It is also difficult to isolate the impact of KPS progress in the security environment since UNMIK Police and NATO Kosovo Force (KFOR) military actors also played large roles in maintaining security. Other SSR monitoring and evaluation mechanisms may focus on quantitative indicators of effort (such as numbers of officers trained), paying insufficient attention to justice-sensitive qualities that would place SSR impact in broader political, social, and economic contexts. The difficulty of measuring these qualitative justice-sensitive principles resulted in the KPS often either overlooking them or describing them only anecdotally. Recently, more attention has been given to public-perception surveys as a tool for measuring at least legitimacy and integrity, as well as increasing citizen empowerment, but often these are conducted infrequently due to the scale of effort required, differ in methodology depending on the surveying agency, or lack baseline surveys (see the section on legitimacy, below).

As difficult as it is to use progress in SSR to facilitate returns and resettlements in the short run, in the long run, sustainable returns and resettlements may be useful indicators of SSR progress. That is, if over time returns and resettlements are sustained, this is a good signal that people feel secure enough in their environment to stay, albeit with the possibility that the ongoing presence of international security providers or informal security providers may be affecting their decisions and distorting results. To use refugee returns and resettlements as measures of progress, however, SSR monitoring should count net returns or resettlements—that is, numbers of people leaving the country as well as those entering the country—and the durability of returns (how long people stay once they come back).

Implementing resettlement strategies is contingent upon coordination among international actors and local stakeholders in the affected areas, especially when local rule of law capacity remains weak or lacks integrity. Including local police in the process, if security allows and protection of the displaced can be assured, is a means of increasing their integrity by responding to the protection needs of the displaced. This sounds obvious: local police may need to play a role in escorting returnees or coordinating with police in neighboring countries. Yet it is difficult to implement in practice, in part because entities that support governments in the implementation of resettlement strategies are humanitarian actors, while police reform is managed by the UN Police component or other law enforcement actors. International coordination with so many stakeholders and priorities is always difficult.

Consider the case of Liberia, which was among the first countries to use the “cluster” approach as an organizational mechanism for humanitarian response. The early recovery cluster—which included rule of law, infrastructure, and youth employment subclusters—was intended to be a crosscutting mechanism in transitioning from humanitarian response to early recovery and development, but it struggled to attract resources and focused primarily on construction and rehabilitation of infrastructure.<sup>17</sup> Despite including many of the same people, the early recovery and protection clusters (the latter addressing SGBV and child protection) operated primarily as stand-alone entities and did not often coordinate strategically. The protection cluster’s “fundamental obstacle to addressing gender-based violence, other forms of criminal activity, and legal disputes [was] the almost complete absence of police, functioning courts, detention facilities and legal assistance for victims, particularly in the rural areas.” Yet the international actor responsible for supporting the reform of the LNP, the UNMIL Police component, was not a member of either the rule of law subcluster or the protection cluster (although UNMIL admittedly had many difficulties, even internally, coordinating rule of law initiatives in its early years).<sup>18</sup>

In Kosovo in 2004, UNMIK and the Kosovo Provisional Institutions of Self-Government developed the Municipal Return Strategy (MRS) Policy Paper, which included a proposed template and procedural guidelines for the municipal governing structures to plan their specific strategies. Only in one municipality out of 30—Mitrovicë/Mitrovica—did planners consult with still-developing security structures (Kosovo Police Service and Kosovo Protection Corps) and neighborhood and village leaders. Mitrovicë/Mitrovica was one of the most politically tense municipalities and, although the MRS did not pass the Municipal Assembly for political reasons, the planners clearly understood the strategic concept and took a proactive approach to including all stakeholders in order to build a comprehensive understanding of security issues, needs, and responsibilities in planning the substance and implementation of the MRS.<sup>19</sup>

### **Accountability: Parallel Courts in Kosovo and Accountability for Judicial Decisions**

When state security actors do not meet security needs, alternative mechanisms develop for reasons varying from convenience and access to distrust and corruption. Kosovo represents a unique situation in that its alternative structures were those of another state—Serbia. Following the Serbian withdrawal from Kosovo in June 1999, most Serbian courts in Kosovo withdrew into Serbia proper but remained operational and still claimed jurisdiction over every Kosovo municipality. Four municipalities in the north of Kosovo—those with large Serbian populations, including Serbians displaced from the

south—continued to have Kosovo-based Serbian courts that dealt with minor offences and municipal courts. The courts that claimed Kosovo jurisdiction in Serbia proper have acted as appellate courts for the courts still in Kosovo, and courts of first instance in serious criminal matters occurring in Kosovo.<sup>20</sup> Although UNMIK's executive mandate gave it judicial authority, in the north, courts were not established until January 2003, were not operational until late 2003, and remained understaffed even as late as 2007, leaving many with no judicial mechanism other than the Serbian courts.<sup>21</sup> Even after January 2003, the parallel courts were located more conveniently for IDPs in Kosovo and were the only accessible option for Kosovo refugees in Serbia. In addition, although parallel courts' decisions should not be enforceable by law in Kosovo, their decisions are still seen as legitimate and valid by many in the local populace, and Kosovo Serbs, Kosovo Albanians, and other minority communities still rely on them, particularly when they need a judgment to be recognized in Serbia.<sup>22</sup>

Although this situation represents an anomaly compared to other countries' alternative justice mechanisms, given Kosovo's unresolved political status, the practical challenges it presents are useful when considering durable solutions in relation to accountability and integrity in justice reform. These challenges primarily relate to overlapping jurisdiction (validity, recognition, and enforcement of decisions; confusion and additional costs; and, most seriously, double jeopardy) and the right to appeal decisions. When jurisdictions overlap, different courts might reach two different and conflicting decisions based on the same set of facts, resulting in public confusion and legal uncertainty. Or duplicative costs may be incurred when a case must be refiled in another court to validate the decision already made in the first court. Sometimes, individuals who dislike an outcome in one court file a new complaint with the second court, resulting in two different judgments.<sup>23</sup>

The most serious accountability (and integrity) challenge arises in criminal matters, due to the risk of double jeopardy, a human rights legal principle that prohibits an individual from being prosecuted twice for the same crime. A great deal of confusion arose in Kosovo on how to avoid this with the parallel courts. To resolve ambiguity, it is generally accepted that courts should follow the spirit of the double jeopardy principle until the legal issues are resolved, unless exceptional circumstances apply (for example, new facts come to light). But this too presents numerous problems: often a parallel court would not be aware of cases in the Kosovo courts (or vice versa), or parallel courts would sometimes prosecute and issue lenient sentences for convicted Serbian criminals (for example, one year for murder) so that the individual would not face a more severe penalty if he returned to Kosovo.<sup>24</sup>

Most states develop agreements on conditions for recognition and enforcement of decisions and managing appeals, and these legal agreements and oversight mechanisms are a significant part of justice sector reform and the development of a criminal procedure code. Even for informal or traditional justice systems within a state, developing such agreements and incorporating conditions is a recommended good practice for strengthening oversight and establishing linkages with the formal justice system. These components of accountability for judicial decisions are critical for displaced persons, given their movements between and within states, to protect them from double jeopardy criminal cases and for the recognition of decisions in civil cases that affect them.

Blanket nonrecognition is not realistic and could cause significant problems in Kosovo, as parallel courts have issued a substantial number of civil decisions regarding property, loans, marriage, and



divorce. Nonrecognition would create numerous social problems—for example, stopping alimony payments or seizure of transferred property.<sup>25</sup> But courts will need to develop the criminal procedure code to deal with this, and to determine the validity of decisions rendered before and after 2003, when Kosovo courts were technically available. The parallel courts remain an ongoing challenge for Kosovo.

### **Legitimacy: Representation in the Kosovo Police Service**

Perhaps the best example of a dedicated effort to establish a multiethnic police service is the work by the UN and the Organisation for Security and Co-operation (OSCE) to develop the KPS. The KPS's experience demonstrates what can be achieved with early commitment to multiethnic representation, but it also shows the difficulty of full integration. An early UNMIK tenet for the KPS was that it should be a multiethnic and impartial police service, and substantial efforts were devoted to recruiting minorities and eliminating ethnic divisions from the training academy and all subsequent training. The decision reflected a now-accepted principle of good practice that representation builds trust and legitimacy with local populations; in addition to practical concerns, such as overcoming any language barriers that exist, people are more likely to accept the authority of public servants they identify with.<sup>26</sup> Mixed representation in the KPS was not intended to directly facilitate return and reintegration as much as general reconciliation—as was clear from the strong donor emphasis on supporting the development of a multiethnic police institution to serve the people of Kosovo.

The minority recruitment effort was largely successful, with KPS minority representation reaching 15 percent in 2000 and remaining steady ever since. Among many anecdotal examples of its success, in September 2005, two weeks after a Kosovo Serb was appointed to one of six regional commander positions, he was injured in a well-organized and targeted ambush. Subsequently, a crowd of angry Kosovo Serbs in the municipality of Štrpce/Shtërpçë protested at the station, threatening to break down doors and attack Albanian officers. Those officers were guarded by their Serb colleagues.<sup>27</sup>

The total institutional percentage of minority officers and positive anecdotes, however, fail to reflect subtle shifts that took place within the organizational structures of the KPS as it assumed greater policing responsibility from UNMIK. Specialized units that had been multiethnic became less so over time, sometimes gradually and sometimes suddenly. Under pressure from Serbia, Kosovo Serb police officers in Mitrovicë/Mitrovica suddenly abandoned their posts following Kosovo's 2008 Universal Declaration of Independence, which resulted in the KPS's four crowd-control units becoming entirely Kosovo Albanian in makeup. During the second half of 2008, a KPS crowd-control unit could move north of Mitrovicë/Mitrovica to secure Kosovo Albanian enclaves only with UNMIK Police escorts. Formed Police Units from UNMIK were needed to secure the rest of the northern municipalities. When the Kosovo Serb officers returned in June 2009, following the KPS authorities' announcement of a deadline for return, they did not rejoin the crowd control units but largely went to stations within the northern municipalities. Feelings of resentment remained on both sides: many KPS officers resented the officers who left their posts for doing so and for having continued to receive their salaries for more than one year while not working, whereas the officers who had left felt both the lingering resentment upon their return and that they were skipped over for promotions.

At the station and substation levels, representation was primarily geared to the ethnicity of the region, as it was thought that those officers would be representative, speak the language, and understand the security concerns of returnees. Ethnic representation in the community is a delicate balance, depending on security conditions, community needs, and police personnel resources. So while prioritizing ethnic representation at the station level was a strategic decision to mirror the community, it placed de facto limitations on the vertical mobility of those officers whose presence was required to maintain the local ethnic balance, since a station commander and station officers reporting to him can only reach designated ranks—as is appropriate for a hierarchical organization. This was less problematic for the relatively large Serbian minority, whose officers were not as limited by demographic distributions, than it was for the smaller minorities with dispersed populations or enclaves in specific locations (for example, Gorani and Roma).

Additionally, shifts in KPS composition and location echoed population migration and displacement trends, or vice versa<sup>28</sup>: substations with Kosovo Albanian officers were established in Kosovo Albanian enclaves along the border of north Mitrovicë/Mitrovica, whereas there was a gradual attrition of Kosovo Serb officers in regional investigative and other specialized units. It remains difficult to identify the discernable long-term impact of these shifts, but the end result is that with the exception of a few enclaves, most Kosovo Serbs have migrated to the northern municipalities of Kosovo. Displaced Kosovo Serb populations prefer to resettle there (and vice versa for Kosovo Albanians displaced from the north) rather than return to their home areas.<sup>29</sup>

### **Empowerment of Citizens: Community Engagement Mechanisms**

Empowerment of citizens has become an increasingly important component of justice-sensitive SSR. It involves citizens taking ownership of security institutions and influencing their decisions and priorities. For security institutions, part of justice-sensitive SSR means having the willingness to listen to citizen security concerns, developing mechanisms for dialogue, and responding in a timely and effective way. Including displaced voices in this process is a critical part of reintegration, and multiple direct and indirect mechanisms exist to promote citizen empowerment. The primary challenge lies in gathering enough information and momentum to include all populations, including the displaced, in the process.

In Kosovo, the United Nations Development Programme (UNDP) attempted to measure public perceptions of the security sector through quarterly Early Warning Reports, as well as a more comprehensive survey in 2004 that included security concerns and perceptions of police among the displaced.<sup>30</sup> The Early Warning Reports were rarely incorporated into police operations, however, and they did not provide sufficient detail to be useful for institutional decision-making or to initiate change (although they were sufficient to bolster arguments for changes already underway). Another tool was a comprehensive Kosovo Internal Security Sector Review (KISSR), which, much like the Liberia National Security Strategy, aimed to be inclusive in dialogue and outcomes. Displaced populations interviewed for the KISSR while returning to visit their enclaves on UNHCR-supported “go and see visits” expressed positive views regarding KPS professionalism in escorting their convoys, despite having underlying trust issues.<sup>31</sup> These positive experiences were part of the reasoning behind the recommendation to include police in Municipal Return Strategy templates.



In an effort to build the capacity of Kosovar civil society to complete such surveys, a UK nongovernmental organization (NGO), Saferworld, partnered with a Kosovar NGO to conduct detailed surveys on public perceptions of security institutions. By far the most useful of the public perception surveys completed in Kosovo, these broke down perceptions by municipality and security priorities, and their methodology included displaced voices, though it did not isolate them to identify whether their security concerns were unique.

Often community forums offer active dialogues and opportunities to discuss security needs and ask security leaders for responses. In Burundi, for example, customary law courts were used as a forum for debating government policies, which allowed public participation and ownership. Chiefs then transferred the discussions upward to provincial and national levels of government.<sup>32</sup> The difficulty of accessing so many voices might suggest that public perception surveys may be a more useful tool for displaced populations prior to or as part of a return process, whereas community forums may be more useful as a tool for reintegration.

## Conclusion

The psychological and political legacies of conflict that make justice-sensitive SSR difficult to achieve also demonstrate its relevance: ethnic, religious, or political polarization; persistence of authoritarian or militaristic behavior; a sense of political entitlement and intolerance for opposing viewpoints; and inappropriate relationships between political and security leaderships. Post-conflict countries offer substantial windows of opportunity to initiate justice-sensitive SSR, as responding to transitional justice and early rule of law recovery needs often represent the first steps in a long-term security and development process.

One of the main challenges—and opportunities—involves redefining security to meet the needs of the civilian population rather than merely guaranteeing the survival of the state. This means reexamining assumptions about and adopting new concepts of “security” on multiple levels—what it is, who should benefit from it, what conditions threaten it, and what it takes to deliver it effectively.<sup>33</sup> Displaced populations should be part of this discussion, so that their voices form part of this new concept and also because displacement is a potential source of instability that may challenge the new security framework. This may be part of a comprehensive SSR strategy formulation, but it is also a process that involves shifting mentalities to act with integrity and developing accountability standards.

This conceptual shift in security is a process and is difficult to achieve, particularly in the short term. The timelines and demands of SSR and durable solutions are often quite different, with a spontaneous return of displaced persons following the cessation of conflict or signing of a peace agreement juxtaposed with the very slow, gradual progress of SSR.<sup>34</sup> A UN secretary-general’s note on SSR offers this suggestion on balancing post-conflict initiatives: that only after basic stability has been achieved, including the return of refugees, should substantial political attention and resources be directed to security sector reform.<sup>35</sup> But however both processes begin and progress, international

actors—both the humanitarian and civilian side that manages implementation of durable solutions and the security sector officials and donors who manage SSR—need to make decisions that take into account their impact on others. Indicators that measure progress should include not only measures of effort (numbers trained) but also outcomes and impact via public-perceptions surveys of quality of service delivery and access to security and justice—a better indicator of public legitimacy.

Justice-sensitive SSR has clear synergies with durable solutions in providing protection in the interim phases for IDPs and refugees and thus facilitating the return or resettlement process. But the most substantial work begins with reintegration. In reintegration, justice-sensitive SSR plays a dual role. First, it provides protection to displaced persons and ensures effective rule of law, with integrity and subject to accountability, in order to foster an environment conducive to reconciliation with the local population. And second, it builds security sector legitimacy with displaced populations and encourages ownership and empowerment over the security sector, by increasing representation within the security sector and responsiveness to and accountability for displaced security needs among their security providers.

## Notes

- <sup>1</sup> Susan Harris Rimmer, “Reconceiving Refugees and Internally Displaced Persons as Transitional Justice Actors,” (Research Paper no. 187, Policy Development and Evaluation Service, UNHCR, Geneva, April 5, 2010), 3.
- <sup>2</sup> For longer descriptions of each area, see Laura Davis, *Transitional Justice and Security System Reform* (New York: Initiative for Peacebuilding and International Center for Transitional Justice, June 2009), 12–13.
- <sup>3</sup> Alix Boucher, *National Security Policies and Strategies: A Note on Current Practice* (Washington, DC: Stimson Center, December 2009), 1.
- <sup>4</sup> UNHCR, *Real-time Evaluation of UNHCR’s IDP Operation in Liberia*, (Geneva: UNHCR, July 2007), 2.
- <sup>5</sup> Peter Albrecht and Paul Jackson, *Security Sector Transformation in Sierra Leone, 1997–2007*, (Birmingham, U.K.: GFN-SSR, February 2009), 7.
- <sup>6</sup> UNHCR, *UNHCR’s IDP Operation in Liberia*, 15.
- <sup>7</sup> *Ibid.*, 8.
- <sup>8</sup> *Ibid.*, 8–9, citing figures from the “National Plan of Action for the Prevention and Management of Gender-Based Violence in Liberia,” prepared by the Task Force on Gender-Based Violence led by the Ministry of Gender and based on a study on SGBV in Liberia by the World Health Organization carried out in 2005 (available at <http://webappso1.un.org/vawdatabase/searchDetail.action?measureId=29489&baseHREF=country&baseHREFId=766>).
- <sup>9</sup> International Crisis Group, *Liberia: Uneven Progress in Security Sector Reform* (Brussels: International Crisis Group, January 13, 2009), 8.
- <sup>10</sup> *Ibid.*, 3, 9; Republic of Liberia, *Liberia Government National Community Resettlement and Reintegration Strategy*, adopted by the Rights Focused Transitional Framework Working Committee (RWC # 3) for Displaced Population (Monrovia, June 2, 2004), 13.
- <sup>11</sup> United Nations, Office for the Coordination of Humanitarian Affairs, *Guiding Principles on Internal Displacement*, September 2004, para. 28(1).
- <sup>12</sup> Chris Dolan, Judith Large, and Naoko Obi, *Evaluation of UNHCR’s Repatriation and Reintegration Programme in East Timor, 1999–2003* (Geneva: UNHCR Policy and Evaluation Unit, February 2004), 54.
- <sup>13</sup> *Ibid.*, 5.
- <sup>14</sup> Republic of Liberia, *National Community Resettlement and Reintegration Strategy*, 8.
- <sup>15</sup> Government of Sierra Leone, National Commission for Reconstruction, Resettlement and Rehabilitation, *Sierra Leone Resettlement Strategy: Enabling the Displaced to Rebuild their Lives Back in Their Communities with Safety and Dignity* (Freetown, October 2001), 7.

- <sup>16</sup> Saferworld, a U.K.-based NGO, has conducted a comprehensive study, “Evaluating for Security: Developing Specific Guidance on Monitoring and Evaluating Security Sector Reform interventions,” including case studies, qualitative surveys and desk reviews, and comprehensive guidance. The reports are available on the organization’s website ([http://www.saferworld.org.uk/pages/ssr\\_research\\_activities.html](http://www.saferworld.org.uk/pages/ssr_research_activities.html)).
- <sup>17</sup> Neill Wright, Enda Savage, and Vicky Tennant, *Real-Time Evaluation of UNHCR’s IDP Operation in Liberia* (Geneva: UNHCR Policy Development and Evaluation Service, July 2007), 13.
- <sup>18</sup> Ibid.
- <sup>19</sup> Organisation for Security and Co-operation in Europe Mission in Kosovo, Department of Human Rights, Decentralization and Communities, *Planning and Implementation of the Municipal Return Strategy* (Pristina: Department of Human Rights, Decentralization and Communities, April–May 2007), 7.
- <sup>20</sup> Organisation for Security and Co-operation in Europe Mission in Kosovo, Department of Human Rights, Decentralization and Communities, *Parallel Structures in Kosovo* (Pristina: Department of Human Rights, Decentralization and Communities, April 4, 2007), 16.
- <sup>21</sup> Ibid., 23.
- <sup>22</sup> Ibid., 20.
- <sup>23</sup> Ibid., 21.
- <sup>24</sup> Ibid., 22.
- <sup>25</sup> Ibid., 24.
- <sup>26</sup> Séverine Bellina, Dominique Darbon, Stein Sundstøl Eriksen, and Ole Jacob Sending, *The Legitimacy of the State in Fragile Situations*, Report for the OECD/DAC International Network on Conflict and Fragility. (Paris: OECD/DAC/INCAF, February 3–4, 2009), 3.
- <sup>27</sup> International Crisis Group, *Kosovo: The Challenge of Transition* (Pristina: International Crisis Group, February 17, 2006), 9.
- <sup>28</sup> Ibid.
- <sup>29</sup> Author interviews with Kosovo authorities and UNDP officials in Pristina, July 2010.
- <sup>30</sup> United Nations Development Programme, *Light Blue: Public Perceptions of Security and Police Performance in Kosovo* (Pristina: UNDP, June 2004); United Nations Development Programme, “Early Warning Reports” (Pristina: UNDP, 2001–2010).
- <sup>31</sup> United Nations Development Programme, *Kosovo Internal Security Sector Review* (Pristina: UNDP, 2006), 21.
- <sup>32</sup> Bellina et al., *Legitimacy of the State*, 27.
- <sup>33</sup> Eboe Hutchful, African Security Sector Network, *Security Sector Reform Provisions in Peace Agreements* (U.K.: University of Birmingham, January 2009), 19.
- <sup>34</sup> The *World Development Report 2011* stated that reforming institutions takes a generation. World Bank, *World Development Report 2011* (Washington, DC: World Bank, 2011), 108.
- <sup>35</sup> United Nations, Note by the Secretary-General, *Securing Peace and Development: The Role of the United Nations in Supporting Security Sector Reform*, UN Doc. A/62/659-S/2008/39 (January 23, 2008), para. 27.