**The Universal Periodic Review and Transitional Justice**

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**Abstract**

When the Universal Periodic Review (UPR) Mechanism was established in 2006, one of the criticisms was that it would undermine the work of other human rights mechanisms. The relationship between the UPR and other human rights mechanisms (treaty bodies and special procedures) have attracted some academic discourse, especially considering that the UPR was established to complement and not duplicate the work of the treaty bodies. Scholars have engaged with the ability of the UPR to impact on domestic human rights protection on a range of issues including the right to health, indigenous rights, rights of sexual minorities and the abolition of the death penalty. One area that has received no meaningful attention so far is the ability of the UPR mechanism to promote transitional justice process in post-conflict states. The UPR, through its deliberative, cooperative, and capacity building approach, can play a significant role in shaping a state’s response to the legacies of mass atrocities and serious human rights violations. Focusing on Burundi and South Sudan, this chapter examines the relationship between the UPR and transitional justice, and the extent to which the UPR mechanism can promote transitional justice processes in post conflict societies. This chapter argues that the UPR can play a significant role in promoting transitional justice measures, reinforcing, and increasing the visibility of recommendations from other international mechanisms, and promoting accountability for human rights atrocities.

1. **Introduction**

Transitional Justice has increasingly been characterised in different ways by scholars and practitioners in the discipline. In human rights law, the requirement for accountability for human rights abuses form the established basis for transitional justice. This conception of ‘transitional justice’ dominated early scholarly works in the 1990s[[1]](#footnote-2) and was elevated by the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 and the International Criminal Tribunal for Rwanda (ICTY) in 1994.[[2]](#footnote-3) The focus was on criminal accountability,[[3]](#footnote-4) and more recent discourse about corporate accountability.[[4]](#footnote-5) This understanding of transitional justice, originally rooted in law, has expanded over time with calls for a more interdisciplinary approach to transitional justice. The breadth of the discipline has expanded over time with increasing scholarship in law, criminology, sociology, political science, development studies and international relations. This expansion has enriched the discipline with the introduction of new theoretical and normative frameworks that elucidate some of the complex dilemmas in realising justice, truth, reparations and other goals in societies transitioning from a period of large-scale past violations and abuses. While the different disciplines may have different definitions of ‘transitional justice’, it is generally accepted by human rights scholars that transitional justice refers to the ‘set of practices, mechanisms and concerns that arise following a period of conflict, civil strife or repression, and that are aimed directly at confronting and dealing with past violations of human rights and humanitarian law.’[[5]](#footnote-6) This view of ‘transitional justice’ as a set of ‘mechanisms’ or ‘processes’ is shared by the UN which defines transitional justice as ‘the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past violations and abuses to ensure accountability, serve justice, and achieve reconciliation.’[[6]](#footnote-7) These processes include prosecutions, truth-seeking, institutional reform, and memorialization. They are implemented with the goal of providing victims with justice, establishing the truth, provide reparations, guarantee non-recurrence of the atrocities, and achieve sustainable peace and reconciliation. The extent to which these goals are feasible or achievable in different post-conflict societies has been the subject of much academic discourse.[[7]](#footnote-8) However, central to the goals of transitional justice is addressing human rights violations that took place during the conflict.

Transitional justice is both backward looking (uncovering the root causes of human rights violations and providing redress for victims) and forward looking by contributing to creating the conditions under which human rights can be promoted and protected. Evidence from the scholarly literature indicate that transitional justice mechanisms contribute to improved human rights protection at the domestic level and the prevention of violations of human rights. Tricia Olsen, Leigh Payne and Andrew Reiter find that a combination of transitional justice mechanisms positively improves human rights.[[8]](#footnote-9) The international Centre for Transitional Justice found that transitional justice measures undertaken in Colombia, Morocco, Peru, the Philippines, and Sierra Leone, contributed to prevention human rights violations in each of these states.[[9]](#footnote-10) They contend that transitional justice is statistically correlated with fewer human rights violations and less recurrence of armed conflict.[[10]](#footnote-11) Transitional justice is therefore rooted in international human rights law and can be mutually reinforcing, but the extent to which transitional justice measures have been the object of UPR recommendations has not yet been examined. Even UPR Info that undertakes extensive categorisation of UPR recommendations across key human rights themes did not include transitional justice in its categorisation in the first two cycles of the review and the categorisation for the third cycle fails to capture key transitional justice measures.[[11]](#footnote-12) As noted in the definition, transitional justice is a ‘process’ and for some of the states the process is just beginning.

This paper argues that the UPR can play an important role in helping post-conflict states achieve the goals of transitional justice by promoting and reinforcing the transitional justice mechanisms needed in post-conflict societies. UN General Assembly Resolution 70/262 makes a connection between the UPR and peacebuilding initiatives[[12]](#footnote-13) The OHCHR has highlighted[[13]](#footnote-14) the potential for the UPR to contribute to sustaining peace, provide valuable information for peacebuilding analysis, strategy and programming at the country level, and serve as a platform for dialogue and collaboration. An increasing number of recommendations have been made to states dealing with the legacies of war and repression in the context of the UPR. This paper will examine the extent to which these recommendations have touched on several transitional justice goals and processes including recommendations to end impunity, on accountability, peace agreements, truth commissions, institutional reform, reparations, return and reintegration programmes, and rule of law.

1. **Relationship between the UPR and related human rights mechanisms and disciplines**

It was evident during the negotiations leading to the establishment of the UPR mechanism that states considered the relationship it would have with other human rights mechanisms and related disciplines. In particular, the discussion focused on the relationship between the UPR and the treaty bodies, and between international human rights law and international humanitarian law (IHL).[[14]](#footnote-15) The goal was to ensure that the UPR would complement the work of the treaty bodies, support, and reinforce applicable humanitarian law. However, the literature has not always viewed these relationships positively, especially in the first few years of the UPR mechanism. In terms of the relationship with the treaty bodies, the UPR was criticised for encroaching on the work of the treaty bodies,[[15]](#footnote-16) undermining the validity of treaty body recommendations,[[16]](#footnote-17) and diverting material resources from treaty bodies.[[17]](#footnote-18) The inclusion of IHL as one of the legal bases for the UPR was contentious during the negotiation of the modalities for the UPR[[18]](#footnote-19) and has been criticised in some of the literature. Several states (including Norway and Australia) had opposed, ultimately unsuccessfully, the inclusion of IHL in the UPR on the basis that the mandate of the Human Rights Council did not include the promotion and protection of IHL.[[19]](#footnote-20) Claire Callejon argued that the inclusion of IHL as a basis for the UPR is ‘a questionable development as the Council has neither the mandate nor the competency to decide on the application of this body of law.’[[20]](#footnote-21)

However, there is emerging evidence that suggests the UPR can play a complementary role in relation to the treaty bodies, and reinforces human rights recommendations from various human rights mechanisms, including IHL. Helen Quane finds that UPR recommendations have contributed to enhance the engagement of Asian states with the UN human rights treaty bodies and special procedures.[[21]](#footnote-22) The UPR has also contributed to improve compliance with human rights treaty body reporting obligations by some African states.[[22]](#footnote-23) In relation to IHL, Lijiang Zhu finds that the UPR has been used as a forum to recommend ratification of IHL treaties and withdrawal of treaty reservations.[[23]](#footnote-24) Over 1000 IHL recommendations have been made in the UPR process by states during the first three cycles of the mechanism. Several of these recommendations are related to transitional justice processes.[[24]](#footnote-25)

Transitional justice scholars generally embrace a human rights-based approach that seek to empower victims, and transitional justice goals including peace, reconciliation, truth-telling, prosecution, reparations, restitution, deterrence and prevention, are intertwined with international human rights law. The ability of the UPR to complement other human rights mechanisms can create a complex regime in which there is duplication of human rights recommendations between domestic and international human rights mechanism, and between different international human rights bodies. Valentina Carraro undertakes the first empirical study that finds that duplications are frequent between recommendations made by states in the UPR process and those made by human rights treaty bodies.[[25]](#footnote-26) In addition, scholars have highlighted the impact of the UPR in advancing a range of human rights thematic issues at the domestic level including, health,[[26]](#footnote-27) indigenous rights,[[27]](#footnote-28) rights of sexual minorities,[[28]](#footnote-29) abolition of the death penalty,[[29]](#footnote-30) and peace and development.[[30]](#footnote-31) This paper adds to that body of knowledge by examining the relationship between the UPR and transitional justice. It acknowledges the existence of duplication of human rights recommendations but views this rather positively. The chapter argues that the ability of the UPR to complement, support, and promote transitional justice mechanisms is an achievable utopian goal. The repetition of same recommendations across multiple mechanisms not only highlights the importance of the issue but also creates pressure that can incentivise compliance or positively influence state behaviour. The UPR can give renewed visibility, amplify, and reinforce the recommendations from other domestic and international human rights mechanisms on transitional justice measures.

1. **Methods**

I undertook empirical analysis on all recommendations made to two African states (Burundi, and South Sudan). Burundi has been grappling with transitional justice since 2000 while South Sudan is more recently emerging from conflict and seeking to deal with the legacies of war and repression. I analysed the UPR recommendations made to these three states during the UPR’s first three cycles with the goal of determining the extent to which the recommendations referred to transitional justice goals. The analysis was guided by three key questions: (1) How prominent was transitional justice goals in the UPR’s recommendations? (2) What was the distribution of recommendations between different transitional justice issues? (3) How specific, useful, and measurable were the recommendations? This paper is based on these findings, and a desk review of literature on the UPR.

I undertook a desk-based review of all the recommendations made to the two states under study. Transitional Justice covers a broad range of issues. It was necessary to apply restrictions when coding UPR recommendations on transitional justice. First, the categorisation was restricted to recommendations that directly referred to transitional justice measures aimed at dealing with human rights abuses that took place during the conflict or reinforcing a recommendation from a domestic or international transitional justice mechanism. For example, a recommendation on sexual violence was coded as a transitional justice recommendation only if it was related to the conflict or made as part of a truth commission or related transitional justice mechanism. Second, the range of transitional justice goals were restricted to six core categories. These included (i) Criminal Accountability, including Prosecutions and engagement with the ICC; (ii) Truth Commissions or Commission of Inquiry; (iii) Return and Reintegration; (iv) Reparations; (v) Constitutional, Legal and Institutional Reform; and (vi) Peace and Reconciliation. This categorisation is broadly reflective of that adopted by the OHCHR,[[31]](#footnote-32) The UN Security Council,[[32]](#footnote-33) and the International Centre for Transitional Justice (ICTJ)[[33]](#footnote-34) in their work. Almost all the relevant recommendations fall into one of these categories, but it is conceivable that this work may have excluded a small number of UPR recommendations that may be relevant to transitional justice if they did not directly refer to transitional justice or fall into one of the six categories.

1. **Transitional Justice Contexts**
   1. **Burundi**

Burundi suffered from several decades of ethnic conflict and civil war after independence in 1962. The conflict was propelled by political rivalry between two ethnic groups, the Hutus (about 85 per cent of the population), and the Tutsis (about 14 per cent).[[34]](#footnote-35) The period between 1962 and 2000 was marked by political assassinations,[[35]](#footnote-36) military coups,[[36]](#footnote-37) ethnic massacres,[[37]](#footnote-38) and large-scale displacement of people.[[38]](#footnote-39) Some of the most egregious human rights violations reported included the 1972 massacre of about 300,000 Hutu civilians, 1988 Ntenga and Marangara massacres of over 50,000 Hutu civilians, the massacre of about 20,000 Hutus in 1991 in Cibitoke[[39]](#footnote-40) The 1993 report by the UN Commission of Inquiry on Burundi refers to the ‘genocide’ of Tutsi civilians.[[40]](#footnote-41) In 1999, over 800,000 civilians (12% of the population) were reportedly displaced.[[41]](#footnote-42) The scale and consistency with which these human rights violations were carried out were underscored by Rene Lemarchand who asserted that ‘nowhere in Africa have human rights been violated on a massive scale and with such brutal consistency than in Burundi’.[[42]](#footnote-43)

The foundations for transitional justice in Burundi are rooted in the 2000 Arusha Peace and Reconciliation Agreement for Burundi (hereafter referred to as the Arusha Agreement) and the 2005 Report of the assessment mission on the establishment of an international judicial commission of inquiry for Burundi led by Tuliameni Kalomoh (the Kalomoh Report).[[43]](#footnote-44) The Arusha Agreement which was signed on 28 August 2000 in Arusha, Tanzania (came into force in November 2001) was a peace agreement and a political power sharing settlement between the different ethnic groups. This peace agreement ended the political violence that had persistent since independence in 1962 although failure to adhere to the terms of this settlement has led to renewed conflict in recent years.[[44]](#footnote-45) The Arusha Agreement acknowledge the commission of atrocity crimes in Burundi including acts of genocide, war crimes and other crimes against humanity, as well as violations of human rights.[[45]](#footnote-46) The parties to the agreement committed to ending and preventing the commission of these crimes.[[46]](#footnote-47) Some of the transitional justice actions the government of Burundi was required to take pursuant to the Arusha Agreement included:

1. Institute a National Day of Remembrance for victims and identification of mass graves;
2. Erect a national monument in memory of victims of genocide, war crimes and crimes against humanity;
3. Enact domestic legislation against genocide, war crimes, crimes against humanity and other violations of human rights;
4. Request the establishment by the UN Security Council of an International Judicial Commission of Inquiry on genocide, war crimes and other crimes against humanity;
5. Request the UN Security Council to establish an international criminal tribunal for Burundi
6. Establish a National Truth and Reconciliation Commission
7. Institutional Reform[[47]](#footnote-48)

The establishment of a national truth and reconciliation commission and an international judicial commission were some of the key recommendations advanced in March 2005 by the Kalomoh Report.[[48]](#footnote-49) These recommendations were subsequently endorsed in June 2006 by the UN Security Council Resolution 1606,[[49]](#footnote-50) and have been reinforced by other human rights bodies including the UN Special Rapporteurs,[[50]](#footnote-51) the African Commission on Human and Peoples’ Rights (ACHPR),[[51]](#footnote-52) and the Strategic Framework for Peacebuilding in Burundi (SFPB).[[52]](#footnote-53)

There have been significant delays in implementing several of the above transitional justice measures in Burundi[[53]](#footnote-54) that have contributed to renewed conflict in the country. Since April 2015, renewed political violence in the country has resulted in the death of about 1,200 people and about 400,000 refugees.[[54]](#footnote-55) Failure to adhere to the Arusha Agreement contributed to this renewed conflict. It is therefore important to examine the extent to which the UPR can contribute to support the implementation of the transitional justice measures set out in the transitional justice framework for Burundi. There have been several years since states have given any significant attention to the transitional justice process in Burundi. The UPR provides a forum that can bring renewed visibility to the transitional justice needs in Burundi. The Special Rapporteur on the situation of human rights in Burundi, Fortuné Gaétan Zongo, has underscored the importance of implementing the various transitional justice mechanisms including on accountability, truth, reparations and institutional reform as recommended by various human rights bodies.[[55]](#footnote-56)

* 1. **South Sudan**

South Sudan was a part of Sudan until 2011 when it gained statehood. Between 1955-1972 and 1983-2005, civil wars between the north and south of Sudan resulted in the commission of human rights atrocities including systematic violence against women.[[56]](#footnote-57) The conflict was primarily between the government of Sudan and two rebel groups - the Sudan Liberation Movement (now the ruling party in South Sudan) and the Justice and Equality Movement. An accurate official historical record of the root causes of the conflict is yet to be established. However, commentators have generally attributed the root causes of the conflict to the racial (‘Arab’ against ‘African’) and religious (the majority Muslim North against the largely Christian and Animist South) divide, and to the differences in regional access to power that resulted in differential economic development.[[57]](#footnote-58) It is estimated that about 2 million people reportedly died and 4 million were displaced as a result of the civil wars.[[58]](#footnote-59) The Comprehensive Peace Agreement (CPA) signed between the Government of Sudan and the Sudan People’s Liberation Movement (SPLM) brought an end to the civil war. The CPA provided the legal basis for South Sudan to hold a referendum on independence in which over 98% of South Sudanese citizens voted for independence from Sudan on 9 July 2011. Whereas the CPA prescribed the power sharing arrangement between the government of Sudan and the SPLM, it was vague in terms of specific transitional justice measures to address the human rights atrocities from the conflict. The focus was more on peace and less on justice for human rights violations. There were references in the CPA to a reconciliation process to be undertaken by the parties but no specific mention of accountability for human rights atrocities or reparations to victims. While scholars in peace studies may see this as beneficial to the peace negotiations,[[59]](#footnote-60) ignoring transitional justice measures in the CPA left unaddressed questions on accountability and reparations for victims which are essential for sustainable peace.

However, in December 2013, South Sudan relapsed into civil war following power sharing disagreements and a political feud between President Salva Kiir Mayardit and Vice President Riek Machar.[[60]](#footnote-61) This conflict quickly took on an ethnic dimension (between the Dinka ethnic group that supported Kiir, and those from the Nuer ethnic group supporting Machar), and reportedly resulted in the death of about 400,000 people and displacement of millions of others.[[61]](#footnote-62) Following mediation by regional and international organisations, and threat of sanction by the UN Security Council,[[62]](#footnote-63) the *Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCSS)* of 17August 2015 was signed between the Sudan People’s Liberation Movement and Army in Government (SPLM/A-IG) (represented by President Salva Kiir Mayardit) and the Sudan People’s Liberation Movement and Army in Opposition (SPLM/A-IO) (represented by Riek Machar Teny Dhurgon).[[63]](#footnote-64) Chapter V of the ARCSS enshrined the foundation principles for transitional justice in South Sudan anchored on three key measures: (i) the Commission for Truth, Reconciliation and Healing (CTRH); (ii) the Hybrid Court for South Sudan (HCSS); and (iii) Compensation and Reparation Authority (CRA).[[64]](#footnote-65) These measures were intended to provide accountability for human rights atrocities, promote healing, reconciliation, and provide material and financial support to victims impacted by the conflict. The ARCSS also set out some parameters for a permanent constitution for South Sudan, institutional reforms and the establishment of a Joint Monitoring and Evaluation Commission (JMEC).[[65]](#footnote-66)

After about a year, none of the transitional justice measures in the ARCSS had been implemented, some of which had to be implemented within six months. There were several reasons for this including the fact that the parties had signed the agreement out of pressure from the international community rather than conviction in the provisions of the agreement.[[66]](#footnote-67) Renewed conflict in 2016 and subsequent peace negotiations culminated to the Revitalized Agreement on the Resolution of Conflict in South Sudan (R-ARCSS) in 2018 that established the Revitalized Transitional Government of National Unity (RTGoNU) and maintained the transitional justice measures set out in the ARCSS 2015.[[67]](#footnote-68)

The transitional justice process is South Sudan is occurring at a time when the UPR and other international mechanisms can make a meaningful contribution to the realisation of key transitional justice goals for the state. Several of the transitional justice measures outlined here have been reinforced by various international mechanisms. The African Union Commission of Inquiry on South Sudan has proposed similar measures to achieve ‘healing, reconciliation, accountability and institutional reforms.’[[68]](#footnote-69) The Human Rights Council and the UN Security Council have both recommended the establishment of a truth commission, hybrid court, and reparations programme as a road map for transitional justice in South Sudan.[[69]](#footnote-70) Resolution 2625 of 15 March 2022 by the UN Security Council required South Sudan to establish a Hybrid Court for South Sudan to prosecute perpetrators of human rights violations during the conflict, including perpetrators of sexual and gender-based violence.[[70]](#footnote-71)

It is within the contexts above that Burundi and South Sudan undertook the first three cycles of the UPR. This paper will now turn to examine the relationship between the UPR and transitional justice, highlighting the contributions of the UPR to reinforcing the six core categories for transitional justice defined earlier in this paper and contextualised in this section.

1. **Analysis and Findings: Relationship between the UPR and Transitional Justice Measures**

This section engages with the three key questions raised by this chapter - (1) How prominent was transitional justice goals in the UPR’s recommendations? (2) What was the distribution of recommendations between different transitional justice issues? and (3) How specific, useful, and measurable were the recommendations?

* 1. **The frequency of reference to transitional justice measures**

An important indicator when determining the value of the UPR for a particular rights issue is the frequency in which the human rights issue is referenced by UPR state recommendations. In 2016, the Special Rapporteur on extreme poverty and human rights raised concerns on the quantity of recommendations made in the UPR process on socio-economic rights, viewing the limited attention given to socio economic rights as an indication states attached limited value to the right.[[71]](#footnote-72) However, Judith Bueno De Mesquita found that recommendations on the right to health has been more prominent in the UPR process that previous findings indicated, and represented 22% and 25% of the total recommendations made during the first two cycles of the UPR.[[72]](#footnote-73) Other studies have engaged in examining the quantity of recommendations made by states in the UPR process to gauge the prominence and level of engagement by states with particular human rights issues.[[73]](#footnote-74) This paper makes the first attempt to undertake a similar analysis in relation to transitional justice.

UPR recommendations were classified as ‘transitional justice related’ if they addressed Criminal Accountability (including prosecutions and engagement with the ICC); Truth Commissions or Commission of Inquiry; Return and Reintegration; Reparations; Constitutional, Legal and Institutional Reform; and Peace and Reconciliation. An additional category was created titled ‘General Reference to transitional justice and others’ to capture recommendations that called for the implementation of transitional justice more generally, without referring to any specific transitional justice measure. Fourteen recommendations were coded twice as they reference two of the transitional justice measures. For example South Africa recommended for South Sudan to ‘[e]xpedite the establishment and the operationalization of the Hybrid Court for South Sudan and the Commission for Truth, Reconciliation and Healing to ensure justice, accountability and healing.’[[74]](#footnote-75)- This recommendation was tagged as both ‘Criminal Accountability’ and ‘Truth Commission’. Only recommendations that clearly called for prosecution, punishment, cooperation with the ICC, ratification of ICC statute were tagged under ‘Criminal Accountability’. Recommendations only calling for investigations were not included. Recommendations were extracted directly from the relevant report of the Working Group on the Universal Periodic Review.

During the first cycle of the UPR, at least 26% (13/51) of the recommendations made to Burundi (see Figure 1) were on transitional justice. This number dropped significantly to 18% (31/171) during the second cycle and then increased to 22% during the third cycle (54/242). Recommendations on transitional justice are prominent in the UPR for Burundi. While there has been a significant increase in the number of UPR recommendations to Burundi across the three cycles,[[75]](#footnote-76) there has not been an equal increase in the number of recommendations on transitional justice. The waning prominence of UPR recommendations on transitional justice to Burundi is an indication that states are not focusing on the increasing challenges of implementing transitional justice in Burundi. The Special Rapporteur on the situation of human rights in Burundi, Fortuné Gaétan Zongo, criticised the limited progress by the government of Burundi on the implementation of transitional justice measures, in particular accountability, reparations, restitution, and security and judicial reform.[[76]](#footnote-77) Findings in the 2017 Report by the Commission of Inquiry on Burundi indicated that the alleged perpetrators of human rights violations during the conflict have not been prosecuted and the government of Burundi is ‘neither willing nor able genuinely to investigate or prosecute those violations.’[[77]](#footnote-78) The absence of a meaningful attempt by the government to hold perpetuators accountable or establish the truth has enabled denial and impunity to fester. According to David Taylor, in the ‘absence of insistence and follow-through in ensuring that the government fulfils its national and international commitments’, transitional justice in Burundi will remain elusive.[[78]](#footnote-79) The UPR can play an important role by reinvigorating its focus on recommendations targeting implementation of the transitional justice measures in Burundi.

A similar pattern on the frequency of recommendations can be observed in the case of South Sudan. Only four (12%) of the 33 recommendations made to South Sudan during the first cycle was related to transitional justice and predominantly focused on a general reference to the peace agreement (CPA). The low number of recommendations was because the review session took place in May 2011 whereas South Sudan only obtained independence in November 2011. The review took place in view of the pending political arrangement under the CPA between Sudan and South Sudan. Recommendations made to South Sudan where clustered separately.[[79]](#footnote-80) However, recommendations on transitional justice were very prominent in the second and third cycles of South Sudan’s review, accounting for at least 28% of the overall recommendations (65/233) during the second cycle and 22% during the third cycle. The level of attention placed on the issue of transitional justice by states within the context of the UPR is consistent with the pressure from other international mechanisms and civil society who have criticised delays by the South Sudanese government in implementing the transitional justice measures in the peace agreements. In 2021, before South Sudan’s third cycle, 34 South Sudanese, regional and international rights organizations urged the African Union to help establish the hybrid court for South Sudan to prosecute perpetrators of serious human rights abuses during the conflict.[[80]](#footnote-81) In 2015, the US committed $5 million to the AU for justice and accountability in South Sudan but the AU did not use the majority of the funds.[[81]](#footnote-82) In 2018, the African Commission called for the government of South Sudan to implement all the transitional justice measures outlined in the CPA.[[82]](#footnote-83) Transitional justice was prioritised in several NGO reports submitted for South Sudan’s second and third cycles of the UPR.[[83]](#footnote-84) There was therefore an appropriate alignment between state and NGO priorities, which focused on the issue of transitional justice and constituted 1/5 of the total recommendations made to South Sudan in the second and third cycles of the UPR.

* 1. **The quality of transitional justice recommendations – Relevance and Specificity**

No other international mechanism has received as much criticism about the quality of its recommendations than the UPR.[[84]](#footnote-85) According to Subhas Gujadhur and Marc Limon, the quality of UPR recommendation is determinative of the ‘usefulness and effectiveness’ of the mechanism.[[85]](#footnote-86) The quality of a UPR recommendation can impact on the ability of the UPR to promote meaningful and measurable change. However, there is no agreed definition of what a ‘good quality’ recommendation is, although there are some common elements across different definitions used by scholars and practitioners. The notion of SMART UPR recommendations, introduced by UPR Info,[[86]](#footnote-87) has been used by different UN agencies and recommended by the OHCHR.[[87]](#footnote-88) SMART requires recommendations to be Specific, Measurable, Achievable, Result-Oriented and Time-Bound.[[88]](#footnote-89) Specific recommendations are those that calls for a specific action in relation to a particular rights issue. This is generally categorised as Rank 5 recommendations on the UPR Info database.[[89]](#footnote-90) A ‘measurable’ recommendation is one that can be assessed, and an objective determination made on whether it has been implemented or not. A recommendation is ‘achievable’ where it can realistically be implemented by the state and ‘result-oriented’ where it addresses a human rights concern in the state under review and can contribute to improving the human rights situation on the ground. The element of ‘time-bound’ requires the recommendable to be capable of being implemented within the window of implementation before the next review cycle for the state). This approach to a ‘good quality’ recommendation helps to promote specificity, measurability, and relevance in relation to UPR recommendations. This approach has generally guided NGO engagement with the UPR process.

Another approach to a ‘good quality recommendation’ is that of ‘usefulness and measurability’ advanced by Gujadhur and Limon.[[90]](#footnote-91) A recommendation is considered ‘useful’ to the state under review if it objectively captures the main human rights challenges facing the state, shows an overall understanding of the domestic human rights situation, and helps provide guidance for reform to the state under review and domestic stakeholders.[[91]](#footnote-92) Measurability under this approach requires recommendations to provide indicators against which progress on the implementation of the recommendation can be measured. Bueno De Mesquita adopted this approach and applied it in the context of the right to health within the UPR.[[92]](#footnote-93) Several scholars and UPR stakeholders have criticised UPR recommendations that are too general, vague with no means of implementation or measuring outcomes of the recommendations.[[93]](#footnote-94) For example, during South Sudan’s second cycle review, Djibouti recommended South Sudan ‘[f]urther focus on the respect of human rights’[[94]](#footnote-95) and Norway recommended that South Sudan should ‘[i]ncrease the efforts in the field of civil protection in the transition period’.[[95]](#footnote-96) These recommendations do not provide a means to determine implementation, or assess the outcome of the recommendation. The Special Rapporteur on extreme poverty and human rights was critical of the recommendations states made on socio-economic rights highlighting that ‘two thirds of the recommendations relating to economic, social and cultural rights called for only general action, as opposed to any specific outcome.’[[96]](#footnote-97) However, I have previously argued that recommendations phrased in general terms are not entirely worthless as they have at times translated to specific action at the implementation stage.[[97]](#footnote-98) McMahon contended that UPR recommendations phrased in general terms and allowed the state the flexibility to determine the mode of implementation, can undermine the utility and impact of the recommendations.[[98]](#footnote-99) This indeed is the case, but it is also plausible that given the lack of human rights expertise informing state recommendations in the UPR process, that flexibility may well be needed by the state where the recommendation (even a specific and measurable one) does not meet the ‘usefulness’ criterion. In such a case, the state may implement the recommendation in a manner that will be most useful and effectively address the human rights concern.

The SMART approach and the ‘usefulness and measurability’ approach are not mutually exclusive. Several elements of the SMART approach are captured in the ‘usefulness and measurability’ approach. For example, the more specific a recommendation is the more useful and measurable it can be. As part of the analysis quality of transitional justice recommendations, I deployed the ‘usefulness’ criterion to determine how relevant the recommendations were and the extent to which they addressed the key transitional justice issues in Burundi and South Sudan. I then considered the specificity of the recommendations using UPR Info classification[[99]](#footnote-100) to determine how actionable the recommendations were.

* 1. **Usefulness and Specificity of Transitional Justice Recommendations to Burundi and South Sudan**

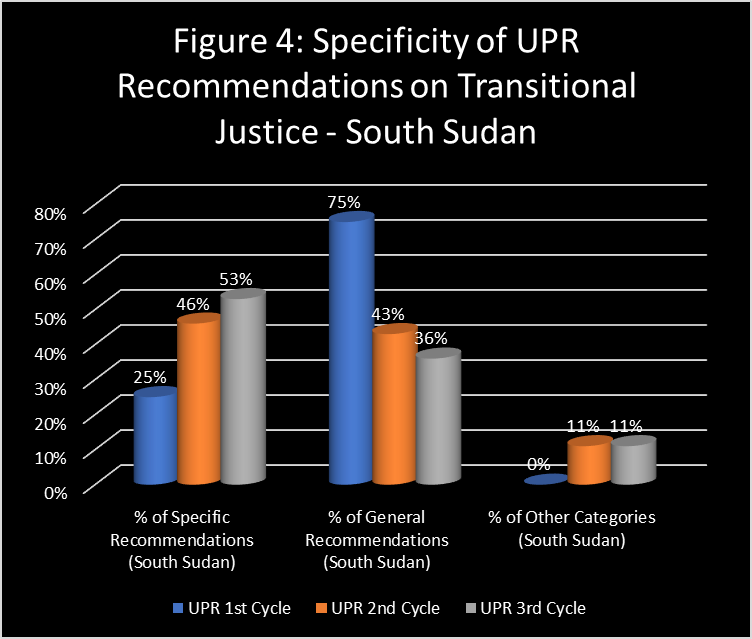
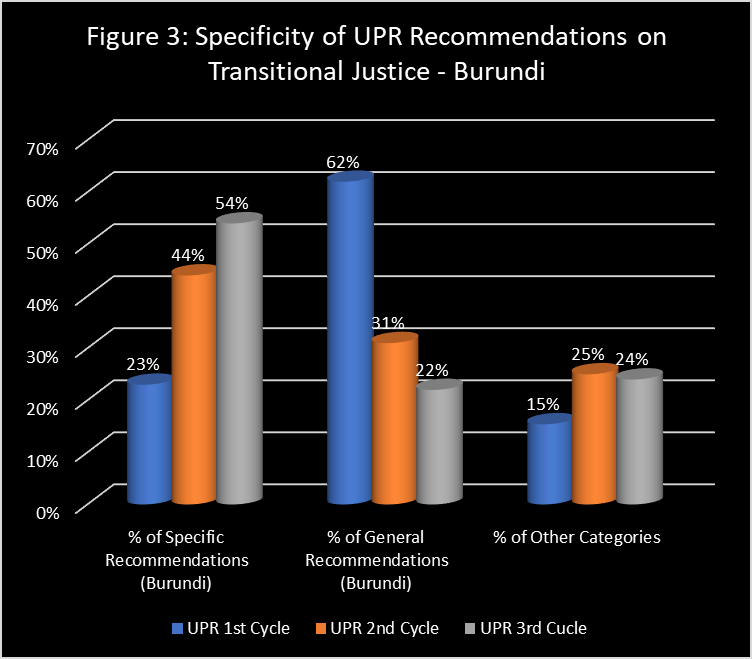
One of the significant findings from data on Figure 1 and 2 above is that there was a significant focus on justice/criminal accountability and truth commissions/commissions of inquiry, and very little focus on other transitional justice measures. The majority of the recommendations on transitional justice made to Burundi during the last three UPR cycles focused equally on justice/criminal accountability (24%) and Truth Commissions/Commissions of Inquiry (24%). There were no recommendations on return and reintegration or on reparations during the second and third cycles of the review. There was only one recommendation to Burundi in the second and third cycles of the review in the category of ‘constitutional, judicial and institutional reform’.[[100]](#footnote-101) The two issues prioritised here by states can be considered useful as they objectively showed an understanding of the human rights situation, and captured the transitional justice challenges facing Burundi. They reinforced some of solutions the state agreed to in the 2000 Arusha agreement and reiterated by UN Security Council Resolution,[[101]](#footnote-102) UN Special Rapporteurs,[[102]](#footnote-103) ACHPR[[103]](#footnote-104) and SFPB.[[104]](#footnote-105) In particular, the recommendations called for the establishment of a Truth Commission, and establishment of tribunal to hold accountable/prosecute perpetrators of genocide, crimes against humanity, war crimes and other related crimes committed during the conflicty. This renewed visibility given to the transitional justice measures in Burundi was much needed considering the several years of delays in implementing the measures since the Arusha agreement was signed in 2000.

In the case of South Sudan, there were only few broad references to transitional justice in the first cycle of the UPR focusing on peace and pending constitutional arrangement that led to South Sudan’s independence. The majority of transitional justice recommendations made during the second and third cycles of the review focused on justice and criminal accountability (25%) compared to 3% on Truth Commission/Commissions of Inquiry, 2% on reparations, 2% on return and reintegration, and 2% on reform. It was useful for states to recommend justice and criminal accountability through the prosecution of perpetrators of human rights atrocities during the conflict in South Sudan. This is consistent with the ARCSS, R-ARCSS, UN Security Council Resolution 2625, and recommendations from the Human Rights Council, as highlighted earlier on in this chapter. It is also in line with authoritative interpretations of the ICCPR requiring states to prosecute, and punish certain serious violators of international human rights law.[[105]](#footnote-106) The majority of the state recommendations to South Sudan on this issue called for the establishment of the hybrid tribunal and the prosecution of perpetuators of atrocity crimes, including conflict related sexual violence. The delays in the establishment of the hybrid tribunal for South Sudan and the need to prosecute perpetuators of atrocity crimes during the conflict was an issue raised in several NGO submissions to South Sudan’s UPR.[[106]](#footnote-107) Recommendations on this issue were therefore useful and the UPR provided renewed visibility to these recommendations.

It is evident that addressing impunity and prosecuting perpetrators of serious human rights violations during the respective conflicts in Burundi and South Sudan gained prominence in state recommendations. These recommendations were useful. However, the limited or no reference to many other important transitional justice measures meant the full domestic situation was not captured in the overall quality of transitional justice recommendations made by states. Whereas the foundational documents for transitional justice in both Burundi and South Sudan captures a range of other measures, states within the UPR have focused primarily on criminal accountability through prosecution and truth commissions. For example, establishing a Remembrance Day and a national monument for victims was given equal importance to prosecution in the Arusha Agreement but was never mentioned in the UPR recommendations to Burundi. There was very little focus on reparations, and the return and reintegration of victims, despite constituting and important aspect of the transitional justice process in both Burundi and South Sudan. The predominant focus on prosecution and truth commission means those UPR recommendations on transitional justice focus more on the needs of the state and less on the needs of the victims. Simon Robin argues that the predominant focus on prosecution and truth commissions is failing victims and that other transitional justice measures can better address the needs of individual victims.[[107]](#footnote-108) There were no recommendations on reparations to Burundi and very few recommendations on this issue to South Sudan, despite the fact that this is a well-enshrined principle in human rights law for victims of gross human rights violations,[[108]](#footnote-109)and was part of the transitional justice framework for the states. While the focus on criminal accountability is important, states need to give equal attention in their recommendations to other transitional justice measures that address the needs of victims. The skewed distribution of the recommendations to Burundi and South Sudan on transitional justice compromises the quality of the recommendations and undermines the growing consensus for a more holistic approach to transitional justice.[[109]](#footnote-110) Given the complex challenges post-conflict societies face in addressing gross human rights violations, UPR recommendations on this issue need to promote a more holistic approach to transitional justice given recognition and prominence to a broader range of transitional justice measures. The transitional justice recommendations made by states to Burundi and South Sudan tended to promote more of the transitional justice measures prioritised by the international community (prosecution and truth commissions) and paid very little attention to local indigenous reconciliation and justice processes.

* 1. **Specificity of UPR recommendations on Transitional Justice to Burundi and South Sudan**

I noted earlier that the more specific a recommendation is, the more useful and measurable it can be to the state under review. Figures 3 and 4 below provide a representation of the specificity of transitional justice recommendations made to Burundi and South Sudan.



A qualitative review of the transitional justice recommendations made to Burundi and South Sudan reveal two key findings. First, the percentage of specific recommendations on transitional justice has significantly increased across the first three cycles of the UPR with a corresponding decrease in the number of general recommendations. In the case of Burundi, the proportion of specific recommendations on transitional justice increased by 31% between the first and third cycles (See Figure 3 above). An increase of 28% was observed in the case of South Sudan between the first and third cycles (see Figure 3 above). Some scholars have made a similar observation that the number of specific recommendations made by states have increased across the three cycles of the UPR.[[110]](#footnote-111) Second, the specific recommendations made to Burundi and South Sudan largely focused on criminal accountability, ratification of the ICC Statute, establishment of a truth commission or other mechanisms advanced in the relevant peace agreement. The outcome of these recommendations can be easily measured. For example, it would be easy to determine whether South Sudan has established the hybrid court, and truth commissions or ratified the Rome Statute of the ICC as recommended by states during the second and third cycles of the UPR.

Nevertheless, a significant proportion of the recommendations were general recommendations. For example, 43% and 36% of the transitional justice recommendations made to South Sudan during the second and third cycle of the review respectively, were general recommendations. Several relevant recommendations on reparations, return and reintegration of displaced persons, and reforms, were too general and at times vague. For example, Saudi Arabia recommended that South Sudan ‘[u]ndertake fundamental reforms to resolve the dispute in South Sudan’[[111]](#footnote-112) and Uganda recommended that South Sudan should ‘[i]ntensify efforts to carry out necessary reforms in the security sector’.[[112]](#footnote-113) Neither of these recommendations provide specific means to determine the action needed to implement the recommendation. Even though these recommendations are useful and highlight the need for reforms to be implemented in South Sudan, they do not meet the measurability requirement. For recommendations on transitional justice to have the most impact at the domestic level, they have to be specific, useful and measurable.

1. **Conclusion**

The analysis in this chapter has provided an opportunity to assess the relation between the UPR and transitional justice. The UPR can play an important role in helping post-conflict states achieve the goals of transitional justice by recommending and reinforcing recommendations on transitional justice measures needed at the domestic level. This can contribute to sustainable peace and to the promotion and protection of human rights in post-conflict societies. Transitional justice has a prominent position in state UPR recommendations. The UPR mechanism is therefore valuable to transitional justice and can play a meaningful role to the promotion of transitional justice in post-conflict societies. However, it was observed that the prominence of these recommendations appeared to be waning over time. Therefore, increasing focus need to be placed on implementation and follow-up of UPR recommendations without which the realisation of transitional justice goals will remain elusive in these states.

UPR recommendations have given renewed visibility to transitional justice measures enshrined in relevant peace agreements. There was evidence that many of the UPR recommendations on transitional justice had previously been made by other human rights mechanisms. The ability of the UPR to reinforce those recommendations gives the recommendations renewed visibility, and provide the state an opportunity to respond to them is a positive aspect of the process. This is particularly helpful in cases like Burundi where several years have passed since there was a meaningful recommendation on transitional justice by an international human rights mechanism.

While the transitional justice recommendations have been relevant and increasing specific, there are still a significant number of recommendations that are general and therefore do not satisfy the measurability requirement. In addition, there is a need for greater focus on implementation given the findings on the usefulness and measurability of many of the UPR recommendations on transitional justice. However, the overwhelming focus on criminal accountability and truth commissions undermines the ability of the UPR to promote other transitional justice measures. The UPR needs to promote a more holistic approach to transitional justice looking beyond prosecution and truth commissions, promoting other measures that address the needs of victims, including local indigenous reconciliation and justice processes.

1. See Ruti Teitel, ‘Transitional Justice Genealogy’ in Ruth Jamieson (ed), *The Criminology of War* (Routledge 2014) 26; Padraig McAuliffe, ‘The roots of transitional accountability: interrogating the “justice cascade” (2013) International Journal of Law in Context 106, 109-112; Iosif Kovras, ‘The future of transitional justice: Mercy or impunity?’ in Michael Stohl and Alison Brysk (eds), *A Research Agenda for Human Rights* (Elgar, 2020) 75–88; Paige Arthur, ‘How “Transitions” Reshaped Human Rights: A Conceptual History of Transitional Justice’ (2009) 31 (2) Human Rights Quarterly 321-367. [↑](#footnote-ref-2)
2. See Diane Orentlicher, ‘Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime’ (1991) 100(8) Yale Law Journal 2537-2615; Naomi Roht-Arriaza, ‘State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law’ (1990) 78(2) California Law Review 449-513. [↑](#footnote-ref-3)
3. See above, n1. [↑](#footnote-ref-4)
4. See Hugo van der Merwe and M Brinton Lykes, ‘Transitional Justice and Corporate Accountability: Introducing New Players and New Theoretical Challenges’ (2022) 16 (3) International Journal of Transitional Justice, 291–297; Sabine Michalowski, *Corporate Accountability in the Context of Transitional Justice* (Routledge 2013); Evelyne Owiye Asaala, ‘The Politics of Transitional Justice and Corporate Accountability for Atrocities: Options under International Law’ (2022) 16 (3) International Journal of Transitional Justice 467–477; Gabriel Pereira, Leigh A. Payne & Laura Bernal Bermúdez, ‘Justice from below: corporate accountability in Argentina’ (2022) 26 (8) The International Journal of Human Rights 1418-1454. [↑](#footnote-ref-5)
5. Naomi Roht-Arriaza & Javier Mariezcurrena (eds.), *Transitional justice in the twenty-first century: Beyond truth versus justice* (CUP 2006); See also Damian Etone, 'The Prospects and Potential Advantages and Disadvantages of a Regional Truth-Seeking Mechanism in the West Balkans' (2016) 2 (2) The International Journal of Conflict and Reconciliation 1-43 <<https://peacestudies.missouri.edu/articles-4>> accessed 3 January 2023. [↑](#footnote-ref-6)
6. UN Security Council ‘The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies’ (23 August 2004) UN Doc. S/2004/616, para 8. [↑](#footnote-ref-7)
7. Kirsten Ainsley, ‘Evaluating the Success of Transitional Justice in Sierra Leone and Beyond’ In: Kirsten Ainley, Rebekka Friedman, and Chris Mahony, (eds.) *Transitional Justice: Accountability and Peacebuilding in Post-Conflict Sierra Leone (*Palgrave Macmillan 2015) 241-264; Bronwyn Anne Leebaw, ‘The Irreconcilable Goals of Transitional Justice’ (2008) 30(1) Human Rights Quarterly 95–118; Simon Robins, ‘Failing Victims? The Limits of Transitional Justice in Addressing the Needs of Victims of Violations’ (2017) 2 Human Rights and International Legal Discourse 41-58. [↑](#footnote-ref-8)
8. Tricia D. Olsen, Leigh A. Payne and Andrew G. Reiter, ‘The Justice Balance: When Transitional Justice Improves Human Rights and Democracy’ (2010) 32 (4) Human Rights Quarterly 980-1007; Geoff Dancey et al examined the contributions of transitional justice in decreasing violations of human rights, see Geoff Dangy et al, ‘Behind Bars and Bargains: New Findings on Transitional Justice in Emerging Democracies’ (2019) International Studies Quarterly 1–12. [↑](#footnote-ref-9)
9. See International Centre for Transitional Justice, ‘Transitional Justice and Prevention: Summary Findings from Five Country Case Studies’ (June 2021) 1-31 <https://bit.ly/3Wc4CDs> accessed 3 January 2023 [↑](#footnote-ref-10)
10. Ibid, 1. [↑](#footnote-ref-11)
11. UPR Info, ‘Database of UPR recommendations’ at <https://bit.ly/3XvWDC3> accessed 14 January 2023. [↑](#footnote-ref-12)
12. UN General Assembly, ‘Review of the United Nations Peacebuilding Architecture’ (12 May 2016) UN Doc. A/RES/70/262, para 11. [↑](#footnote-ref-13)
13. UN Office of the High Commissioner for Human Rights, ‘2020 Review of the UN Peacebuilding Architecture: The Universal Periodic Review and Sustaining Peace’ (2020) <https://bit.ly/3W83RLn> accessed on 3 January 2023. [↑](#footnote-ref-14)
14. Lijiang Zhu, ‘International Humanitarian Law in the Universal Periodic Review of the UN Human Rights Council’ (2014) *5*(1-2) Journal of International Humanitarian Legal Studies 186-212. [↑](#footnote-ref-15)
15. Nadia Bernaz, ‘Reforming the UN Human Rights Protection Procedures: A Legal Perspective on the Establishment of the Universal Periodic Review’ in Kevin Boyle (ed), *New Institutions for Human Rights Protection* (Oxford University Press 2009) 78 and 88. [↑](#footnote-ref-16)
16. Sir Nigel S Rodley, ‘UN Treaty Bodies and the Human Rights Council’ in Helen Keller and Geir Ulfstein (eds), *UN Human Rights Treaty Bodies: Law and Legitimacy* (Cambridge University Press, 2012) 329. See also Heather Collister, ‘Rituals and Implementation in the Universal Periodic Review’ in Hilary Charlesworth and Emma Larking (eds), *Human Rights and the Universal Periodic Review: Rituals and Ritualism* (Cambridge University Press, 2015), 116-19. [↑](#footnote-ref-17)
17. Olivier de Frouville, ‘Building a Universal System for the Protection of Human Rights: The Way Forward’ in M Cherif Bassiouni and William A Schabas (eds), *New Challenges for the UN Human Rights Machinery* (Intersentia, 2011) 250-251. [↑](#footnote-ref-18)
18. See Lijiang Zhu, ‘International Humanitarian Law in the Universal Periodic Review of the UN Human Rights Council’ (2014) 5 *Journal of International Humanitarian Legal Studies* 186-212. [↑](#footnote-ref-19)
19. See Lijiang Zhu, ibid 193. [↑](#footnote-ref-20)
20. See Claire Callejon, ‘Developments at the Human Rights Council in 2007: A Reflection of its Ambivalence’ (2008) 8 (2) Human Rights Law Review 323, 336. [↑](#footnote-ref-21)
21. Helen Quane, ‘The Significance of an Evolving Relationship: Asian States and the Global Human Rights Mechanisms’ (2015) 15 *Human Rights Law Review 283,* 289. [↑](#footnote-ref-22)
22. For Kenya and South Africa, see Damian Etone, *The Human Rights Council: The Impact of the Universal Periodic Review in Africa* (Routledge 2021) 104 & 156. [↑](#footnote-ref-23)
23. Lijiang Zhu, above n18. [↑](#footnote-ref-24)
24. See UPR Info, ‘Database on Recommendations’ at <<https://bit.ly/3GIr8xL>> accessed 14 January 2023. [↑](#footnote-ref-25)
25. See Valentina Carraro, ‘The More the Better? The Complementarity of United Nations Institutions in the Fight Against Torture’ (2022) 40 (4) Netherlands Quarterly of Human Rights 354-378. [↑](#footnote-ref-26)
26. See Judith Bueno De Mesquita, ‘The Universal Periodic Review: A Valuable New Procedure for the Right to Health?’ (2019) 21(2) Health Hum Rights 263-277. [↑](#footnote-ref-27)
27. See Noelle Higgins, ‘Creating a space for indigenous rights: the Universal Periodic Review as a mechanism for promoting the rights of indigenous peoples’ (2019) 23:1-2 The International Journal of Human Rights 125-148; Jonathan Liljeblad ‘Indigenous Rights and Universal Periodic Review: A Confluence of Human Rights and Environmental Issues’ In: Michelle Lim (ed) Charting Environmental Law Futures in the Anthropocene (Springer 2019) 151-157. [↑](#footnote-ref-28)
28. Frederick Cowell and Angelina Milon, ‘Decriminalisation of Sexual Orientation through the Universal Periodic Review’ (2012) 12(2) *Human Rights Law Review* 341–352; Kate Gilmore, Luis Mora, Alfonso Barragues, and Ida Krogh Mikkelsen, ‘The Universal Periodic Review: A Platform for Dialogue, Accountability, and Change on Sexual and Reproductive Health and Rights’ (2015) 17 (2) Health and Human Rights Journal 167-79. [↑](#footnote-ref-29)
29. See Amna Nazir, ‘The Universal Periodic Review and the Death Penalty: A Case Study of Pakistan’ (2020) 1 RSIL Law Review 126-155; Amna Nazir, ‘A UPR Perspective on Capital Punishment and the Kingdom of Saudi Arabia’ (2022) 19(1) Muslim World Journal of Human Rights 77-94; Alice Storey, ‘Challenges and Opportunities for the United Nations’ (2021) 90(1) UMKC Law Review 129-152. [↑](#footnote-ref-30)
30. UN General Assembly, above n12; Mie Roesdahl, ‘Universal Periodic Review and its Limited Change Potential: Tracking the Complexity of Multiple Actors and Approaches to Human Rights Change through the Lens of the UPR Process of Nepal’ (2017) 9 (3) Journal of Human Rights Practice 401–423. [↑](#footnote-ref-31)
31. Office of the High Commission for Human Rights, ‘Transitional Justice and Human Rights’ at <https://www.ohchr.org/en/transitional-justice> accessed 14 January 2023. [↑](#footnote-ref-32)
32. Report of the Secretary-General, ’The rule of law and transitional justice in conflict and post conflict societies’ (23 August 2004) UN Doc S/2004/616, para 8. [↑](#footnote-ref-33)
33. The International Centre for Transitional Justice (ICTJ), ‘What Is Transitional Justice?’ at <https://www.ictj.org/what-transitional-justice> accessed 14 January 2023. [↑](#footnote-ref-34)
34. Daniel Sullivan, ‘The Missing Pillars: A look at the Failure of Peace in Burundi Through the the Lens of Arend Lijphart's Theory of Consociational Democracy’ (2005) 43 (1) Journal of Modern African Studies 75, 76. [↑](#footnote-ref-35)
35. Ibid, 75-82; President Ndadaye was assassinated on 21 October 1993; Pierre' Ngendandumwe, a *Hutu* Prime Minister elected in 1963 was assassinated on 15 January 1965. [↑](#footnote-ref-36)
36. President Ndadaye was overthrown in October 1993; Major Pierre Buyoya led a coup on 25 July 1996 to become Acting President; see UN Commission on Human Rights, ’Report on the human rights situation in Burundi submitted by the Special Rapporteur, Mrs. Marie-Thérèse A. Keita Bocoum, in accordance with Commission resolution 1999/10 (25 February 2000) UN Doc E/CN.4/2000/34, para 31-32. [↑](#footnote-ref-37)
37. ibid, para 21. [↑](#footnote-ref-38)
38. Ibid, 55-56; See also Internal Displacement Monitoring Centre ‘Burundi: Still No End to Displacement, Despite Political Progress – A Profile of the Internal Displacement Situation’ (2006) <<https://www.refworld.org/pdfid/4455cc524.pdf>> accessed 3 January 2023. [↑](#footnote-ref-39)
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40. *Final Report of the UN Commission of Inquiry Report for Burundi,* 1993 para 496 - 499 at <https://bit.ly/3XbE5al> accessed 14 January 2023. [↑](#footnote-ref-41)
41. See Internal Displacement Monitoring Centre and Norwegian Refugee Council, ‘Burundi: still no end to displacement, despite political progress’ (11 April 2006) available at <https://bit.ly/3XdcAxn> accessed 30/12/2022. [↑](#footnote-ref-42)
42. Rene Lemarchand's assertion in a testimony to the United States Congress in 1988 on the scale of human rights violations and enduring nature of the cycle of violence in Burundi, see Robert Krueger and Kathleen Krueger, *From Bloodshed to Hope in Burundi: Our Embassy Years during Genocide* (University of Texas Press 2007) 27. [↑](#footnote-ref-43)
43. *Arusha Peace and Reconciliation Agreement for Burundi,* Arusha (28 August 2000); United Nations Security Council, *Letter dated 11 March 2005 from the Secretary-General addressed to the President of the Security Council (Kalomoh Report)* (11 March 2005) UN Doc S/2005/158. [↑](#footnote-ref-44)
44. Arusha Agreement, preamble and article 6 (2). [↑](#footnote-ref-45)
45. Ibid. [↑](#footnote-ref-46)
46. Ibid, Article 6. [↑](#footnote-ref-47)
47. See Arusha Agreement, Chapter 2 articles 6 (7) - 6(10), 17, and 18. [↑](#footnote-ref-48)
48. United Nations Security Council, *Letter dated 11 March 2005 from the Secretary-General addressed to the President of the Security Council (Kalomoh Report)* (11 March 2005) UN Doc S/2005/158 para 53-66. [↑](#footnote-ref-49)
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50. See UN Human Rights Council, ‘Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff’(10 August 2015) UN Doc A/HRC/30/42/Add.1 para 109-112. [↑](#footnote-ref-51)
51. See African Commission on Human and Peoples’ Rights, Report of the Delegation of the African Commission on Human and Peoples’ Rights on its Fact-Finding Mission to Burundi 7 - 13 December 2015’ para 172-173 available at <https://bit.ly/3CNJ9JY> accessed 14 January 2023 [↑](#footnote-ref-52)
52. See United Nations Peacebuilding Commission, ‘Identical letters dated 21 June 2007 from the Chairman of the Burundi configuration of the Peacebuilding Commission to the President of the Security Council, the President of the General Assembly and the President of the Economic and Social Council’ (22 June 2007) UN Doc PBC/1/BDI/4, Annex - Strategic Framework for Peacebuilding in Burundi, para 29-31. [↑](#footnote-ref-53)
53. UN Human Rights Council, ‘Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff’(10 August 2015) UN Doc A/HRC/30/42/Add.1 para 37-46. [↑](#footnote-ref-54)
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55. UN Human Rights Council, ‘Report on the Situation of Human Rights in Burundi, Fortuné Gaetan Zongo’ (13 September 2022) UN Doc A/HRC/51/44 paras 39-42. [↑](#footnote-ref-56)
56. See *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General* *Pursuant to Security Council Resolution 1564 of 18 September 2004* (25 January 2005) paras 333 - 338 available at <https://www.legal-tools.org/doc/1480de/pdf/> accessed 14 January 2023. [↑](#footnote-ref-57)
57. Alex Cobham, ‘Causes of Conflict in Sudan: Testing The Black Book’ (2005) 17 (3) The European Journal of Development Research 462-480; Douglas Johnson and Douglas H Johnson, *The Root Causes of Sudan's Civil Wars Old Wars and New Wars [Expanded 3rd Edition]* (Boydell & Brewer 2016); African Union, *Report of the African Union: High Level Panel on Darfur (AUPD)*, 29 October 2009, PSC/AHG/2(CCVII) para 198. [↑](#footnote-ref-58)
58. European Parliament, ‘Background Note on the Political and Human Rights Situation in Sudan and Darfur’ (2007) 1 available at <https://bit.ly/3kk5J6w> accessed 14 January 2023. [↑](#footnote-ref-59)
59. See Kuyang Logo, ‘Pushing too hard for transitional justice? Lessons from South Sudan’ (2021) available at <https://bit.ly/3kglCeu> accessed 14 January 2023. [↑](#footnote-ref-60)
60. Douglas H Johnson. ‘The Political Crisis in South Sudan’ (2014) 57 (3) *African Studies Review* 167–174. [↑](#footnote-ref-61)
61. International Crisis Group, ‘Toward a Viable Future for South Sudan Crisis Report No. 300’ (10 February 2021) para (i) and (ii) https://bit.ly/3H4vLDW accessed 14 January 2023. [↑](#footnote-ref-62)
62. UN Security Council, Security Council resolution 2206, *Sanctions Compliance and the Situation in South Sudan* (3 March 2015) UN Doc S/RES/2206, 5; For a detailed discussion on reservations to the agreement President Kiir had, see Clayton Hazvinei Vhumbunu, ‘Conflict Resurgence and the Agreement on the Resolution of the Conflict in the Republic of South Sudan: A Hurried and Imposed Peace Pact?’ (19 October 2016) available at <https://bit.ly/3ILhfCh> accessed 14 January 2023. [↑](#footnote-ref-63)
63. The negotiations was facilitated by the Intergovernmental Authority on Development, an East African regional organisation with the mission to promote regional cooperation and integration; See Inter Governmental Authority on Development (IGAD), *Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCSS)* of 19August 2015 available at <https://bit.ly/3w6N9Bw> accessed 14 January 2023. [↑](#footnote-ref-64)
64. ARCSS, Chapter V. [↑](#footnote-ref-65)
65. Chapter VI and VII of ARCSS. [↑](#footnote-ref-66)
66. For a discussion on the reasons why the agreement failed, see Mairi John Blackings ‘Why Peace Fails: The Case of South Sudan’s Agreement on the Resolution of the Conflict in South Sudan’ (Friedrich-Ebert-Stiftung 2016) available at <https://library.fes.de/pdf-files/bueros/fes-pscc/14355-20180511.pdf> accessed 14 January 2023. [↑](#footnote-ref-67)
67. Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS), 12 September 2018, Chapter V. [↑](#footnote-ref-68)
68. African Union, *Final Report of the African Union Commission of Inquiry on South Sudan* (15 October 2014) para 4 available at <http://www.peaceau.org/uploads/auciss.executive.summary.pdf> accessed 14 January 2023. [↑](#footnote-ref-69)
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70. UN Security Council, ‘Resolution 2625 (2022) Adopted by the Security Council at its 8994th meeting, on 15 March 2022’ (15 March 2022) UN Doc S/RES/2625 paras 9, 17 and 24. [↑](#footnote-ref-71)
71. UN Human Rights Council, ‘Report of the Special Rapporteur on extreme poverty and human rights’ (28 April 2016) UN Doc A/HRC/32/31, para 50. [↑](#footnote-ref-72)
72. See Judith Bueno De Mesquita, above n26, 274. [↑](#footnote-ref-73)
73. See Center for Economic and Social Rights ‘The Universal Periodic Review: A Skewed Agenda? Trends analysis of the UPR’s coverage of economic, social and cultural rights’ (2016) 1-14; *Kate Gilmore, Luis Mora, Alfonso Barragues, and Ida Krogh Mikkelsen* ‘The Universal Periodic Review: A Platform for Dialogue, Accountability, and Change on Sexual and Reproductive Health and Rights’ (2015) 17(2) Health and Human Rights Journal 167-179. [↑](#footnote-ref-74)
74. See UN Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review – South Sudan’, 50th sess, UN Doc A/HRC/50/14 (28 March 2022) para 113.102. [↑](#footnote-ref-75)
75. This is consistent with broader findings in the literature that the number of UPR recommendations to states have increased across UPR cycles, see for example Edward R McMahon, Kojo Busia and Marta Ascherio, ‘Comparing Peer Reviews: The Universal Periodic Review of the UN Human Rights Council and the African Peer Review Mechanism’ (2013) 12 African and Asian Studies 266, 280-82. [↑](#footnote-ref-76)
76. UN Human Rights Council, above n55. [↑](#footnote-ref-77)
77. UN Human Rights Council, ‘Report of the Commission of Inquiry on Burundi’ (11 August 2017) UN Doc A/HRC/36/54, paras 26, 66 and 80. [↑](#footnote-ref-78)
78. David Taylor, ‘“We Have No Influence”: International Discourse and the Instrumentalisation of Transitional Justice in Burundi’ (2013) 2 (3) Stability: International Journal of Security & Development 1-10. [↑](#footnote-ref-79)
79. See UN Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review - Sudan’ (11 July 2011) UN Doc A/HRC/18/16, paras 84 and 85. [↑](#footnote-ref-80)
80. *Letter to AU Commission Chairperson on South Sudan from Civil Society Organizations* (9 June 2021) available at <https://bit.ly/3XekMgQ> accessed 14 January 2023. [↑](#footnote-ref-81)
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82. See The African Commission on Human and Peoples’ Rights, ‘Press release on human rights violations in the South Sudan conflict’ (12 July 2018) available at <https://bit.ly/3iKvrRd> accessed 14 January 2023. [↑](#footnote-ref-83)
83. See for example South Sudan Civil Society Coalition on the UPR, Joint submission 7‘ paras 4-9 available at <https://bit.ly/3w5oQE4> accessed 14 January 2023; Rights for Peace, Centre for Inclusive Governance, Peace & Justice, and Dialogue and Research Initiative, ’ Submission to the United Nations Universal Periodic Review of South Sudan’ (15 July 2011) 1-9 available at <https://bit.ly/3GI5N7Q> accessed 14 January 2023; The East and Horn of Africa Human Rights Defenders Project (DefendDefenders) and South Sudan Human Rights Defenders Network (SSHRDN), ’Joint Submission 5’ paras 1.1 - 1.12 available at <https://bit.ly/3QDJ6Gt> accessed 14 January 2014; Amnesty International, ’South Sudan: Amnesty International Submission for the UN Universal Periodic Review 26th Session of the UPR Working Group’ (March 2016) 6 available at <https://bit.ly/3W70kx2> accessed 14 January 2023; Human Rights Watch, ’UPR Submission for Sudan’ (March 2016) 6 available at <https://bit.ly/3W85dpr> accessed 14 January 2023. [↑](#footnote-ref-84)
84. See statement by group of 47 NGOs criticising the quality of UPR recommendations, UPR Info, ‘Group of 47 NGOs calls on States to focus on quality, not quantity at UPR‘ available at <https://bit.ly/3w8hBvf> accessed 14 January 2023; However, other international mechanisms have been criticised as well. For criticisms on the recommendations of the treaty bodies, see Secretary General, *Effective Functioning of Bodies Established Pursuant to United Nations Human Rights Instruments,* UN Doc. E/CN.4/1997/74 (27 March 1997) Annex, para 109. [↑](#footnote-ref-85)
85. See Subhas Gujadhur and Marc Limon ‘Towards the Third Cycle of the UPR: Stick or Twist? Lessons learnt from the first ten years of the Universal Periodic Review’ (2016) [Universal Rights Group](https://independent.academia.edu/URGthinktank) 1, 5 available at

    <https://bit.ly/3GLx60U> accessed 14 January 2023). [↑](#footnote-ref-86)
86. See UPR Info, ‘For impact on the ground the UPR needs SMART recommendations’ (21 October 2015) available at <https://bit.ly/3GBLJ70> accessed 14 January 2023. [↑](#footnote-ref-87)
87. See OHCHR, ’ Universal Periodic Review (Third Cycle): Information and guidelines for relevant stakeholders’ written submissions’ para 7 (c) available at <https://bit.ly/3ZBUHda> accessed 14 January 2023); UNESCO, ‘The Universal Periodic Review (UPR) and its potential to foster freedom of expression, access to information and safety of journalists: factsheet on smart recommendations for civil society organizations’ (2022) available at https://unesdoc.unesco.org/ark:/48223/pf0000382048 accessed 14 January 2023. [↑](#footnote-ref-88)
88. See UNESCO, above n 87, 2. [↑](#footnote-ref-89)
89. See UPR Info, ‘UPR Info's Database Action category’ available at <https://bit.ly/3CMzR0I> accessed 14 January 2023. [↑](#footnote-ref-90)
90. See Subhas Gujadhur and Marc Limon, above n85, 29-30. [↑](#footnote-ref-91)
91. Ibid page 29. [↑](#footnote-ref-92)
92. Judith Bueno De Mesquita, ’The Universal Periodic Review: A Valuable New Procedure for the Right to Health?‘ (2019) (21 (2) *Health and Human Rights Journal* 263–277. [↑](#footnote-ref-93)
93. Allehone M Abebe, ‘Of Shaming and Bargaining: African States and the Universal Periodic Review of the United Nations Human Rights Council’ (2009) *Human Rights Law Review* 1, 16; Damian Etone, *The Human Rights Council: The Impact of the Universal Periodic Review in Africa* (Routledge, 2021) 116-117. [↑](#footnote-ref-94)
94. UN Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review – South Sudan’, 34th sess, UN Doc A/HRC/34/13 (26 December 2016) para 126.20. [↑](#footnote-ref-95)
95. See UN Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review - Sudan’ (11 July 2011) UN Doc A/HRC/18/16, para 85.2. [↑](#footnote-ref-96)
96. See UN Human Rights Council, ‘Report of the Special Rapporteur on extreme poverty and human rights’ (28 April 2016) UN Doc A/HRC/32/31, para 50. [↑](#footnote-ref-97)
97. Damian Etone, *The Human Rights Council: The Impact of the Universal Periodic Review in Africa* (Routledge 2021) 117. [↑](#footnote-ref-98)
98. Edward McMahon, ‘The Universal Periodic review: A Work in Progress, An Evaluation of the First Cycle of the New UPR Mechanism of the United Nations Human Rights Council’ (2012) *Friedrich Ebert Stiftung* 1, 26. [↑](#footnote-ref-99)
99. See UPR Info, ‘UPR Info's Database Action category’ available at <https://bit.ly/3CMzR0I> accessed 14 January 2023. [↑](#footnote-ref-100)
100. Senegal recommended that Burundi completes the ongoing judicial reforms, see UN Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review - Burundi’ (19 April 2018) UN Doc A/HRC/38/10, para 137.185. [↑](#footnote-ref-101)
101. UN Security Council, above n 49. [↑](#footnote-ref-102)
102. See UN Human Rights Council, above n 50. [↑](#footnote-ref-103)
103. African Commission on Human and Peoples’ Rights, above n 51. [↑](#footnote-ref-104)
104. See United Nations Peacebuilding Commission, above n 52. [↑](#footnote-ref-105)
105. As part of the state’s duty to prevent under International Covenant on Civil and Political Rights. ,For legal analysis on the legal duty to prosecute under human rights law see Anja Seibert-Fohr, *Prosecuting Serious Human Rights Violations* (OUP 2009). [↑](#footnote-ref-106)
106. See above note 83. [↑](#footnote-ref-107)
107. Simon Robins, ‘Failing Victims? The Limits of Transitional Justice in Addressing the Needs of Victims of Violations’ (2017) 2 Human Rights and International Legal Discourse 41-58. [↑](#footnote-ref-108)
108. See UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (*21 March 2006) UN Doc A/RES/60/147; Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights ("Banjul Charter")*, 27 June 1981, Arts 10 & 63; ICCPR, Art 9; UN Convention against Torture, Art 14; For the challenges implementing reparations in South Sudan, see Stephen Oola and Luke Moffett, ’Reparations in South Sudan: Prospects and Challenges’ (2019) available at <https://reparations.qub.ac.uk/assets/uploads/South-Sudan-Report-Update-SP.pdf> accessed 14 January 2023. [↑](#footnote-ref-109)
109. [Lisa Laplante](https://peacelab.blog/search?author=lisa-laplante), ‘Plural Justice: A Holistic Approach to Transitional Justice and Peacebuilding’ (2018) available at <https://bit.ly/3ZDobqT> accessed 14 January 2023; Natalia Szablewska and Sascha-Dominik Bachmann, *Current Issues in Transitional Justice: Towards a More Holistic Approach* (Springer 2015); for a discussion on the importance of local processes see OHCHR, ‘Report of the Transitional Justice Workshop of December 2019, organised by the United Nations Commission on Human Rights in South Sudan’ available at <https://bit.ly/3H4mQT0> accessed 14 January 2023. [↑](#footnote-ref-110)
110. Edward R McMahon, Kojo Busia and Marta Ascherio, ‘Comparing Peer Reviews: The Universal Periodic Review of the UN Human Rights Council and the African Peer Review Mechanism’ (2013) 12 African and Asian Studies 266, 280-82. [↑](#footnote-ref-111)
111. UN Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review – South Sudan’, 34th sess, UN Doc A/HRC/34/13 (26 December 2016) para 126.12. [↑](#footnote-ref-112)
112. UN Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review – South Sudan’, 34th sess, UN Doc A/HRC/34/13 (26 December 2016) para 127.27. [↑](#footnote-ref-113)