

Transitional Justice: What Role for the UN Security Council?



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Srebrenica, July 2020: Bosnian woman praying in graveyard in memorial centre Srebrenica.

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Introduction

"[P]eace does not automatically happen when weapons fall silent and atrocity crimes cease. To be able to rebuild lives without fear of recurrence and for society to move forward, suffering needs to be acknowledged, confidence in State institutions restored and justice done... Transitional justice processes have repeatedly shown that they can help to address grievances and divisions".

High Commissioner for Human Rights Michelle Bachelet, Security Council open debate on transitional justice in conflict and post-conflict situations, 13 February 2020.

Transitional justice is a complex and abiding

issue in the aftermath of conflict or systemic oppression. International practice suggests that transitional justice has no universal model, and that understandings and definitions of transitional justice differ, depending on the context. Experts generally agree. Acknowledging the breadth of transitional justice is helpful to seeing the variety of political and practical entry points to the issue.

The Security Council has considered aspects of transitional justice, and included it in Council mandates, since the early 1990s. Over these three decades, the Council has associated transitional justice with a wide range of positive outcomes.

Introduction

| | |
|----|---|
| 1 | Introduction |
| 3 | Understanding the Breadth of Transitional Justice |
| 6 | Research Methodology |
| 6 | Overview of Country Situations |
| 8 | The Security Council's Approach: An Overview |
| 13 | Push and Pull Factors Affecting Security Council Engagement on Transitional Justice Processes |
| 18 | The Security Council and Transitional Justice: Concluding Recommendations |
| 21 | Conclusion |
| 23 | ANNEX I: Case Studies |
| 23 | Burundi |
| 30 | The Central African Republic |
| 38 | Sierra Leone |
| 44 | South Sudan |
| 51 | Annex II: Participants in Consultations on Transitional Justice organized by Security Council Report |
| 52 | Annex III: Key UN Documents on Transitional Justice |
| 55 | Annex IV: Transitional Justice: Overview of Key Security Council Open Debates |

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Council members have also said that transitional justice processes should be considered in connection with other thematic issues on their agenda, including peacebuilding and sustaining peace; women, peace and security; children and armed conflict; and the protection of civilians. The 13 February 2020 open debate on “transitional justice in conflict and post-conflict situations”, organised by Belgium, was the Council's first meeting on transitional justice as a thematic issue (S/PV.8723) (henceforth, “February 2020 open debate”).

This report aims to contribute to a better understanding of how the Security Council has positioned itself on transitional justice issues. It outlines elements that are at play in Council decisions on transitional justice, notably its understanding and perception of country-specific situations and the timing and sequencing of its actions. It also emphasises the powerful political considerations at work when the Council grapples with transitional justice. Drawing principally on five country situations and two expert seminars, the report discusses examples of how the Security Council has approached transitional justice and sets out recommendations on optimising its engagement.

Alleged war crimes in Ukraine following Russia's 24 February 2022 invasion have prompted widespread calls for criminal accountability. The invasion of Ukraine has posed a profound challenge to the multilateral system, and to the work of the Security Council in particular. It has also highlighted ways in which the Council and other international actors can promote transitional justice initiatives even while conflict rages. To date, the direct involvement of a permanent Council member has prevented substantive Council action on Ukraine, but some urgent measures have been adopted in other UN fora, including the General Assembly and the Human Rights Council (HRC).

The report is divided into three sections. The first section presents a broad understanding of the components of transitional justice, describing the UN system's activities on this issue, with a particular focus on the UN Security Council. It observes that many parts of the UN system are engaged in transitional justice activities, with a wealth of discrete guidance and revised guidance from the Secretary-General reportedly due in 2022.

The second section of the report analyses the Council's approach to transitional justice. Council members have recognised that each transitional justice process is unique, and have tended to signal their support for holistic, gender-sensitive and inclusive efforts in this regard. The report discusses the many desired outcomes that the Council has associated with transitional justice, including preventing the recurrence of conflict, strengthening accountability, building more effective justice and security institutions and national human rights bodies, promoting reconciliation, supporting truth-telling, enabling national dialogues, addressing the root causes of conflict, and promoting development and prosperity. It describes factors which affect Council engagement in national transitional justice processes, the principles guiding the Council's transitional justice decisions and activities, and the timing and sequencing of these decisions and activities.

The Council's engagement on transitional justice has varied in different contexts. Its seemingly inconsistent levels of involvement and interest have often been contingent on the national authorities' interest and commitment, progress or setbacks in peace on the ground, sequencing considerations, the passage of time, and Council dynamics. Overall, Council members generally recognise the value

Introduction

of international engagement while taking the view that transitional justice processes must be nationally-owned to be effective.

The third section of the report details the four recommendations to take away from the case studies for demonstrably effective Council engagement with transitional justice processes. These are:

Making Best Use of the Council

The Security Council has a record of emphasising the importance of transitional justice in its briefings and statements, and of including transitional justice-related measures in the mandates of UN peace operations. It should continue to do so, underlining relevant standards of justice and accountability in this connection.

The Security Council should continue to support comprehensive approaches to transitional justice, in which the diverse elements complement one another, and to encourage national authorities to articulate their goals for, and commitment to, transitional justice.

The Council is not best placed to provide detailed guidance in its peace operations mandating on the form(s) transitional justice should take in a given country situation, and need not do so.

Using Council Tools

The Council should use its full leverage to combat impunity and insist on accountability. In addition to peace operations mandates, other Council products, and members' statements, its primary tools

include establishing fact-finding mechanisms, sanctions and international (and hybrid) legal mechanisms. There appears greater scope for the Council to deploy these tools, although present geopolitical tensions make this difficult in some situations. Members can also press for fact-finding mechanisms via other channels.

Engaging with Civil Society and Local Populations

Recognising the critical role of civil society in promoting and implementing transitional justice initiatives, the Council should itself engage with civil society actors.

The Council should encourage the UN and national authorities to engage with local populations and communicate transitional justice goals.

Hearing directly from victims of human rights violations and violations of international humanitarian law is important to Council members' understanding. Mitigating the risk of reprisals against such individuals is essential.

Security Council Expectations of an Effective UN

The Security Council should expect quality information, analysis and recommendations from the UN Secretariat (and agencies, funds and programmes) on transitional justice, as well as strong interagency coordination and cooperation at both field and headquarters levels.

Understanding the Breadth of Transitional Justice

A 2004 report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616) defined transitional justice as:

the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.

Parsing this definition provides four generally accepted pillars or approaches to transitional justice, which should be seen as complementary: criminal prosecutions; truth-seeking or fact-finding, including by non-judicial bodies such as truth commissions; reparations, which can be material, symbolic, individual and/or collective; and institutional and legal reforms, including of the police, judiciary and/or military.

In 2010, the Secretary-General's Guidance Note¹ on the guiding principles and framework for the UN's approach to transitional justice processes and mechanisms added "national consultations" as a further pillar of transitional justice.²

The 2010 Guidance Note also outlined ten guiding principles for the UN's approach to transitional justice:

- Support and actively encourage compliance with international norms and standards when designing and implementing transitional justice processes and mechanisms.
- Take account of the political context when designing and implementing transitional justice processes and mechanisms.
- Base assistance for transitional justice on the unique country context and strengthen national capacity to carry out community-wide transitional justice processes.
- Strive to ensure women's rights.
- Support a child-sensitive approach.
- Ensure the centrality of victims in the design and implementation of transitional justice processes and mechanisms.
- Coordinate transitional justice programmes with the broader rule of law initiatives.
- Encourage a comprehensive approach integrating an appropriate combination of transitional justice processes and mechanisms. Strive to ensure transitional justice processes and mechanisms take account of the root causes of conflict and repressive rule, and address violations of all rights.
- Engage in effective coordination and partnerships.

¹ United Nations. "Guidance Note of the Secretary General: United Nations Approach to Transitional Justice," March 2010. <https://www.securitycouncilreport.org/un-documents/document/un-approach-to-transitional-justice.php>

² Wendy Lambourne, "What are the Pillars of Transitional Justice? The United Nations, Civil Society and the Justice Cascade in Burundi" in *Macquarie Law Journal*, vol. 13, 2014, p. 42, <http://classic.austlii.edu.au/au/journals/MqLawJl/2014/4.pdf>

Understanding the Breadth of Transitional Justice

Many parts of the UN system work on issues related to transitional justice. Among the political bodies of the UN, the General Assembly and the HRC have implemented measures that have developed the normative framework surrounding transitional justice. Both organs have also introduced initiatives that either contribute to existing transitional justice processes or have the potential to assist such initiatives.

In 2016, for example, the General Assembly established the International, Impartial and Independent Mechanism to Assist in the Investigation of Persons Responsible for the Most Serious Crimes Under International Law Committed in the Syrian Arab Republic since March 2011 (IIIM). The IIIM is responsible for collecting, preserving, and analysing evidence of violations of international humanitarian law and human rights violations in order to facilitate fair and independent criminal proceedings.³ While it is the only investigative mechanism established by the General Assembly in the past decade, its impact has been significant. By the end of January 2022, the IIIM had assisted 13 jurisdictions with 143 discrete investigations into serious international crimes committed in Syria,⁴ including by supporting the successful prosecution of a former Syrian official for crimes against humanity in German courts.⁵ Such prosecutions can contribute to transitional justice processes in several ways, such as providing recognition to victims as rights holders; establishing the trustworthiness of the legal system; reinforcing that perpetrators will be held accountable and that no one is above the law, thereby upholding the rule of law; and building institutional capacity by giving judges and prosecutors the opportunity to hone their skills in a complex area of law.⁶ The IIIM's work can also support transitional justice objectives other than prosecutions and accountability, including truth-telling, fact-finding, and tracing missing persons.

A striking aspect of the IIIM is its contribution to transitional justice in the absence of a political transition and an end to the conflict, which reflects a broader trend in transitional justice in other conflict situations.⁷ Documentation, critical to transitional justice processes, must already begin during conflict. The IIIM has been “seeking to integrate approaches to the construction of its evidence collection that will maximise its utility” for these processes.⁸ The IIIM also has as a cross-cutting aim to facilitate broader transitional justice objectives, and as one example, works with international organisations mandated to search for missing persons to determine how its evidence processing systems can assist in this.⁹

The General Assembly has bolstered the normative framework for transitional justice by passing a resolution on the right to a remedy

and reparation for victims of gross violations of international law¹⁰ and a resolution on the right to truth.¹¹ The right to truth underpins several transitional justice measures and its realisation is a key objective of transitional justice processes. Among other elements, victims of human rights violations and their families are entitled to obtain information regarding the violation and states are required to establish institutions intended to reveal the truth about the circumstances in which the violation occurred.¹²

In 1997, the Commission on Human Rights, the predecessor to the HRC, adopted the “set of principles for the protection and promotion of human rights through action to combat impunity”, which are generally referred to as the “UN impunity principles”.¹³ The Commission on Human Rights subsequently updated the UN impunity principles in 2005.¹⁴ The UN impunity principles provide guidance to states regarding several different aspects of transitional justice, including the establishment and role of truth commissions; preservation of and access to archives; the right to reparation; and guarantees of non-recurrence.

The HRC, for its part, has established fact-finding missions, commissions of inquiry, and other bodies to support specific transitional justice processes. These bodies can help gather and verify information with a view to creating a historical record of events and providing the foundation for further investigation,¹⁵ and can also assist national authorities pursuing transitional justice objectives. In March 2016, for example, the HRC created the Commission on Human Rights in South Sudan and tasked the Commission with assessing past reports on the human rights situation in the country “in order to establish a factual basis for transitional justice and reconciliation”. The Commission was asked to “make recommendations on technical assistance to the transitional government of national unity to support transitional justice, accountability, reconciliation, and healing”, among other matters.

The HRC has also created investigative mechanisms for Myanmar. In March 2017, the HRC mandated the Independent International Fact-Finding Mission on Myanmar (IIFMM) to establish the facts and circumstances of alleged human rights violations by military and security forces in Myanmar. In August 2019, the IIFMM handed over the evidence it had gathered to the Independent Investigative Mechanism for Myanmar (IIMM), a body created by the HRC in September 2018 to collect evidence of the most serious international crimes and violations of international law in Myanmar and prepare files for criminal prosecution. The IIMM has cooperated with the ICC following the Court's 14 November 2019 decision to grant the

3 United Nations. General Assembly Resolution. A/RES/71/248. 21 December 2016. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3CF6E4FF96FF9%7D/a_res_71_248.pdf

4 United Nations. Report of the IIIM. A/76/690. 11 February 2022. p. 9. <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/76/690&Lang=E>

5 United Nations. “Message from the Head of the IIIM.” Bulletin no 7. January 2022. <https://iiim.un.org/wp-content/uploads/2022/03/IIIM-Bulletin7-2022-03-EN.pdf>.

6 United Nations. Report of the Special Rapporteur Pablo de Greiff. A/HRC/27/56. 27 August 2014. p. 5. https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/27/56

7 United Nations. Report of the Special Rapporteur Pablo de Greiff. A/HRC/24/42. 28 August 2013. p. 8. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/165/05/PDF/G1316505.pdf?OpenElement>

8 United Nations. Report of the IIM. A/72/764. 28 February 2018. p. 9 - 10. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/055/88/PDF/N1805588.pdf?OpenElement>

9 United Nations. Report of the IIM. A/73/741. 13 February 2019. p.12. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/040/26/PDF/N1904026.pdf?OpenElement>

10 United Nations. General Assembly Resolution. A/RES/60/147. 16 December 2005. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/496/42/PDF/N0549642.pdf?OpenElement>

11 United Nations. General Assembly Resolution. A/RES/68/165. 18 December 2013. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/449/35/PDF/N1344935.pdf?OpenElement>

12 United Nations. Report of the Special Rapporteur Pablo de Greiff A/HRC/24/42. 28 August 2013. p. 6. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/165/05/PDF/G1316505.pdf?OpenElement>

13 United Nations. Economic and Social Council Commission on Human Rights. E/CN.4/Sub.2/1997/20/Rev.1. 2 October 1997. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G97/141/42/PDF/G9714142.pdf?OpenElement>

14 United Nations. Economic and Social Council Commission on Human Rights. E/CN.4/2005/102/Add.1. 8 February 2005. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf?OpenElement>

15 United Nations. Report of the Special Rapporteur. A/HRC/36/50/Add.1. 7 August 2017. p. 12-13. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/233/98/PDF/G1723398.pdf?OpenElement>.

Understanding the Breadth of Transitional Justice

ICC Prosecutor's request to start an investigation into the situation in Bangladesh/Myanmar. It has also worked with the parties in *The Gambia v. Myanmar*, the ICJ case in which The Gambia alleges that crimes committed against the Rohingya in Rakhine State violate the Convention on the Prevention and Punishment of the Crime of Genocide, and has engaged with judicial authorities in Argentina to support their investigation into crimes against the Rohingya.¹⁶

Partly due to the lack of action from the Council in the face of apparent serious violations of international law, on 29 September 2017, the HRC created the Group of Eminent International and Regional Experts on Yemen.¹⁷ The Group was tasked with monitoring and reporting on the human rights situation in Yemen, as well as conducting a comprehensive examination of all alleged violations and abuses of international law committed by all parties to the conflict, among other matters. In October 2021, the HRC voted against extending the mandate of the Group, reportedly after lobbying by Saudi Arabia and its coalition allies.¹⁸

In 2011, the HRC adopted resolution 18/7 appointing a special rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence. Since then, the special rapporteur has regularly published reports relating to transitional justice. In September 2021, the special rapporteur presented a report to the HRC on accountability with a view to the prosecution and punishment of gross violations of human rights and serious violations of international humanitarian law in the context of transitional justice processes (A/HRC/48/60). In October 2021, the special rapporteur presented a report to the General Assembly examining the design and application of measures in the areas of truth, justice, reparation, memorialisation and guarantees of non-recurrence to address gross violations of human rights and international humanitarian law committed in colonial contexts (A/76/180).

Several entities in the Secretariat also work on issues that relate to transitional justice. The Office of the High Commissioner for Human Rights (OHCHR) has, for example, published a series of papers titled “rule of law tools for post conflict states” that outline guidance and best practices regarding several aspects of transitional justice, including truth commissions, vetting of personnel working for public institutions, and reparations programmes.¹⁹

The reports of the Secretary-General to the Security Council—notably on peace operations, and thus drawing on the Department of Peace Operations (DPO) and the Department of Political and

Peacebuilding Affairs (DPPA)—are a vital resource in informing the Council and the wider world on transitional justice needs and initiatives in particular country contexts, and making recommendations. DPO is also involved with transitional justice-related work, particularly in relation to security sector reform (SSR), which has an important role to play regarding guarantees of non-repetition.²⁰ The Security Sector Reform Unit (SSRU), which sits within the Office of Rule of Law and Security Institutions (OROLSI) in the DPO, serves as the focal point for SSR and provides technical support on this issue to other entities throughout the UN system. OROLSI's work on national capacity and institution building in countries affected by conflict can support transitional justice processes.²¹ Several SSRU reports document the principles and concepts that guide the UN's SSR support to member states and regional organisations²² and the approach taken in specific country situations.²³ The SSRU also contributes to the integrated technical guidance notes on SSR produced by the UN-Inter-Agency SSR Task Force.²⁴

DPPA is an important actor in this context, with its Mediation Support Unit, which includes staff and standby advisers working closely on transitional justice in peace mediation contexts. Also particularly important is the Office of Legal Affairs (OLA) in all work related to international tribunals and in legal guidance on a range of issues.

The UN Development Programme (UNDP) has supported transitional justice processes for more than a decade, taking a development approach that seeks to connect transitional justice mechanisms with permanent institutions, build capacity, and create an environment for transformative change.²⁵ Its main areas of work include victim engagement, truth-telling processes, linking transitional justice to DDR initiatives, and strengthening the rule of law and human rights to support guarantees of non-repetition.²⁶

Together, DPO and UNDP co-chair the Global Focal Point for the Rule of Law (GFP), a coordination mechanism established to enhance predictability, coherence, accountability and effectiveness in the delivery of rule of law assistance by the UN.²⁷ In carrying out this work, the GFP partners with the Executive Office of the Secretary-General (EOSG), OHCHR, the UN High Commissioner for Refugees (UNHCR), the UN Office on Drugs and Crime (UNODC), the UN Office for Project Services, and UN Women. While not specifically focused on transitional justice, the GFP's work touches on related areas, such as special courts or SSR.

16 United Nations. Office of the UN High Commissioner for Human Rights (OHCHR). “Independent International Fact-Finding Mission on Myanmar”. <https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/index>

17 United Nations. Human Rights Council Resolution. A/HRC/RES/36/31. 29 September 2017. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/289/51/PDF/G1728951.pdf?OpenElement>

18 United Nations. Office of the High Commissioner for Human Rights. “Statement by Group of Experts on Yemen on HRC rejection of resolution to renew their mandate”. 8 October 2021. <https://www.ohchr.org/en/press-releases/2021/10/statement-group-experts-yemen-hrc-rejection-resolution-renew-their-mandate?LangID=E&NewsID=27636>; and Reuters. “Saudi lobbying jeopardises UN Yemen war crimes probe, activists say”. 6 October 2021. <https://www.reuters.com/world/middle-east/saudi-lobbying-jeopardises-un-yemen-war-crimes-probe-activists-say-2021-10-06/>

19 United Nations. Office of the High Commissioner for Human Rights. “Rule-of-Law Tools for Post-Conflict States: Truth Commissions.” 2006. <https://www.ohchr.org/sites/default/files/Documents/Publications/RuleoflawTruthCommissionsen.pdf>

20 United Nations. Report of the Special Rapporteur. A/70/438. 21 October 2015. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/326/47/PDF/N1532647.pdf?OpenElement>

21 United Nations. Report of the Special Rapporteur. A/HRC/36/50. 21 August 2017. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/243/19/PDF/G1724319.pdf?OpenElement>

22 United Nations. Security Sector Reform Unit. “The UN SSR Perspective”. May 2012. https://peacekeeping.un.org/sites/default/files/ssr_perspective_2012.pdf

23 United Nations. Security Sector Reform Unit. “SSR in the Central African Republic: Challenges and Priorities”. 2016. https://peacekeeping.un.org/sites/default/files/security_sector_reform_in_the_central_african_republic_challenges_and_priorities.pdf

24 United Nations. Security Sector Reform Unit. “Integrated Technical Guidance Notes”. 2012. https://peacekeeping.un.org/sites/default/files/un_integrated_technical_guidance_notes_on_ssr_1.pdf

25 United Nations Development Program. “From Justice for the Past to Peace and Inclusion for the Future: A Development Approach to Transitional Justice.” November 2020. <https://www.undp.org/sites/g/files/zskgke326/files/publications/UNDP-From-Justice-for-the-Past-to-Peace-and-Inclusion.pdf>

26 Ibid.

27 United Nations. “The Global Focal Point for the Rule of Law.” [https://www.un.org/ruleoflaw/globalfocalpoint/#:~:text=The%20Global%20Focal%20Point%20for%20the%20Rule%20of%20Law%20\(GFP,at%20country%20and%20international%20levels](https://www.un.org/ruleoflaw/globalfocalpoint/#:~:text=The%20Global%20Focal%20Point%20for%20the%20Rule%20of%20Law%20(GFP,at%20country%20and%20international%20levels)

Understanding the Breadth of Transitional Justice

The examples listed above are illustrative. With transitional justice measures intended to assist with the pursuit of four main goals—providing recognition to victims, fostering trust, contributing to reconciliation and strengthening the rule of law²⁸—many other UN entities carry out work connected to these, directly or tangentially, including the UN Population Fund (UNFPA), UNICEF, the Food and Agriculture Organization of the UN (FAO), UN Women, UNHCR, the Special Adviser on the Prevention of Genocide, and the International Organization for Migration (IOM).

In light of the number of UN entities involved with work that can contribute to transitional justice, it is helpful if the UN system as a whole adopts a shared strategic vision of how to approach transitional justice in any given setting and coordinates its activities effectively across both field and headquarters in this regard.²⁹

The EOSG, with the support of OHCHR, is currently implementing a UN-wide project on renewing the UN approach to transitional justice. An expected output is a revised Secretary-General's Guidance Note on the UN's Approach to Transitional Justice, to be issued by the end of 2022. The UN is examining various thematic issues, which will inform the new guidance note, including transitional justice in the context of mediation and peace agreements; the intersection between transitional justice and disarmament, demobilisation and reintegration (DDR); transitional justice and mental health and psychosocial support; and reparations in weakly institutionalised settings. The envisaged approach to transitional justice will emphasise the need to be context-specific, people-centred and forward-looking.

Research Methodology

This report explores the Security Council's approach to transitional justice through an analysis of the language used in Council resolutions, particularly those mandating UN peace operations, and Council members' statements at relevant Council meetings, based on five country situations: Burundi, the Central African Republic (CAR), Colombia, Sierra Leone, and South Sudan. The choice of situations is based on the role transitional justice played in peace-building efforts in the country, the level of Council involvement

in these processes, and how often transitional justice-related terms appear in the respective resolutions (such as “transitional justice”, “accountability”, “truth commissions”, “reconciliation”, “healing”, “reparations”, “compensation”, “restitution”, and “amnesty”). The country situations were also chosen with the aim of showing whether the Security Council's approach to transitional justice has been consistent or has evolved.

Overview of Country Situations

This section provides a brief overview of the country situations which informed the report and their key findings. Four case studies prepared by SCR (Burundi, the CAR, Sierra Leone, and South Sudan) can be found in the annex to this report, while the analysis of Colombia derives primarily from SCR's ongoing research on the Council's work on Colombia.

Burundi

Although the Security Council frequently called for reconciliation, justice and accountability during the years of its engagement on Burundi (1995 to 2020), it did not maintain a sustained interest in ensuring progress on these issues. The case study argues that this could be attributed to the national authorities' piecemeal approach to implementing the necessary transitional justice processes. Although the UN Integrated Office in Burundi (BINUB), and later the UN Office in Burundi (BNUB), which operated between 2007 and 2014, were tasked with supporting measures to end impunity through the establishment of transitional justice mechanisms, including the National Truth and Reconciliation Commission (TRC) stipulated in the 2000 Arusha agreement, the national authorities consistently pushed

decisive action into the future. The TRC was only established in April 2014, as BNUB was preparing to close. In addition, despite the Council's recognition that impunity was one of the most serious factors in the country's deteriorating security situation (indeed, Burundi came to the Council's agenda following the assassination of the president and other senior political figures), dire conditions on the ground meant that the Council prioritised security, political and humanitarian elements in mandating the peace operations in the country.

CAR

Impunity has been identified as a major driver of conflict in the CAR, and over the past decade, the Security Council has authorised extensive engagement by the UN peace operation in this regard. However, Council engagement on transitional justice was initially limited because of a demonstrated lack of political will by the national authorities: in the early years of Council engagement (1997–2013), it mainly expressed support for the national reconciliation dialogue envisioned in the 1998 Bangui agreements. The case study suggests that the Council adopted a “wait-and-see” strategy in these years, missing an opportunity to push national leaders to engage earnestly

²⁸ This point was made in the first annual report of the special rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence. See United Nations. Report of the Special Rapporteur Pablo de Greiff. A/HRC/21/46. August 9, 2012. p. 7. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/158/58/PDF/G1215858.pdf?OpenElement>

²⁹ For several years, OHCHR was designated as lead entity, an arrangement which appears to have ended in 2012 without another entity being nominated to take this role.

Overview of Country Situations

on transitional justice processes. The Council only adopted a more proactive approach in 2013, when the overthrow of the government by the Séléka rebel group set off the widespread sectarian violence which still affects the country in mid-2022. It gave the UN Multi-dimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA), which was established in 2014, far-reaching authorisation to assist the CAR authorities in the administration of justice, including through the arrest of those accused of committing violations of human rights and international law. This was a departure not only from its prior practice in the CAR, but also from its response to other country situations. The CAR case study suggests that widespread reports of human rights abuses, together with the presence of weak state institutions, can prompt the Council to take extraordinary action on transitional justice.

Sierra Leone

In Sierra Leone, the government's strong commitment to transitional justice processes following the civil war (1991-2002) drew Security Council support. In resolution 1270 of 22 October 1999, the Security Council called for the swift establishment of the Truth and Reconciliation Commission in Sierra Leone, which had been created by the 7 July 1999 Lomé Peace Accord between the government of Sierra Leone and the Revolutionary United Front of Sierra Leone (RUF). The Council, while not formally or directly involved in the commission's formation, consistently and explicitly noted the importance and necessity that it be established, and subsequently called on the government to implement its recommendations. The case study describes the active and formal role the Council played in the creation of the Special Court for Sierra Leone, as envisaged in resolution 1315 of 14 August 2000, and notes that in ensuing years the Council routinely discussed, monitored and responded to progress and setbacks in the country, including with regard to Sierra Leone's transitional justice process.

South Sudan

Security Council resolutions on South Sudan have consistently included fairly extensive language on transitional justice. Terms such as "reconciliation", "truth", "accountability", "healing", and "reparations" are found in many mandate renewals of the UN Mission in South Sudan (UNMISS). However, the South Sudan case study suggests that the reluctance of the government, along with limited action and pressure by the AU and regional actors, explain the failure to set up the Hybrid Court for South Sudan. While the Council has requested the Secretary-General to make available technical assistance to the AU and the government of South Sudan in establishing the Hybrid Court, the Council has faced internal divisions and disagreements over how, when and whether to pressure the parties in South Sudan to uphold their commitments in the peace agreements, limiting its ability to press for transitional justice measures. The case study does show, however, that since 2014, when the key elements of the current UNMISS mandate were established, the mission has had some role in furthering local and national reconciliation efforts.

Colombia

Colombia represents a significant example of consistent Security Council engagement with transitional justice measures. The Council has supported the transitional justice processes stipulated in the 2016 peace agreement signed between the government of Colombia and the former rebel group Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo (FARC-EP), with positive effects overall. The fifth chapter of the 2016 agreement established the Comprehensive System for Truth, Justice, Reparation and Non-Repetition, which is comprised of the Special Jurisdiction for Peace (SJP), the Commission for the Clarification of Truth, Coexistence and Non-Repetition (henceforth the Truth Commission), and the Unit for the Search for Persons Deemed as Missing. Council consensus on the Colombia file has helped it take decisive action on transitional justice.

In March 2019, the Council responded swiftly when Colombian President Iván Duque—who campaigned on the promise to alter the 2016 accord, including aspects relating to transitional justice—delayed the signing of the statutory law governing the SJP, the judicial component of the transitional justice system established by the 2016 agreement, instead proposing a legal reform that would have significantly modified the SJP's mandate. Council members reacted to this development in a 16 April 2019 press statement in which they called for full respect for the SJP's independence and autonomy.

Duque eventually signed the statutory law of the SJP in June 2019 after Congress rejected his reform proposal. The Council has continued to demonstrate consistently strong support for the comprehensive transitional justice system, including by meeting with the heads of the three components during a visiting mission to Colombia in July 2019 and by highlighting the importance of its work and autonomy in subsequent press statements. Actors on the ground have found this support crucial. As a case in point, the head of the Truth Commission, Francisco de Roux, thanked the Security Council for its support for the commission's work when the Commission's final report was released on 28 June 2022.³⁰

Colombia is also a rare instance of the Council approving a role for a UN peace operation in supporting the implementation of restorative aspects of a peace agreement. Resolution 2574 of 11 May 2021³¹ expanded the mandate of the UN Verification Mission in Colombia to include monitoring compliance with the sentences that are to be handed down by the SJP.³²

³⁰ El Espectador. "Reviva el discurso del padre Francisco de Roux: Convocatoria a la Paz Grande". 28 June 2022, <https://www.elespectador.com/politica/reviva-el-discurso-del-padre-francisco-de-roux-convocatoria-a-la-paz-grande/>

³¹ United Nations. Security Council Resolution. S/RES/2574. 11 May 2021. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2574.pdf

³² In accordance with the 2016 agreement, the SJP has the authority to issue sentences against those who acknowledge responsibility for crimes committed during the conflict, which

The Security Council's Approach: An Overview

Since the end of the Cold War era, the Council has engaged on transitional justice issues, both in its thematic and country-specific work. It has discussed elements of transitional justice in its thematic debates and briefings on agenda items such as “Justice and the rule of law”,³³ “Post-conflict national reconciliation”,³⁴ “Peacebuilding and sustaining peace”,³⁵ “Women and peace and security”,³⁶ and “The maintenance of international peace and security”,³⁷ among other topics. In recent years, notable meetings in which Council members have grappled intensively with transitional justice issues have included the 19 November 2019 open debate on “Peacebuilding and sustaining peace: The role of reconciliation in maintaining international peace and security” under the UK Council presidency,³⁸ the 13 February 2020 open debate on “Peacebuilding and sustaining peace: Transitional justice in conflict and post-conflict situations” organised by Belgium,³⁹ and the open debate convened by Albania on 2 June 2022 on “Maintenance of international peace and security agenda item: Strengthening accountability and justice for serious violations of international law”.⁴⁰

A number of thematic Council outcomes have also specifically referenced, or touched on aspects of, transitional justice during the past two decades. At a 24 September 2003 ministerial-level meeting on “Justice and the Rule of Law: the United Nations role”,⁴¹ the Council adopted a presidential statement noting “the abundant wealth of relevant experience and expertise that exists within the United Nations system and in the Member States”.⁴² On 26 January 2004, the Council held an open debate on “Post-conflict national reconciliation: role of the United Nations”,⁴³ at which it adopted a presidential statement affirming “the vital importance of this matter, stressing the necessary close cooperation needed in the United Nations system, including the Council, on this issue”.⁴⁴ On 6 October 2004, the Council adopted a presidential statement that “draws attention to the full range of transitional justice mechanisms that should be considered, including national, international and ‘mixed’ criminal tribunals, truth and reconciliation commissions, and underlines that those mechanisms should concentrate not only on individual responsibility for serious crimes, but also on the need to seek peace, truth and national reconciliation”.⁴⁵ Furthermore, resolution

2282 of 27 April 2016 on the UN’s peacebuilding architecture stressed that “a comprehensive approach to transitional justice... [is] critical to consolidation of peace and stability”.⁴⁶

In addition to thematic outcomes, the Council often incorporates aspects of transitional justice into country-specific resolutions—notably in mandates of peace operations—while not always using the term “transitional justice”. These resolutions often emphasise the importance of the rule of law and accountability, encourage reconciliation processes, and support institutional reforms related to the security sector and the rule of law.

There are several consistent themes in these formal outcomes and in Council members’ public statements:

- Transitional justice is a holistic process with several interrelated elements; in this regard, the Council has tended to regard the various components of transitional justice as beneficial and necessary for a range of national-level outcomes.
- Transitional justice should be inclusive, and involve the support and participation of different sectors of society—women, youth, civil society, and ethnic and religious minorities, among others—and pay particular attention to the needs of survivors.
- Transitional justice processes should be gender-sensitive, seeking accountability for sexual and gender-based violence, in addition to promoting the equal and full participation of women.
- Approaches to transitional justice need to be context-specific, tailored by each country to its needs and traditions; although national ownership is paramount, external actors can play an important role in supporting national process through funding, experience and technical expertise.
- Several members view transitional justice as a core element of conflict-affected countries’ efforts to build and sustain peace.⁴⁷
- Relatedly, members sometimes mention the importance of equitable economic development accompanying transitional justice measures.

Notwithstanding general convergence on these themes, the

can include up to eight years of confinement to one municipality to carry out work and activities that count as reparations to victims (such activities may include, but are not limited to, the construction and repair of infrastructure, humanitarian demining, and rural and urban development projects). The mission’s tasks will be to verify that those individuals who have received restorative sentences comply with them, and that the government provides the necessary conditions (such as budgetary allocation for the restorative projects and security support) for the sentences to be implemented.

33 United Nations. Security Council Meeting Record. S/PV.5052. 6 October 2004. <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/IJ%20SPV5052.pdf>

34 United Nations. Security Council Meeting Record. S/PV.4903. 26 January 2004. <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/IJ%20SPV4903.pdf>

35 United Nations. Security Council Meeting Record. S/PV.8723. 13 February 2020. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_PV.8723.pdf

36 United Nations. Security Council Meeting Record. S/PV.8514. 23 April 2019. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_8514.pdf

37 United Nations. Security Council Meeting Record. S/PV.9052. 2 June 2022. <https://documents-dds-ny.un.org/doc/UNDOC/PRO/N22/369/43/PDF/N2236943.pdf?OpenElement>

38 United Nations. Security Council Meeting Record. S/PV.8668. 19 November 2019. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_8668.pdf

39 United Nations. Security Council Meeting Record. S/PV. 8723. 13 February 2020. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_PV.8723.pdf

40 United Nations. Security Council Meeting Record. S/PV.9052. 2 June 2022. <https://documents-dds-ny.un.org/doc/UNDOC/PRO/N22/369/43/PDF/N2236943.pdf?OpenElement>

41 United Nations. Security Council Meeting Record. S/PV.4835. 30 September 2003. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/PKO%20SPV%204835.pdf>

42 United Nations. Security Council Presidential Statement. S/PRST/2003/15. 24 September 2003. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/IJ%20SPRST200315.pdf>

43 United Nations. Security Council Meeting Record. S/PV.4903. 26 January 2004. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/IJ%20SPV4903.pdf>

44 United Nations. Security Council Presidential Statement. S/PRST/2004/2. 26 January 2004. <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/IJ%20SPRST20042.pdf>

45 United Nations. Security Council Presidential Statement. S/PRST/2004/34. 6 October 2004. <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/IJ%20SPRST200434.pdf>

46 United Nations. Security Council Resolution. S/RES/2282. 27 April 2016. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2282.pdf

47 As noted above, the one Council open debate focused specifically on transitional justice was held under the “Peacebuilding and sustaining peace” agenda item.

The Security Council's Approach: An Overview

question of how to approach criminal accountability remains controversial in the Council. Differences have arisen over the timing and sequencing of accountability measures, double standards in their application, and views on their effectiveness.

The following section considers the outcomes that Council members have linked with transitional justice processes and how it has pursued those outcomes, before analysing the “push and pull factors” that affect the Council’s engagement with transitional justice.

The Security Council’s Perspectives on Supporting Transitional Justice Processes

Security Council members have associated transitional justice elements with a range of positive and at times interconnected outcomes in their statements at thematic debates and other open meetings, in the language of peace operations mandates, and in other Council products. They have, for example, underscored the complementary relationship between promoting accountability and reconciliation, on the one hand, and preventing the recurrence of conflict, on the other. Many desired outcomes are pursued simultaneously in the same peace operation, as in the MINUSCA mandate, which urges the CAR authorities to address the root causes of conflict, highlights the importance of reconciliation and accountability in the country, and supports efforts to strengthen the justice and security sectors in the CAR.⁴⁸

Preventing recurrence of conflict, atrocities, and human rights violations

Addressing the February 2020 open debate, then-High Commissioner for Human Rights Michelle Bachelet said that the “failure to engage in [transitional justice] processes...will fuel recurrence [of conflict]”, and urged the Security Council to “make full use of the transformative impact of transitional justice in consideration of matters of international peace and security”. Indeed, Council members most often emphasise preventing the occurrence or recurrence of conflict, or of future violence against civilians, as a core goal of transitional justice measures. In an open debate on the rule of law in June 2006, Ghana stated that “prevention is the first imperative of justice”, echoing a theme of the Secretary-General’s 2004 report on the rule of law and transitional justice.⁴⁹ At the February 2020 open debate, members including Belgium, Niger and Viet Nam highlighted that transitional justice frameworks are designed to prevent a relapse into conflict and human rights violations. Belgium emphasised that transitional justice “encompasses the full range of tools to provide truth, justice and reparations to victims, with the objective of preventing the recurrence of future conflicts or atrocities”. Several members referred to the need to prevent serious human rights violations and atrocities, and emphasised the interdependence and complementarity of accountability and prevention. The links between prevention and transitional justice also appear in peace operation mandates, with the Council’s 15 March 2022 mandate renewal of UNMISS describing local and national **reconciliation as an** “essential part of preventing violence”.⁵⁰

48 United Nations. Security Council Resolution. S/RES/2605. 12 November 2021. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2605.pdf

49 United Nations. Security Council Meeting Record. S/PV.5474. 22 June 2006. p. 25. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/IJ%20SPV%205474.pdf>. At the same meeting, the Chinese statement (p. 26-27) was notable for its emphasis on respecting local customs and historical traditions in assisting countries to develop their rule of law capacities.

50 United Nations. Security Council Resolution. S/RES/2625. 15 March 2022. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/N2228831.pdf>

51 United Nations. Security Council Resolution. S/RES/2625. 15 March 2022. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/N2228831.pdf>

52 United Nations. Security Council Resolution. S/RES/2467. 23 April 2019. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2467.

Bringing violators to justice: Combatting impunity and strengthening criminal accountability

Security Council discourse and practice in the post-Cold War period reflects an understanding that impunity can undermine international peace and security. Several members view the promotion of criminal accountability as a key tool at the Council’s disposal in discharging its primary responsibility for the maintenance of international peace and security.

Over the years, in response to a variety of situations and demands, the Council has been flexible and creative in the institutional measures for accountability that it has adopted. It created two ad hoc criminal tribunals, the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), as well as the successor International Residual Mechanism for Criminal Tribunals (IRMCT). It helped to establish mixed tribunals, the Special Court for Sierra Leone and the Special Tribunal for Lebanon, and it has referred two situations to the ICC, Darfur and Libya. More recently, the Council created the UN Investigative Team to Promote Accountability for Crimes Committed by Da’esh/ISIL (UNITAD), which consists of Iraqi investigative judges and other criminal experts as well as international experts, who are directed to collect, store and preserve evidence of ISIL’s crimes in Iraq that could be used later in criminal proceedings in Iraqi national-level courts.

The Council’s emphasis on combatting impunity and promoting accountability is especially prominent in the mandate of the UN Multidimensional Integrated Stabilisation Mission in the Central African Republic (MINUSCA). In resolution 2605 of 12 November 2021, the Council highlighted the importance of strengthening national and local-level justice institutions as a means to combat impunity and called on the CAR authorities to swiftly investigate alleged abuses and violations. Describing the fight against impunity as part of the country’s peace process, the Council also mandated the mission to provide technical assistance and capacity-building to the CAR’s Special Criminal Court.

The Council has similarly stressed the significance of transitional justice for ending impunity and promoting accountability in South Sudan. Resolution 2625, adopted on 15 March 2022, called on the government of South Sudan to hold accountable perpetrators of all forms of violence, human rights violations and abuses and violations of international humanitarian law, “in order to break the prevailing cycle of impunity”. The resolution further called on the government of South Sudan and the AU to overcome their current impasse and establish the Hybrid Court for South Sudan.⁵¹

Combatting impunity with regard to sexual violence has been an area of significant focus of the Council. Resolution 2467 on sexual violence in conflict, which was adopted on 27 April 2019, encourages national authorities to strengthen legislation that promotes accountability for sexual violence.⁵² The resolution also stresses the “need for the exclusion of sexual violence crimes from amnesty and immunity

The Security Council's Approach: An Overview

provisions in the context of conflict resolution processes”.⁵³ This would seem consistent with the Secretary-General’s 2010 guidance on transitional justice, which states that the UN will not “endorse provisions in peace agreements that include amnesties for genocide, war crimes, crimes against humanity, and gross violations of human rights”.⁵⁴ In addition, the Council has called on national authorities in South Sudan and the CAR to prosecute perpetrators of sexual and gender-based violence in the mandates of the UN Mission in South Sudan (UNMISS)⁵⁵ and MINUSCA.⁵⁶

In recent decades, notwithstanding the language of resolution 2467, the Council has not delved deeply into the question of amnesties, although Council resolutions have been consistent with the UN’s stance that international crimes should not be pardoned. As early as 2000, in requesting the Secretary-General to negotiate an agreement to create the Special Court for Sierra Leone, the Council recalled that the Special Representative of the Secretary-General to Sierra Leone appended to his signature to the Lomé Agreement a statement expressing the UN’s understanding that the amnesty provisions should not apply to international crimes.⁵⁷ Phil Clark has also demonstrated how Council practice in the DRC evolved from allowing amnesties for international crimes for high level officials in the 1990s to opposing such amnesties by the mid-2000s.⁵⁸

Security Council Report has argued elsewhere⁵⁹ (and as reflected later in this report) that there has been a softening in the Council’s approach to impunity in recent years. Notwithstanding the Council’s role in developing criminal accountability mechanisms in the post-Cold War period, there has been inconsistency on this issue. This has been reflected in Council discussions on transitional justice in open meetings; some members specifically emphasise that there should be no impunity for international crimes, while others have been more ambivalent. Among this later group, Russia, for example, has argued that “it is not always acceptable for unconditional demands to be made by the United Nations, such as the unacceptability of amnesty”.⁶⁰

State-building and sustaining peace by creating more effective justice and security institutions and national human rights bodies

In public meetings, Council members have drawn connections between institution-building and legal reforms—key elements of transitional justice—and peacebuilding and sustaining peace.⁶¹

Long-term reforms related to state-building, such as judicial and security reforms, are consistent with the Security Council’s “overall goals of not only mitigating but also preventing a return to violent conflict and sustaining the gains made through peace”.⁶² This appears in formal Council outcomes as well, including resolution 2282 of 27 April 2016 on the review of the UN peacebuilding architecture, which stressed that comprehensive approaches to transitional justice (including through effective SSR and DDR) are important elements in the consolidation of peace and stability.

The Council has frequently mandated UN peace operations to support the development of a range of political, security and legal institutions. It authorises UNMISS, through capacity-building and technical assistance, to support the government of South Sudan in expanding and reforming the rule of law and justice sector in order to combat impunity and promote accountability.⁶³ Similarly, in the CAR, MINUSCA is mandated to promote and support the “rapid extension of State authority over the entire territory of the CAR, including by supporting the deployment of vetted and trained national security forces in priority areas including through co-location, advising, mentoring and monitoring”.⁶⁴ This is to be done “as part of the deployment of the territorial administration and other rule of law authorities”.⁶⁵

Human rights have remained a significant focus of the Council’s work in country-specific cases, notwithstanding different views among Council members on the extent to which human rights should be within the organ’s purview. In several instances, the Council has mandated support to strengthening the rule of law and national human rights bodies, with Burundi and the CAR as notable examples. Before dissolving the UN Office in Burundi (BNUB) in 2014, in several mandate renewals the Council encouraged the government of Burundi to establish its National Independent Human Rights Commission and subsequently called on it to strengthen the capacity of this body. Following an upsurge of violence in the CAR, the Council expanded the mandate of the UN Integrated Peacebuilding Office in the CAR (BINUCA) through resolution 2121 of 10 October 2013 to “help strengthen the capacities of the judicial system, including transitional justice mechanisms, and of the national human rights institutions and assist with national reconciliation efforts”. The Council continues to play a role in supporting legal institutions in the CAR; resolution 2605 of 12 November 2021 mandates MINUSCA to “help

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53 Ibid. Op. 30.

54 United Nations, “Guidance Note of the Secretary General: United Nations Approach to Transitional Justice,” March 2010, p. 4 https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/TJ_Guidance_Note_March_2010FINAL.pdf

55 United Nations. Security Council Resolution. S/RES/2625. 15 March 2022. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/N2228831.pdf>.

56 United Nations. Security Council Resolution. S/RES/2605. 12 November 2021. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2605.pdf

57 United Nations. Security Council Resolution. S/RES/1315. 14 August 2000. <https://www.securitycouncilreport.org/un-documents/document/ij-sres1315.php>

58 Phil Clark. “The UN Security Council and Transitional Justice: The Democratic Republic of the Congo.” United Nations University, Centre for Policy Research. 2021

59 Security Council Report, “The Rule of Law: Retreat from Accountability”, 23 December 2019, <https://www.securitycouncilreport.org/research-reports/the-rule-of-law-retreat-from-accountability.php>

60 United Nations. Security Council Meeting Record. S/PV.8723. 13 February 2020. <https://www.securitycouncilreport.org/un-documents/document/s-pv-8723.php>

61 For example, at the 13 February 2020 open debate on transitional justice (S/PV.8723), Japan – which will join the Council in 2023 for its 12th Council term – underscored that the “building of strong, effective and trustworthy institutions is an integral part of building and sustaining peace and should remain a crucial part of transitional justice as well”.

62 Rebecca Brubaker. “The UN Security Council and Transitional Justice.” United Nations University, Centre for Policy Research. 2021. p. 7. http://collections.unu.edu/eserv/UNU:7965/UNU_TransitionalJustice_FINAL_WEB.pdf

63 United Nations. Security Council Resolution. S/RES/2625. OP. 17. 15 March 2021. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/N2228831.pdf>

64 United Nations. Security Council Resolution. S/RES/2605. OP 35 c. ii. 12 November 2021. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2605.pdf

65 Ibid.

The Security Council's Approach: An Overview

build the capacities of the national human rights institution coordinating with the Independent Expert on human rights in the CAR as appropriate".⁶⁶

Promoting reconciliation at multiple levels (personal, communal, societal, political)

The Council has often emphasised the importance of national reconciliation, both as a process and as a goal, and in debates and mandating. In November 2019, reconciliation was the focus of a Council open debate, during which many members underscored that reconciliation should be an inclusive process tailored to a particular situation and contributing to durable peace.⁶⁷ Council members have emphasised the importance of reconciliation in preventing conflict recurrence, and the Council has described combating impunity as a means of promoting peace and reconciliation.⁶⁸

The Council frequently referenced reconciliation as a desirable goal in Burundi, often without elaborating what reconciliation would entail. It recognised in resolution 1858 of 22 December 2008, and then again in resolution 1902 of 17 Dec 2009, "the importance of transitional justice in promoting lasting reconciliation among all the people of Burundi". When BNUB's mandate was extended for the final time, through resolution 2137 of 13 February 2014, the Council called on the government to work toward the "establishment of transitional justice mechanisms, including a credible and consensual Truth and Reconciliation Commission to help foster an effective reconciliation of all Burundians and durable peace in Burundi". Later that year, the government passed a law establishing the commission, which had been envisioned nearly 15 years earlier in the 2000 Arusha Peace and Reconciliation Agreement. However, the commission has been criticised for favouring the interests of the National Council for the Defense of Democracy—Forces for the Defense of Democracy (CNDD-FDD)—Burundi's ruling party—and focusing more closely on crimes committed against Hutu victims than against Tutsis.⁶⁹

In the UNMISS mandate, the Council called on the government of South Sudan to set up the Commission for Truth, Reconciliation, and Healing outlined in Chapter V of the 2018 peace agreement and requested the Secretary-General to make available technical assistance for its establishment. UNMISS is also authorised to mediate and engage with communities to "foster sustainable local and national reconciliation" as part of its protection of civilians mandate.⁷⁰

In Sierra Leone, although the Council was not formally or directly involved in the establishment, or mandate, of the Truth and Reconciliation Commission, it called for the commission's swift

establishment, explicitly and consistently noted its importance and necessity, and subsequently, through resolution 1734 of 22 December 2006 renewing the mandate of the UN Integrated Office in Sierra Leone (UNIOSIL), called for the government to implement its recommendations. The commission, whose final report was published in 2004, did have some success, including by making recommendations that led to the delivery of "reparations...with limitations, to victims of human rights abuses in Sierra Leone" and the passage of anti-corruption legislation by the country's parliament.⁷¹

The Council has also repeatedly emphasised the importance of reconciliation in MINUSCA's mandate renewals. In resolution 2605, the Council "[u]rges the CAR authorities to urgently implement a genuinely inclusive process to support reconciliation in the CAR by addressing the root causes of the conflict". It requests that CAR authorities take concrete steps towards "the full operationalisation of the Truth, Justice, Reparation and Reconciliation Commission". And it "decides that MINUSCA's mandate is designed to advance a multi-year strategic vision to create the political, security and institutional conditions conducive to national reconciliation and durable peace".⁷²

Supporting truth-telling and the emergence of historical truth

As noted in the cases of South Sudan, Burundi, Sierra Leone, and the CAR, Council mandates have recognised the important role that truth and reconciliation commissions can play in promoting transitional justice. Resolution 2459 of 15 March 2019, renewing the UNMISS mandate, refers to "truth-seeking" as a key to healing and reconciliation as part of a holistic transitional justice process.

The work of truth and reconciliation commissions is favourably reflected in thematic debates as well. In the November 2019 debate on reconciliation, the representative of South Africa observed that his country's Truth and Reconciliation Commission had "to deal with the question of reconciliation and the future, on the one hand, and the necessity to establish the truth in relation to past events and ensure reparations to the victims of gross human rights abuses".⁷³ It was his country's way of "reconciling the decades-long oppression and proceed[ing] with nation-building", he said, as both victims and perpetrators had the opportunity to speak in public hearings.⁷⁴ At the same meeting, the UK said that The Gambia Truth, Reconciliation and Reparations Commission had "secured the confidence of the public", as it "was seen to be independent, consultative and inclusive".⁷⁵ While some members have highlighted truth-telling as a way of promoting reconciliation, others emphasise it as a means to achieve accountability, captured by the expression "no justice without truth".⁷⁶

66 United Nations. Security Council Resolution. S/RES/2605. 12 November 2021. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2605.pdf Op. 34 f. 2.

67 At that debate, France called for the involvement of "women, youth, civil society actors, and community and religious leaders" in reconciliation efforts, adding that reconciliation "is essential for building lasting peace". During that meeting, some members also noted the role of the UN's good offices and mediation in supporting reconciliation processes.

68 See, for example, S/PRST/2009/23 on post-conflict peacebuilding, S/PRST/2012/1 on justice and the rule of law, and S/PRST/2014/5 on the strengthening rule of law institutions

69 See, for example, Mireille Kanyange, "An Elusive Truth", Development and Cooperation. 13 December 2021. <https://www.dandc.eu/en/article/burundis-truth-and-reconciliation-commission-faces-accusations-ethnic-bias>; and africanews.com; and "Burundi's Truth and Reconciliation Commission Presents New Findings". 20 March 2021. <https://www.africanews.com/2021/03/20/burindi-s-truth-and-reconciliation-commission-presents-new-findings/>.

70 United Nations. Security Council Resolution. S/RES/2625. 15 March 2022. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/N2228831.pdf>

71 Elena Naughton. "Sierra Leone: Case Study" in Challenging the Conventional: Can Truth Commissions Strengthen Peace Processes? International Center for Transitional Justice and the Kofi Annan Foundation. June 2014. p. 44. <https://www.ictj.org/sites/default/files/subsites/challenging-conventional-truth-commissions-peace/docs/ICTJ-Report-KAF-TruthCommPeace-2014.pdf>

72 United Nations. Security Council Resolution. S/RES/2605. 12 November 2021. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2605.pdf

73 United Nations. Security Council Meeting Record. S/PV.8668. 19 November 2019. p. 10. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_8668.pdf

74 Ibid.

75 Ibid. p. 8.

76 Ibid. p. 7 and 13.

The Security Council's Approach: An Overview

Supporting a national dialogue

National dialogues, conducted in good faith, have an important role to play in advancing transitional justice.⁷⁷ These have been mentioned in Council meetings on the rule of law and peacebuilding and sustaining peace, but have not been a significant focus in such discussions. Nonetheless, Council support for national dialogue processes runs through its country-specific work. In South Sudan, the Council has urged all parties to engage in an inclusive national dialogue process in successive UNMISS mandate renewals, and noted the support of the Inter-governmental Authority on Development (IGAD) for the process, which took place from 2016 to 2020. The Council also closely followed the Yemen National Dialogue in 2013–2014, receiving several briefings from the Secretary-General's Special Adviser on Yemen on developments related to this process. In resolution 2140 of 26 February 2014, it encouraged all constituencies in the country to implement the recommendations of the National Dialogue. In the same resolution, it added as a designation criterion for targeted sanctions in Yemen (assets freeze and travel ban): “impeding the implementation of the outcomes of the final report of the comprehensive National Dialogue Conference through violence, or attacks on essential infrastructure”. In subsequent resolutions, the Council continued to call on all parties in Yemen to abide by the outcomes of the National Dialogue conference.⁷⁸

Addressing root causes of conflict

The Council has drawn connections in peace operations mandates between implementing transitional justice processes and addressing the root causes of conflict. In the MINUSCA mandate, the Council explicitly urges “the CAR authorities to urgently implement a genuinely inclusive process to support reconciliation in the CAR by addressing the root causes of the conflict”.⁷⁹ In some cases, the Council has mandated peace operations to support institution-building in post-conflict settings as a way of addressing the root causes of conflict, as in the case of the UN Integrated Office in Burundi (BINUB)⁸⁰ and the UN Integrated Office in Sierra Leone (UNIOSIL).⁸¹

In addition, the notion that transitional justice is a means to tackling the root causes of conflict has been emphasised in Council debates. During the November 2019 open debate on the role of reconciliation in maintaining international peace and security, Peru posited that reconciliation is a process that can identify and tackle “the political, social, legal and economic root causes of conflict in order to prevent them from recurring”.⁸² At the February 2020 open debate, Viet Nam maintained that justice “is a means to

the long-term goals of sustainable national unity and development” and that “efforts to promote transitional justice and post-conflict peacebuilding need to always keep that long-term goal [in] consideration, including addressing the root causes of conflict”.⁸³ South Africa stated that various forms of transitional justice—including criminal prosecutions, truth commissions, reparations, and amnesties, among others—can help countries make the transition from conflict to sustainable peace,⁸⁴ while the UK argued that certain truth and reconciliation commissions have shown that transitional justice mechanisms can help to address the root causes of conflict.⁸⁵ Finally, Saint Vincent and the Grenadines said that transitional justice mechanisms should be combined with sustainable development efforts that “address the root causes of insecurity and empower people to live in dignity”.⁸⁶

Development and prosperity

As noted, some Council members have viewed transitional justice as a means to achieve sustainable development, or as an essential complement to transitional justice in efforts to address the root causes of conflict. China, which often positions itself as a champion of the developing world, drew a particularly clear connection between transitional justice and sustainable development in the February 2020 open debate, arguing that “transitional justice is not only a legal issue but should also contribute to establishing lasting peace and stability, economic development and social progress in the country concerned, as well as the long-term well-being of local populations”.⁸⁷ Indonesia made a similar statement: “The various activities surrounding transitional justice should pave the way to well-being and prosperity, with the long-term goal of building a durable peace, putting a human approach at the forefront while protecting humankind and providing hope for future generations.”⁸⁸

At the same debate, the UK noted that transitional justice needs to be complemented by “a proper response for dealing with wider social and economic injustices” to forestall the prospects of future violence.⁸⁹ Saint Vincent and the Grenadines said that “Transitional justice mechanisms should...be complemented by sustainable development initiatives that address the root causes of insecurity and empower people to live in dignity”.⁹⁰

The Council has drawn linkages between transitional justice and development in its formal products as well, although less directly than in members' statements in the Council chamber. For example, in a January 2015 presidential statement on inclusive development, the Council noted that implementing the multitude of potential tasks of

77 UNDP. “How can dialogue support reconciliation and transitional justice in post-conflict contexts?” 1 February 2017. <https://www.undp.org/publications/how-can-dialogue-support-reconciliation-and-transitional-justice-post-conflict-contexts>

78 See, for example, Security Council Resolution S/RES/2201 of 15 February 2015. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2201.pdf, and resolution S/RES/2216 of 14 April 2015. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2216.pdf

79 United Nations. Security Council Resolution. S/RES/2605, OP. 8. 12 November 2021. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2605.pdf

80 United Nations. Security Council Resolution. S/RES/1719, OP. 2a. 25 October 2006. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CAC%20SRES%201719.pdf>

81 United Nations. Security Council Resolution. S/RES/1620, OP. 1 a. i. 31 August 2005. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/SL%20SRES1620.pdf>

82 United Nations. Security Council Meeting Record. S/PV.8668. 19 November 2019, p. 17. <https://www.securitycouncilreport.org/un-documents/document/s-pv-8668.php>

83 United Nations. Security Council Meeting Record. S/PV.8723. 13 February 2020. Statement by China, p. 22. <https://www.securitycouncilreport.org/un-documents/document/s-pv-8723.php>

84 Ibid., p. 12.

85 Ibid., p. 17.

86 Ibid., p. 20.

87 Ibid., p. 21.

88 Ibid., p. 15.

89 Ibid., p.17.

90 Ibid, Statement by Saint Vincent and the Grenadines, p. 20.

The Security Council's Approach: An Overview

a peacekeeping operation—in the areas of SSR, DDR, the rule of law, transitional justice and human rights—“requires an understanding of...the close interlinkages between security and development”.⁹¹ In a presidential statement from November 2021, the Council

emphasised that “sustainable and sustained economic growth”, sustainable development and poverty eradication are fostered by inclusive dialogue, access to justice and transitional justice, good governance, and accountable institutions, among other factors.⁹²

Push and Pull Factors Affecting Security Council Engagement on Transitional Justice Processes

Referring to “Security Council practice” in respect of transitional justice can risk glossing over the degree to which the Council’s membership changes, reprioritises, and forgets: with one-third of its members being replaced annually, momentum may be lost, and members’ knowledge of and interest in transitional justice will vary. Over time, Council interest in seeing transitional justice pursued can appear to fade, particularly where the national government’s commitment is lacking. The national government’s openness to Council support for transitional justice processes in the country, and the presence of Council members strongly committed to transitional justice, and the Secretary-General’s reporting, have manifestly been elements in reinforcing the Council’s engagement on the issue, as seen in Sierra Leone and more recently, Colombia. Invariably, too, there are broad political push and pull factors at play: members’ own foreign policy considerations, and encouragement—or pushback—from the country concerned, other countries, and regional actors. Supportive member states can work to strengthen support for transitional justice initiatives outside the Council, through bilateral engagement with the country (and region) concerned.

In exploring the Council’s response to various aspects of transitional justice in different contexts and at different times, this section aims to highlight some of the conditions under which the Council seeks to support such efforts and instances when it has seemingly failed to do so.

In analysing patterns of Council decisions and actions on transitional justice, this report identifies what might be termed “push and pull” factors affecting its approach to the issue. As indicated above, these are: (1) Council members’ political considerations; (2) national-level commitment to transitional justice processes; (3) national-level openness to Council involvement (4) the Council’s attempt to strike a balance between national ownership and international engagement on transitional justice; and (5) ebbs and flows in Council attention.

In examining what can appear as inconsistencies in the Council’s approach, we have kept in mind that transitional justice efforts must fit the situation at hand. The desirability of tailored approaches is not in dispute, and the Secretary-General has also said in his 2010 Guidance Note that “the UN eschews one-size-fits-all formulas and the importation of foreign models, and bases its work upon a thorough

analysis of national needs and capacities, drawing upon national expertise to the greatest extent possible”.

Political Considerations

The Security Council is a political body whose decisions reflect the art of the possible, based on the relationships among its members, their ideological views, their strategic considerations, their commitments to national constituencies, and their willingness to compromise. Geopolitical dynamics, rather than a clinical evaluation of good practice, often dictate the content of a decision—on transitional justice as on all its files. At other times, different perspectives on what constitutes good practice and on how to achieve sustainable peace in a particular situation can lead to inconsistent and even incoherent practices.

Differences among Council members often lead to gridlock over transitional justice, particularly on the matter of accountability for international crimes, where the Council’s approach has been less assertive in recent years.⁹³ The Council consistently prioritises securing peace agreements and political settlements: while, at times, members appear to have viewed accountability measures as supporting such processes, at other times, they were viewed as a possible impediment to political resolution.

Notwithstanding its innovation in the early post-Cold War period, the formation of UNITAD in September 2017 (S/RES/2379), and its broad rhetorical support for promoting accountability, the Council has shown little collective appetite in recent years to use its leverage to fight impunity, for instance in Afghanistan and Syria. Overall, Council members appear to be particularly sensitive to mandating accountability measures in conflict situations where they have a direct engagement or a strong political stake, or when they or their political allies could be targeted as a result. Some members have also suggested that international and mixed tribunals can be politicised and interfere with a state’s sovereign prerogatives. Others have increasingly claimed that international legal prosecution can be counter-productive and can undermine reconciliation and political transition processes. This view has been voiced, for example, by Russia and frequent Council member South Africa, which most recently served in 2019–2020. In the 19 November 2019 open debate on reconciliation, Russia argued: “[o]ften the operations of international justice bodies lead to even greater escalation of differences within societies”.⁹⁴ In the same meeting, South Africa posited

91 United Nations. Security Council Presidential Statement. S/PRST/2015/3. 19 January 2015. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_prst_2015_3.pdf

92 United Nations. Security Council Presidential Statement. S/PRST/2021/22. 9 November 2021. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_prst_2021_22.pdf

93 See, for example, Security Council Report, “The Rule of Law: Retreat from Accountability”. 23 December 2019. <https://www.securitycouncilreport.org/research-reports/the-rule-of-law-retreat-from-accountability.php>

94 United Nations. Security Council Meeting Record. S/PV.8668. 19 November 2019. Statement by Russia, p. 15, <https://www.securitycouncilreport.org/atf/>

Push and Pull Factors Affecting Security Council Engagement on Transitional Justice Processes

the need “to consider that there is a political necessity to promote alternative means of accountability”, as prosecutions alone can be destabilising, and underscored the importance of exploring a range of transitional justice tools, such as truth commissions, reparations, and traditional mechanisms.⁹⁵

Differing views about the work of the ICC have hamstrung the Council’s ability to refer situations to the Court. Among the permanent members of the Council, China, Russia and the US are not state parties to the ICC, and over the years, many of the Council’s African members have expressed concern that the court unfairly targets countries on the continent.

A case in point is the US’ fraught approach to accountability measures in Afghanistan. A UNU study on Afghanistan pointed out that selective US opposition to efforts to hold perpetrators to account, for example through an ICC investigation, is a major factor shaping the Council’s reticence on transitional justice measures for that country.⁹⁶ In September 2020, following the ICC’s decision to open an investigation into possible US war crimes in and related to Afghanistan, the Trump administration imposed sanctions on then-ICC Prosecutor Fatou Bensouda. The Biden administration lifted the sanctions in April 2021 and, in December of that year, ICC Prosecutor Karim Asad Ahmad Khan decided to “de-prioritise” the investigation into possible crimes committed by Americans, focusing instead on crimes committed by the Taliban and the Islamic State in Iraq and the Levant (ISIL/Da’esh).⁹⁷

Russia has also been an outspoken critic of the ICC. At the February 2020 open debate, Russia claimed that the ICC’s commitment to “the idea of complementarity remained a dead letter, while the general trend towards the politicisation of the work of international judicial bodies manifested itself in its ugliest forms”. In the case of Syria, Russia’s active involvement in the conflict has prevented the Council from adopting accountability measures such as imposing an arms embargo or targeted sanctions, and in 2014, China and Russia vetoed a draft resolution that would have referred the situation in Syria to the ICC. As discussed above, the IIIM, established in 2016 by the General Assembly, was an initiative by the wider UN membership to pursue accountability measures where the Council failed to act because of the political considerations of a permanent member.

Following the Council’s failure to adopt a resolution⁹⁸ that would have condemned Russia’s invasion of Ukraine—and might have called for related accountability measures—the Council adopted resolution 2623 on 27 February 2022, calling for an emergency special session (ESS) of the General Assembly.⁹⁹ This was the Council’s

first “Uniting for Peace” resolution—whereby the Council refers a situation on which its permanent members are deadlocked to the General Assembly—in four decades. On 2 March, the General Assembly adopted a resolution titled “Aggression Against Ukraine”, which condemned Russia’s invasion.¹⁰⁰

Other international mechanisms swiftly took action to address issues relating to accountability for crimes committed as part of the war. A week after the invasion, on 2 March 2022, the ICC announced its decision to proceed immediately with an active investigation into the situation in Ukraine after receiving referrals from 39 ICC States Parties.¹⁰¹ The HRC established an independent international Commission of Inquiry (COI) on 4 March to investigate alleged violations and abuses of human rights committed in the context of Russia’s aggression against Ukraine.¹⁰²

Calls for investigations and accountability gained more urgency following reports of atrocities in areas north of Kyiv retaken from Russian forces in late March. On 25 March, Ukraine, together with Albania, Colombia, Denmark, the Marshall Islands, and the Netherlands, launched the Group of Friends of Accountability following the Aggression against Ukraine to promote the issue at the UN.¹⁰³ On 7 April, the General Assembly adopted a resolution suspending Russia from the HRC.¹⁰⁴ Many Council members—notably the US and European members—have continued to emphasise the need to ensure accountability for crimes committed in the context of the war in their statements in Council meetings on Ukraine. To further highlight the issue, Albania and France convened an Arria-formula meeting titled “Ensuring accountability for atrocities committed in Ukraine” on 27 April 2022.¹⁰⁵

National Commitment to Transitional Justice Processes

The UN Secretariat and the Security Council agree that transitional justice processes must be nationally owned to be effective and consistent with national sovereignty. Indeed, the Council appears most inclined to support transitional justice measures where these are promoted by the country’s authorities and where specific transitional justice mechanisms have been agreed by the parties involved, whether in a peace agreement or a separate national agreement. In some cases, national authorities have sought Council support (as in Colombia and Sierra Leone), and in all five country situations discussed in this report, transitional justice measures have been outlined in peace agreements at various times.¹⁰⁶ In such contexts, the Council has often played a useful supporting role in calling for the establishment and functioning of mechanisms that have formally

cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_8668.pdf

95 Ibid., p.10.

96 Cale Salih. “The UN Security Council and Transitional Justice: Afghanistan”. United Nations University, Centre for Policy Research, 2021, p. 31

97 ICC. “Statement of the Prosecutor of the International Criminal Court, Karim A. A. Khan QC, following the application for an expedited order under article 18(2) seeking authorisation to resume investigations in the Situation in Afghanistan”, September 27, 2021. <https://www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-karim-khan-qc-following-application>

98 See draft resolution S/2022/155 of 25 February 2022. <https://www.securitycouncilreport.org/un-documents/document/s-2022-155.php> For an analysis of the process leading to the vote, see SCR’s 25 February 2022. What’s in Blue story: <https://www.securitycouncilreport.org/whatsinblue/2022/02/ukraine-vote-on-draft-resolution.php>

99 United Nations. Security Council Resolution. S/RES/2623. 27 February 2022. <https://www.securitycouncilreport.org/un-documents/document/s-res-2623.php>

100 United Nations. General Assembly Resolution. A/RES/ES-11/1. 2 March 2022. <https://www.securitycouncilreport.org/un-documents/document/a-res-es-11-1.php>

101 ICC. “Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation”. March 2, 2022. <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-receipt-referrals-39-states>

102 United Nations. Human Rights Council Resolution. A/HRC/RES/49/1. 4 March 2022. <https://www.securitycouncilreport.org/un-documents/document/a-hrc-res-49-1.php>

103 International Peace Institute. “High-Level Launch Meeting of the Group of Friends of Accountability Following the Aggression Against Ukraine”. 25 March 2022. <https://www.ipinst.org/2022/03/high-level-launch-meeting-of-group-of-friends-of-accountability-for-ukraine#9>

104 United Nations. General Assembly Resolution. A/RES/ES-11/3. 7 April 2022. <https://www.securitycouncilreport.org/un-documents/document/a-res-es-11-3.php>

105 United Nations. Security Council Arria-formula Meeting. 27 April 2022. <https://media.un.org/en/asset/k14/k144em1spf>

106 Although the Council was not directly involved in the drafting process of these agreements, various international actors often supported these endeavors by providing technical expertise, such as in the case of Colombia.

Push and Pull Factors Affecting Security Council Engagement on Transitional Justice Processes

been agreed, or by authorising missions to provide capacity-building or technical assistance for national justice or security institutions.

The degree of such support—whether through its mandating of UN peace missions or other country-specific outcomes—varies, largely depending on the level of consent of the country and its willingness to commit to a meaningful transitional justice process.

The case studies show that it is important—and in some cases, pivotal—for the Council to see that a genuine effort exists from national authorities to make such processes work. The examples of the CAR and Burundi illustrate that apparent lack of commitment over time by national authorities can make some Council members reluctant to offer substantial support or even to maintain their engagement. In the CAR, the Secretary-General on several occasions recommended increasing the capacities of UN missions in the country, including expanding the functions of the mission to enable it to provide added support for transitional justice processes. While the Council eventually agreed to such mandate expansions, members like Russia and the US have expressed some reservations, with the latter arguing that the CAR authorities did not demonstrate sufficient commitment to reforms, including progress on national reconciliation.¹⁰⁷

Although the Council initially set a high bar for transitional justice goals in Burundi, its appetite to support such processes waned after several years, during which the national authorities demonstrated a reluctance to cooperate with the Council, including on human rights monitoring. In December 2020, the Council significantly limited its engagement on Burundi, adopting a presidential statement calling on the Secretary-General to end his periodic reporting on the situation and instead incorporate this into his regular reporting on the Great Lakes region and Central Africa. This decision was made despite the Council's recognition that there was "important work ahead to advance national reconciliation, promotion of the rule of law and of an independent judiciary". The statement called on Burundi to ensure an end to human rights abuses and hold perpetrators to account.

While regional actors can support transitional justice processes and contribute through their unique understanding of the region, lack of political will by these actors can, as with lacklustre commitment by the national authorities of the relevant country, prove detrimental and serve as an excuse to delay Council action. In South Sudan, a stalemate between the AU and the South Sudan government has, as at mid-2022, hindered progress in setting up the Hybrid Court for South Sudan, as stipulated in Chapter V of the 2015 and 2018 peace agreements. This recalcitrance on the part of both the AU and South Sudan has been met by an overall reluctance from the Council to exert its authority to promote the establishment of the hybrid court.

Can the Council encourage national commitment, or ownership,

when it wavers? A united Security Council might have been able to exert leverage on the government and the AU to move the process forward, but there has been disagreement within the Council on the issue for several years. Russia, supported by China and several elected members, has maintained since 2015 that the establishment of the Hybrid Court is the AU's prerogative and has tried to resist the inclusion of language on UN engagement. Since 2018, the Council has called on the government of South Sudan and the AU to sign a memorandum of understanding on establishing the Hybrid Court in its resolutions extending UNMISS' mandate, to no practical effect. In 2021, however, the Council sought to increase pressure on South Sudan to fulfil its obligations under Chapter V, calling on the government to take steps towards establishing the hybrid court by March 2022. With no concrete progress, the Council made the same call in the following mandate renewal resolution, again with a one-year timeframe (that is, by March 2023).¹⁰⁸

In Colombia, the Security Council's involvement has helped to strengthen and maintain national ownership of the transitional justice processes stipulated in the peace agreement through changes in national administrations. In 2018, when Iván Duque replaced former president Juan Manuel Santos, who had led the country through the process culminating in the 2016 peace agreement, the Colombian government actively sought to undo the agreement's transitional justice provisions. Although Duque's attempt to change the law governing the SJP was overturned by the Colombian Congress in June of that year, the Security Council's strong messaging in support of the SJP appears to have helped bolster the positions of other national and international actors (such as the UN Verification Mission).¹⁰⁹

A UNU Study argues that the Council's support for the SJP in Colombia when it came under threat in March 2019 influenced the government's subsequent actions because of the latter's desire "to remain fully engaged with the international community and to maintain its reputation for cooperation with international law and the UN", among other things.¹¹⁰ Additionally, the Council's rare unity on the Colombia file has helped the Council take more decisive action than on some other country situations on its agenda. While the national authorities' lack of political will led the Council to limit its engagement on transitional justice in Burundi and the CAR, it appears to have spurred the Council on in Colombia.

The Council remains aware of the significant role it has played, and members appear to be proud of their support for the 2016 peace agreement, which they view as an accord with potential global resonance.¹¹¹ During Colombia's 2022 electoral cycle, Council members emphasised the importance of implementing the 2016 peace agreement in its entirety, including aspects relating to transitional justice, regardless of the outcome of the legislative and presidential elections.¹¹²

¹⁰⁷ See S/PV.3867 (27 March 1998), during which the Council discussed the future of the UN Mission in the Central African Republic (MINURCA). At that meeting, Russia noted the need to continue international assistance for the "consolidation of the process of national reconciliation", while emphasising that "[t]he effectiveness of the international community's assistance in achieving a definitive resolution of the crisis in that country depends on the readiness of its Government... to demonstrate further political will, implement strictly the Bangui Agreements and comply strictly with the National Reconciliation Pact".

¹⁰⁸ See S/RES/2625 of 15 March 2022. <https://www.securitycouncilreport.org/un-documents/document/s-res-2625.php>

¹⁰⁹ Rebecca Brubaker. "The UN Security Council and Transitional Justice". United Nations University, Centre for Policy Research. 2021. p. 63-64.

¹¹⁰ *Ibid.*, p.53.

¹¹¹ During a 14 July 2022 Arria-formula meeting on transitional justice in Colombia, the US said that the 2016 peace agreement has "served as a model for ending conflicts worldwide", adding that it is essential for the Security Council to "meaningfully reflect on the lessons learned from Colombia's transitional justice system, both to assist Colombia as it moves forward, and to help resolve conflicts elsewhere". Many members echoed similar sentiments, while recalling that all transitional justice processes need to be context specific. Norway noted that Colombia's transitional justice systems is "perhaps the most sophisticated system of its kind globally" and said that it can serve as an inspiration for transitional justice systems elsewhere.

¹¹² See SC/14781 (27 January 2022) and S/PV.8951 (20 January 2022).

Push and Pull Factors Affecting Security Council Engagement on Transitional Justice Processes

The strong involvement of civil society and national institutions in the Colombian process is a reminder that national ownership can be broader than government engagement, and can fill in for a lack of government enthusiasm. Civil society organisations, including victims' organisations, were key in the processes leading up to the agreement and have played a crucial role in its implementation; victims have steadfastly participated by sharing their testimonies, even at grave risk to their safety. At a 14 July 2022 Arria-formula meeting on transitional justice in Colombia, Ireland noted that “transitional justice and peace agreement implementation has the absolute best chance of success when the commitment and efforts of its participants is met by the support of the international community”.¹¹³

It also appears important for the Council to see a demonstrated capacity and commitment by national transitional justice institutions. In Colombia, the three components of the justice system have been constantly commended for their work, including by members of the international community. The SJP has gained national and international recognition for its work in preparation for handing down sentences against individuals accused of committing crimes during the civil war. In October 2021, the ICC announced its decision to close its preliminary examination on alleged crimes committed during the civil war in Colombia, which commenced in 2004, citing among other things, the “significant progress achieved by domestic prosecutorial and judicial entities, and in particular by the SJP”.

Openness to Council Support

The Council has broadly been more willing to approve UN support for transitional justice initiatives in its mandating of UN peace operations when the request comes directly from the host country. The CAR is a notable example, as the Council authorised MINUSCA to support the authorities in arresting and bringing to justice those responsible for war crimes and crimes against humanity in the country. It seems that members such as China and Russia—which often stress the importance of state sovereignty—expressed hesitation about setting a precedent of allowing a peacekeeping mission to engage in justice procedures that they believe should be in the purview of the state. However, it appears that even those members with reservations ultimately accepted that this function should be part of the mandate due to weak state capacity in the CAR and the fact that the request was made by the authorities themselves.

Colombia is another pertinent example. The UK noted following the adoption of resolution 2261 of 25 January 2016 establishing the “Mission in Colombia”, that “it is not common for a country to refer itself to the Council”. Indeed, Colombia is a rare case in which the Council follows a country situation at the invitation of its own authorities and is involved in a post-conflict peacebuilding context. Initially, the Verification Mission in Colombia, the successor of the “Mission in Colombia”, was only mandated to verify aspects of the peace agreement related to the political, economic and social reincorporation of former FARC-EP combatants and personal and collective security guarantees for communities and organisations

¹¹³ United Nations. Security Council Arria-formula meeting. 14 July 2022. <https://media.un.org/en/asset/k1h/k1hsk0z91y>.

¹¹⁴ See letter to the Council from Colombian President Iván Duque Márquez. United Nations. Security Council Letter. S/2021/147. 15 January 2021. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2021_147_E.pdf

¹¹⁵ United Nations. Security Council Letter. S/2021/186. 24 February 2021. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2021_186_E.pdf

¹¹⁶ Such language is consistent with the 2010 guidance note, which states that “national consultations are a critical element of the human rights-based approach to transitional justice, founded on the principle that successful transitional justice programmes necessitate meaningful public participation, including the different voices of men and women”.

in conflict-affected areas. At the government's request, the Council expanded the Verification Mission's mandate to include elements relating to transitional justice (the monitoring of compliance with the sentences handed down by the SJP) through resolution 2574 of 11 May 2021.¹¹⁴ Another key factor is that the 2016 peace agreement had stipulated international involvement in such monitoring.

The UN Secretariat also played an important role in the process leading to the expansion of the Verification Mission's mandate. It consulted with the government and the SJP to develop recommendations for the specific tasks that the Verification Mission will undertake in verifying the sentences. The recommendations were transmitted to the Council in a 24 February 2021 letter, which also provided comprehensive background information about the transitional justice processes stipulated in the peace agreement.¹¹⁵ The letter helped guide Council discussions during the negotiations on resolution 2574 and was explicitly referenced in the resolution.

Striking a Balance between National Ownership and International Support

In insisting on transitional justice, the Council searches for balance between offering support to relevant national processes and upholding the country's sovereignty. Sections two and three demonstrated that the Council is best positioned to play an effective role in supporting transitional justice processes when the national authorities have a coherent plan in place and welcome external support, or at the very least, accord importance to the views of the international community. In such instances, countries may recognise the practical and normative benefits of such international engagement, and the Council can be viewed as a useful partner, whose political sway helps to facilitate or incentivise transitional justice initiatives. International engagement in national processes can also help set positive change in motion. It has helped strengthen national legislation and judicial mechanisms (for instance, in Sierra Leone) and created many openings for training, information exchange and recognition of national efforts.

The Secretary-General's 2010 Guidance Note says that “the UN should consistently promote the compliance of transitional justice processes and mechanisms with international norms and standards”, and our case studies confirm that some members also see a role for the Council in promoting and encouraging compliance. Language in Council resolutions often alludes to such principles. For example, in resolution 2625 of 15 March 2022 on UNMISS' mandate, the Council notes that the government of South Sudan has started consultations on the Commission for Truth, Reconciliation, and Healing, and encourages it to conduct these consultations “with all stakeholders, including full, equal, and meaningful participation of women, and inclusion of youth, victims, persons with disabilities, and internally displaced persons (IDPs)”.¹¹⁶

Where national capacity is lacking, raising concerns that processes will be unable to meet international standards, the Council appears more likely to authorise mechanisms that feature

Push and Pull Factors Affecting Security Council Engagement on Transitional Justice Processes

international involvement. These can range from assisting national processes, including by adding credibility and lending technical support, to authorising international criminal tribunals. Tools that the Council has used in this regard include international commissions of inquiry (such as in Burundi and the CAR); mandating UN peace operations to support the establishment of a hybrid court (as in South Sudan); technical assistance to the government in reintegrating members of armed groups into the national forces and in investigating and prosecuting those accused of violating international humanitarian law (as in the CAR); and the establishment of international criminal tribunals (as in the former Yugoslavia and Rwanda).

Some Council members have challenged the role of the standards cited by the Secretary-General, especially in relation to criminal accountability. During the Council's February 2020 open debate on transitional justice, Russia urged the Council "not to get carried away by prescribing the same medication to all patients" and expressed scepticism about the Secretary-General's 2010 Guidance Note, noting that it had been drawn up without the participation of member states. While voicing support for the UN providing appropriate technical assistance to such processes, Russia said that the UN cannot make unconditional demands — such as on the unacceptability of amnesty, or the primacy of the international component of mixed bodies. This contrasted with the views of members such as the UK, which asserted that there should be "no impunity for international crimes and no amnesty for gross violations", and France, which called for the Rome Statute that established the ICC to be universally ratified.

Timing and Sequencing of the Council's transitional justice decisions and activities

Council engagement on transitional justice shows peaks and troughs of engagement in specific cases, with an ebb or flow of interest that reflects its perception of the relevant country's interest and sequencing considerations. The Council does not appear to have developed a generic or prescriptive "Council view" of the appropriate timing of various transitional justice measures, or their sequencing. In addition, the Council's own composition changes annually, and as such, its degree of commitment may shift from one year to the next.

The Council's pursuit of transitional justice measures may sharpen in response to violent incidents: in requesting the establishment of an international COI in Burundi in 1995 following the assassination of President Melchior Ndadaye and the ensuing violence between the Hutu and Tutsi ethnic groups, for example, and in the CAR in 2013 when the overthrow of the government by the Séléka rebel group set off widespread sectarian violence and serious human rights violations.

While the Council has, in several cases, maintained attention to transitional justice even as conflict raged, it may shelve that focus to concentrate on immediate humanitarian and political crises such as in South Sudan and Burundi. The Council appears readier to engage where impunity is identified as an acute driver of a current conflict. It is also willing to take more concrete and far-reaching measures if there appears to be a looming threat of ethnic cleansing or genocide,

doing so in Burundi, the CAR and South Sudan. The killing and hostage-taking of UN peacekeepers contributed to a Council focus on the importance of criminal accountability at the time of the May 2000 abduction of over 500 UN peacekeepers in Sierra Leone.

The Council remained consistently engaged on transitional justice issues in Sierra Leone from May 1999, when it welcomed provisions in the Lomé Peace Agreement establishing the Truth and Reconciliation Commission and the Human Rights Commission in Sierra Leone (S/RES/1260) to the final mandate renewal of the UN Integrated Peacebuilding Office in Sierra Leone (UNIPSIL) in March 2013 (S/RES/2097), when it reiterated its strong support to the Special Court. The specific request from the president to create an independent special court played an important role in the Council's involvement, and coincided with persistent atrocities on the ground, including attacks on civilians and UN peacekeepers. Addressing international involvement more broadly, the Executive Representative of the Secretary-General to Sierra Leone, Jens Anders Toyberg-Frandzen, observed that: "the general atmosphere of peace that now prevails is the culmination of more than 15 years of successive Security Council-mandated peace operations in the country" at the final formal Council meeting on Sierra Leone on 26 March 2014.¹¹⁷

In Colombia, too, the Council has remained consistently engaged in supporting the transitional justice processes stipulated in a peace agreement. It is possible to suggest that the Council's sense of success early in the process and constant cues from non-governmental actors on the ground indicating the importance of the Council's support to the peace process in Colombia helped sustain its continued engagement and support. That the Colombian transitional justice process has seen progress over the years may also be a reason that Council members refer to it regularly in their statements on Colombia, whereas other aspects of the peace process, such as the persistent violence by groups not signatory to the 2016 peace agreement against former FARC-EP members, human rights defenders, social leaders and conflict-affected communities have been a constant source of concern.¹¹⁸

Despite the Council's stated belief that transitional justice measures are fundamentally preventive and serve to break the cycle of recurrent ethno-political violence, it seems to be understood that only limited operational transitional justice measures can occur in-country while violence continues and in the absence of a political resolution.

In the CAR, for example, the Council was reticent in articulating ambitious goals for transitional justice in the late 1990s and early 2000s, a time when it was, in contrast, setting a high bar for transitional justice in Burundi and elsewhere. The turning point came in 2013 when the overthrow of the government by the Séléka rebel group set off widespread sectarian violence. Following this outburst of violence, the CAR transitional government, with limited presence and authority in the country, sought an active role for MINUSCA in the administration of justice.

In relation to Burundi, calls for justice and accountability appeared consistently throughout Security Council resolutions from 1995 to 2014. However, the case of Burundi also suggests that even

¹¹⁷ United Nations. Security Council Meeting Record. S/PV.7148. 26 March 2014. <https://www.securitycouncilreport.org/un-documents/document/spv7148.php>

¹¹⁸ Some observers have suggested that the Council's (and the UN's) desire to paint Colombia as success story has sometimes led it to paint a rosier picture of the implementation of the peace process.

when the Security Council sets the bar high, in terms of the justice it wishes to see done, and pledges the support of the international community, the Council will not persist if the country concerned drags its feet. Every transitional justice goal pursued by the Council in Burundi either took years, or was never attained.

Similarly, on South Sudan, a lack of unity among Security Council members at certain moments has undermined the Council's leverage with the government, such as its response to ongoing

reports of violence against civilians, impediments to humanitarian access and a lack of implementation of the 2015 and 2018 Peace Agreements, including the establishment of the institutions specified under Chapter V. On issues of accountability and transitional justice, members have over the years disagreed on the extent to which the Council should be involved and should exert pressure on the parties to fulfil their obligations.

The Security Council and Transitional Justice: Concluding Recommendations

Drawing on the Council's approach to transitional justice as presented in our case studies, as well as broader research, this section sets out concluding recommendations for optimising the Council's engagement with transitional justice processes.

Making Best Use of the Council

- The Security Council has a record of emphasising the importance of transitional justice in its briefings and statements, and of including it in the mandates of UN peace operations. It should continue to do so, underlining relevant standards of justice and accountability in this connection.
- The Security Council should continue to support comprehensive approaches to transitional justice, in which the diverse elements complement one another, and to encourage national authorities to articulate their goals for, and commitment to, transitional justice.
- The Council is not best placed to provide detailed guidance in its peace operations mandating on the form(s) transitional justice should take in a given country situation, and need not do so.

As these case studies illustrate, the Security Council has emphasised the importance of transitional justice in its mandating of UN peace operations, and most members have also done so in their statements at briefings and debates. The Security Council also has a record of underlining the importance of transitional justice in its contacts with national authorities—during field visits, for instance, and in the Council chamber. It has articulated broad (if, at times, selective) support for international standards pertaining to criminal accountability, the rights of victims to justice, and to fair legal proceedings and the rule of law.

The concept of “transitional justice” may not be well understood—or may be interpreted differently—in different settings; however, whether the term “transitional justice” is used is less relevant. What is important is that the activities commonly associated with this concept are envisioned as mutually reinforcing, and not as a series of discrete technical elements that are divorced from one another and do not contribute to sustainable peace. While elements of transitional justice may vary depending on the context, Council members should invite briefers to set out how these elements interact with and reinforce one another.

In light of the context-specific nature of transitional justice and the importance of national commitment and engagement, however, the Council should not be expected to design and insert detailed and task-specific mandating for these activities by UN peace operations. The Council is best placed to equip UN peace operations with the political backing and articulation of the principals and broad strategic goals of support to transitional justice processes.

Without delineating too closely a transitional justice process, the Council should provide: (a) appropriate messaging on the importance of transitional justice, including on accountability and amnesty; (b) adequate scope for the UN and other actors to monitor, document and report on human rights violations, and to support and monitor national, international or hybrid transitional justice initiatives; and (c) support for national efforts to build accountable and inclusive judicial and security institutions.

This is consistent with other recommendations, for instance by the 2015 High-Level Panel on Peace Operations, that the Council move away from detailed and task-oriented mandating for peace operations. Far more important than excessively detailed mandates is a process of strategic planning and consultations, with Council members as well as within the UN Secretariat, leading to mandates that signal overall goals for the country. (For more on this, see Security Council Report's February 2020 research report titled “Prioritisation and Sequencing of Council Mandates”).

(In 2014, the CAR transitional authorities asked that MINUSCA be authorised to support the transitional government, which lacked effective authority outside Bangui, in arresting and bringing to justice those responsible for war crimes and crimes against humanity in the country. This was added to its mandate, and remains the only mandated responsibility of its kind across UN peace operations.)

While UN guidance emphasises national ownership, some Council members have used the language of national ownership (and national sovereignty) to push back against international engagement in transitional justice, as in the case of South Sudan. Difficult Council dynamics in 2022 include several members' high sensitivity to including references to criminal accountability elements in Council products. Members have also encountered challenges in including language pertaining to human rights and international humanitarian law. Member states, civil society and other actors will need to work hard to avoid backsliding in this domain and to keep transitional justice actions grounded in international standards.

Using Council Tools

- The Council should use its full leverage to combat impunity and insist on accountability. In addition to peace operations mandates, other Council products, and members' statements, its primary tools include establishing fact-finding mechanisms, sanctions and international (and hybrid) legal mechanisms. There appears greater scope for the Council to deploy these tools, although present geopolitical tensions make this difficult in some situations. Members can also press for fact-finding mechanisms via other channels.

The Security Council and Transitional Justice: Concluding Recommendations

In many of its statements and resolutions, the Security Council has insisted on accountability and decried impunity for violations of human rights and international humanitarian law. In addition to peace operations mandates that support transitional justice, it has turned to fact-finding mechanisms, sanctions, and international legal prosecution/hybrid mechanisms.

A credible account of “what happened” is traditionally central to transitional justice, whether this comes about via a court, a truth-telling exercise, or independent scrutiny.

The Security Council may, under Article 34 of the Charter, “investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security”.

As the case studies illustrate, the Council has often established international commissions of inquiry (COIs). It did so for Burundi in August 1995, on the recommendation of the Secretary-General, into the assassination of Melchior Ndadaye and the massacres and “other related serious acts of violence” committed after 21 October 1993; the COI was also “to propose measures to bring those responsible to justice”, to end impunity, and to promote national reconciliation.¹¹⁹

It also did so for the CAR in December 2013, with the aim of investigating reports of violations of international humanitarian law, international human rights law and abuses of human rights in CAR by all parties since 1 January 2013. The COI was to “compile information, to help identify the perpetrators of such violations and abuses, point to their possible criminal responsibility and to help ensure that those responsible are held accountable”.

The Council can actively use sanctions listings to support accountability measures, discourage impunity, and encourage key political actors to engage in peace processes. While the Council has been inconsistent in (on the one hand) seeking to sanction individuals suspected of international crimes but not opposing national reconciliation processes that offer immunity or amnesty, such as in Burundi, it has made use of sanctions measures (or the threat of such measures) to exert pressure. For the CAR, resolution 2127 on 5 December 2013 established a sanctions regime, imposing an arms embargo on the CAR. The resolution warned that targeted measures, including travel bans and assets freezes, may be considered in the future against those obstructing the transitional political process and committing violations of human rights and international humanitarian law. The Council subsequently adopted resolution 2134 of 28 January 2014, which exempted persons who promote the objectives of peace and national reconciliation—perhaps demonstrating the Council’s view that the threat of sanctions and their removal can serve as a tool to promote transitional justice.

With respect to South Sudan, the Council, in the lead-up to its visit to South Sudan in 2014, consistently used the threat of sanctions to press the parties to negotiate in good faith, as in its presidential statement adopted on 8 August 2014. Council resolution 2206, adopted

on 3 March 2015, established a targeted sanctions regime, with a travel ban and assets freeze; while not explicitly referring to “transitional justice”, the resolution contains relevant language, including stressing “the importance of accountability, reconciliation, and healing as prominent elements of a transitional agenda while taking note of the important role international investigations and where appropriate, prosecutions can play with respect to holding those responsible for war crimes and crimes against humanity”. It also welcomes “further engagement of the African Union to ensure justice and accountability, as well as healing and reconciliation for South Sudan”.

With a view to strengthening the linkage between sanctions and accountability measures, it may also be useful for sanctions committee chairs to use the experience and knowledge they have gained to act as co-penholders on the relevant file.¹²⁰

The Council has supported formal criminal accountability mechanisms in country-specific situations. In addition to the international criminal tribunals for the Former Yugoslavia and for Rwanda, it has endorsed criminal accountability mechanisms in the country situations considered in this report: Burundi, CAR, Sierra Leone and South Sudan, as it has in respect of Colombia. The Arusha Agreement, which the Security Council supported, called for the government of Burundi to request the Security Council to establish an international criminal tribunal, as well as an international judicial commission of inquiry on genocide, war crimes and crimes against humanity. With regard to the CAR, the Council authorised MINUSCA to assist the transitional authorities in establishing the Special Criminal Court, a hybrid transitional justice mechanism established with UN assistance. The Council also expressed support for the establishment of CAR’s Truth, Justice, Reparation and Reconciliation Commission by resolution 2217 adopted on 28 April 2015 (It was established in July 2021.)

In response to the 12 June 2000 request from Ahmad Tejan Kabbah, the then-President of Sierra Leone, the Security Council adopted resolution 1315 on 14 August 2000, requesting the Secretary-General to “negotiate an agreement with the government of Sierra Leone to create an independent special court consistent with this resolution”. Following the adoption of resolution 1315, the Security Council continued to play a vital and active role in the process.

While the Council endorsed South Sudan’s 2015 Peace Agreement, Security Council negotiations on resolution 2241 in October 2015 showed disagreements over the language related to the Hybrid Court for South Sudan, with some members arguing that under the Peace Agreement, issues pertaining to the Hybrid Court were the sole responsibility of the AU. Ultimately, the paragraph on the Hybrid Court was slightly modified to include language inviting the AU to share information with the Secretary-General on issues related to Chapter V of the 2015 Peace Agreement.

The Council has expressed strong support for the Special Jurisdiction for Peace (SJP) in Colombia, a unique model which combines judicial criminal proceedings with truth-telling and reparations

¹¹⁹ Speaking before the vote on resolution 1012 of 28 August 1995, which established the COI, the representative of Botswana, while supporting the establishment of an independent international commission of inquiry, also warned that “the matter must be dealt with carefully. The work of an international, independent and impartial Commission should at the end of the day help foster national reconciliation and political stability in Burundi”. S/PV.3571, p. 6-7.

¹²⁰ As noted in Security Council Report’s 29 January 2021 brief on Penholders and Chairs, while subsidiary body chair positions are traditionally filled by elected members, the position of penholder on most country files is largely in the hands of France, the UK and the US. Co-penholderships between permanent and elected members became a reality for the first time when Germany joined the UK as co-penholder on Libya sanctions and Sudan in 2019. As at mid-2022, elected members have shared the pen with permanent members on some files—for example, Albania and the US on resolution 2623 (27 February 2022) referring the situation in Ukraine to the General Assembly, and Mexico and the US on Haiti; however, no sanctions committee chairs hold the pen on the country that is the focus of the committee’s work.

The Security Council and Transitional Justice: Concluding Recommendations

for victims. Those who appear before this special court first must acknowledge responsibility and provide an account of their crimes. The process includes public hearings in which survivors are able to share their testimonies, after which the accused can request forgiveness. In this way, the proceedings of the court contribute to reconciliation. Finally, the sentences that the SJP hands down have a dual purpose—holding those responsible to account, while providing reparations to victims by sentencing perpetrators to carry out projects that will benefit conflict-affected communities.

The Council has mandated documentation (that is, a precursor to fact-finding) by peace operations (MINUSCA, for example), as well as fact-finding, even while violence and instability persist. Unlike some in-country transitional justice activities, a political settlement and an end to fighting are not prerequisites for fact-finding. Moreover, peace operations can undertake significant information-gathering and compilation of dossiers (as was done in BNUB), in support of broader justice and human rights goals.

Where the Council does not seek fact-finding, or blocks such initiatives, member states can press for alternative fact-finding mechanisms. Other actors, not mandated by the Council, can undertake fact-finding on situations on the Council's agenda.

Numerous fact-finding initiatives have been pursued in recent years. The HRC established the Independent International Commission of Inquiry on Syria in 2011 and the Commission on Human Rights in South Sudan in 2016, with an explicit role in relation to transitional justice, including in respect to evidence preservation and clarification of responsibility for past gross violations. In 2016, the General Assembly set up the International, Impartial and Independent Mechanism to Assist in the Investigation of Persons Responsible for the Most Serious Crimes Under International Law Committed in the Syrian Arab Republic since March 2011 (IIIM), to gather evidence of serious crimes in Syria since 2011, for eventual future prosecution. After Russia blocked renewal of the Organisation for the Prohibition of Chemical Weapons (OPCW)-UN Joint Investigative Mechanism on Chemical Weapons Use in Syria in October 2017, the OPCW established its own Fact-Finding Mission and Investigation and Identification Team. (In many countries on the agenda of the Security Council, OHCHR has undertaken mapping reports documenting serious human rights violations, with the potential for use in support of future prosecutions.)

The HRC established the Independent International COI on Ukraine in March 2022, with responsibilities that include investigating “all alleged violations and abuses of human rights and violations of international humanitarian law, and related crimes in the context of aggression against Ukraine by the Russian Federation”, as well as preserving information, documentation and evidence of such violations and abuses in view of any future legal proceedings.

Engaging with Civil Society and Local Populations

- Recognising the critical role of civil society in promoting and implementing transitional justice initiatives, the Council should itself engage with civil society actors.
- The Council should encourage the UN and national authorities to engage with local populations and communicate transitional justice goals.
- Hearing directly from victims of human rights violations and violations of international humanitarian law is important to Council members' understanding. Mitigating the risk of reprisals against such individuals is essential.

The Council often seeks the expertise of the UN Secretariat and addresses explicit requests for support from national governments. The Council can benefit from listening to a broader range of actors, notably conflict survivors, while taking care that these briefers not be exposed to further risk. It can show support for civil society actors, including victims' organisations.¹²¹ (In the case of Colombia, Council experts have interacted directly with representatives of the Truth Commission in informal virtual meetings.)

Hearing survivor testimony constituted an essential element of accomplishing restorative justice in the context of seminal truth (and reconciliation) commissions, including those in Argentina, Chile, Colombia, and South Africa. Hearing from, and protecting, survivors is inherent to fundamental norms of both international criminal law and transitional justice. Instruments such as the Rome Statute of the ICC and the statutes of the international criminal tribunals for the former Yugoslavia and Rwanda contain provisions governing the testimony and protection of survivors. Article 68(3) of the Rome Statute states that during judicial proceedings, survivors have the right to present their views and concerns to ICC Judges. Survivors may exercise their participatory rights throughout judicial proceedings, including appeals. Survivors may also claim reparations where an accused is convicted.

Council practice has strengthened significantly since the early 1990s in respect of providing a platform for victims as well as hearing from civil society actors. This has not been without controversy; nor has the practice been risk-free for victims who bear witness in public before the Security Council. Women civil society Council briefers have increased steadily since the adoption of resolution 2242 on women, peace and security on 13 October 2015. Recognising that civil society briefers may face added risks after such exposure, Council members have increasingly protected the names of some briefers ahead of their expected briefings. Less public meeting formats have also been used to hear such briefings, including closed Arria-formula meetings or private meetings.¹²²

The Council has heard from victims of international crime in conflict contexts. Nobel Laureate, Yazidi human rights advocate and survivor of crimes committed by the Islamic State in Iraq and the Levant (ISIL\Da'esh) Nadia Murad has briefed the Council several times. Nobel laureate Malala Yousafzai addressed the Council during a meeting on Afghanistan in 2021, sharing her account of violence she had experienced in Pakistan.

¹²¹ At the 14 July 2022 Arria-formula meeting on transitional justice in Colombia, Yanet Mosquera, a social leader who is a survivor of the conflict, shared lessons learned from the experience of transitional justice in Colombia and provided recommendations on how the international community can support the process. Among other things, she suggested that the international community support the active participation of civil society and the social leaders in the process, including by providing them with international platforms where they can share information on challenges they are facing.

¹²² Arria-formula meetings were initially conceived for Council members to hear about war crimes in the former Yugoslavia.

The Security Council and Transitional Justice: Concluding Recommendations

Council members can also use their visiting missions to the country concerned to meet with members of civil society.

Recommendations to engage with civil society, and to hear from victims, also apply to national authorities—in the case of Burundi, for example, the UN pressed for national consultations on transitional justice—and to UN personnel and partners involved in transitional justice. The Secretary-General’s 2010 Guidance Note recommends ensuring “the centrality of victims in the design and implementation of transitional justice processes and mechanisms”, and, in particular, that national consultations have the “explicit inclusion of victims and other traditionally excluded groups”. It also emphasises the centrality of women’s rights and a child-sensitive approach.

The Council listening to and showing support for civil society can be especially important given that post-conflict settings are often volatile, with an atmosphere of fear and with fragile judicial institutions. It is difficult to achieve even-handed national accountability processes, whether trials or truth-telling, in a fraught, unstable climate. Post-conflict revenge and retaliatory killings are a reality, and (the Secretary-General’s guidance notwithstanding), it is impossible to guarantee the safety of individuals from retribution. In Burundi and elsewhere, the Council has questioned whether the government is able or willing to pursue accountability measures, and whether such measures will be balanced. Moreover, the Council should not be blind to governments’ appropriation of justice processes to pursue political ends and to continue to protect themselves: in the CAR, an International COI determined in 2014 that political elites had used early national reconciliation initiatives as a fig leaf and a cover for adopting amnesty laws, which in turn bolstered impunity.

The balance between national and international engagement in transitional justice processes is one of the themes addressed in this report. Goals such as non-recurrence, reconciliation and creating stronger institutions will only be met with the engagement of both the state and the population.

In this regard, a participant in the virtual consultations convened by Security Council Report on 30 June 2022 noted that while it is important to keep the processes victim-centred, there could be more

buy-in if the general population is aware of the potential benefits of transitional justice to the entire society. The Council and the UN field presence should support the national authorities and civil society in developing and communicating an integrated, holistic perspective that can ideally be embraced by local populations.

Security Council Expectations of an Effective UN

- The Security Council should expect to be given quality information, analysis and recommendations from the UN Secretariat (and agencies, funds and programmes) on transitional justice, as well as strong interagency coordination and cooperation at both field and headquarters levels.

The Council requires clear, contextual information and recommendations on transitional justice measures. While some Council members have good sources on the ground, often members’ knowledge depends heavily on the UN Secretariat’s reports and recommendations.¹²³

The Secretary-General’s 2010 Guidance Note emphasises careful consideration of local needs and politics in developing transitional justice approaches. Member states can encourage this by prompting dedicated informal meetings with visiting Special Representatives of the Secretary-General, for example, to deepen the discussion of transitional justice initiatives and reinforce the importance of accountability. Interested Council members have established groups of friends and have set up informal expert groups on thematic issues—including protection of civilians; women, peace and security; and climate and security—to coordinate more closely and seek more specific information from the UN Secretariat.

Given the role that reports and recommendations from the UN Secretariat play in informing the Security Council, it is valuable for the UN Secretariat and agencies to consult closely with each other and with relevant external actors in order to arrive at a clear strategic vision for transitional justice in affected countries. This is useful given the breadth of transitional justice initiatives, approaches, and desired outcomes (as articulated by the Security Council), and the fact that many different parts of the UN system, both at headquarters and in the field, deal with aspects of transitional justice.

Conclusion

The Security Council has over 30 years of engagement in transitional justice, at times taking far-reaching support measures and reflecting the strong links it perceives between transitional justice and the attainment of peace and stability. Political factors, including the involvement of Council members or their allies in the country situations on the Council’s agenda, and the national authorities’ reluctance to pursue some transitional measures, have reduced its engagement. It is possible that time passing—and the Council’s attention shifting to newer crises—can have this effect as well.

The Council’s understanding that transitional justice is essential for national stability, and its political support for such processes, are important. Its members have advocated transitional justice processes

that are comprehensive, inclusive and gender-sensitive. The very breadth of transitional justice approaches and concepts may mean that the Security Council’s own broad conceptualisation has been beneficial. Optimally, the Council will provide sufficient political support in its mandating (and in other calls, and mechanisms, for transitional justice) and space for the actors on the ground (including UN peace missions), to undertake the necessary work.

Given the importance of support from national authorities, there are vital roles for Council members, regional organisations, civil society, and other advocates to work towards an environment in which the government itself takes and supports transitional justice initiatives.

¹²³ In relation to the case studies in this report, for example, Council members conducted visiting missions to Sierra Leone in 2000, 2003 and 2004 and 2012; South Sudan in 2014, 2016 and 2019; Burundi in 1994, 1995, 2001, 2002, 2003, 2004, 2005, 2015 and 2016; the CAR in 2015; and Colombia in 2017 and 2019.

Conclusion

The UN Secretariat should be ready to deliver clear and coordinated messages, and strong and coordinated support at country level. Unified approaches by the Secretariat and other UN entities are all the more important in light of the pushback in the Council, in recent years, against draft resolution language on human rights, accountability, and the work of OHCHR.

The changing nature of conflict can also be expected to bring changes in the realm of transitional justice. The roles played by foreign armies, foreign terrorist fighters, and mercenaries may complicate the search for justice, as may the use of cyber-attacks, hybrid warfare and advanced technologies. The UN Secretariat and other experts should examine this avidly.

Among some Council members, politically-driven arguments are sometimes made about it being “too soon” for justice. On the other hand, the case of Burundi illustrates the consequences of delay: the government has delivered little on its limited transitional justice commitments, and the Council’s appetite for transitional justice in the country has faded.

International actors should listen actively before making assumptions about, or judging, the actions that citizens at different levels

regard as appropriate in the national context. Many non-judicial actions play an important part in transitional justice. There is a fine line to be walked between context-appropriate justice and reduced standards of justice. Ultimately, there is no substitute for the restoration, or the establishment, of the rule of law.

Speaking at the Security Council’s February 2020 open debate, Yasmin Sooka of the Foundation for Human Rights in South Africa and Chair of the Commission on Human Rights in South Sudan recalled that during the apartheid years in South Africa, detainees reportedly jumped from police headquarters windows, hanged themselves in cells and died hitting their heads against police filing cabinets. While inquests held under the apartheid system “found nobody responsible for their deaths,” she said, two decades after South Africa’s transitional justice process, these inquests are being reopened.

There is a timelessness and universality to societies recognising and coming to terms with their own history, and how this relates to restoring trust among members of a divided society. The world over, transitional justice has no expiry date.

ANNEX I: Case Studies

Burundi

Introduction

Burundi is a useful case study, as calls for justice and accountability run like a red thread through Security Council resolutions from 1995 to 2014. However, the case of Burundi also suggests that even when the Security Council sets the bar high, in terms of the justice it wishes to see done, and pledges the support of the international community, the Council will not persist if the country concerned drags its feet. As described in this brief case study, every transitional justice goal pursued by the Council in Burundi either took years or was never attained.

In addition to the international judicial commission of inquiry, Burundian truth/transitional justice process, and hybrid court provided for by the 2000 Arusha Agreement, the Security Council and the UN Secretariat initiated a number of assessments and fact-finding missions in this connection.

Calls for accountability were not limited to the Security Council, but also appeared in reports of the Burundi-specific Peacebuilding Commission configuration, Burundi having been, with Sierra Leone, one of the two first countries on the PBC agenda (see PBC/2/BUR/SR.1); and in indicators developed by BNUB, the UN mission in Burundi. UN Special Rapporteurs on Burundi, on transitional justice, on human rights defenders, and on extrajudicial, summary or arbitrary executions have also weighed in on impunity in the country. Nonetheless, while Burundi advanced slowly, post-Arusha, towards national consultations on justice and reconciliation, and in drafting TRC legislation, its leadership consistently pushed decisive action towards transitional justice and accountability into the future. Writing in 2009, an expert on constitutional issues in Burundi said, “The truth about the past has not been told, hardly anyone had been held accountable for the crimes that were committed and victims are left without any reparation for the injury suffered”.¹

1965-1992: Cycles of Violence in Burundi

Despite outbreaks of violence in Burundi in 1965, 1972, 1988, and 1991, one of which killed between 100,000 and 200,000 people, the Council appears not to have referred to the situation in Burundi prior to 1993, according to the UN repertoire for the Security Council. The Cold War was accompanied by a low level of Council initiative, in any case.

The Years 1993 to 2000

The Council took up the situation in Burundi a few days after the 21 October 1993 assassination of President Melchior Ndadaye, Burundi’s first democratically elected Hutu President, and members of his cabinet. On 25 October 1993, the Security Council called for those responsible to be brought to justice. In a subsequent statement, after the Secretary-General had appointed a Special Envoy, the Council refers to a “spirit of reconciliation”, which however suggests political reconciliation more than developments at country and community

level (S/26757 of 16 November 1993). In the same vein, for some years the Council’s calls for justice in Burundi remained focused principally on the high-profile killings. While Burundi was discussed regularly in the Council in the years 1994-1996, almost all the discussions took place in closed consultations, with the documented Council reactions being the (consensually-agreed) Presidential Statements (PRSTs). Only at rare briefings and debates were the positions of individual Council members recorded. France was the penholder, and all resolutions on Burundi were adopted unanimously.

From 1994, with “the situation in Burundi” now an item on its agenda, the Council started to “consider(s) that impunity from justice is one of the most serious problems which contributes to the deterioration of the security situation in Burundi” (S/PRST/1994/47). Many Council references to UN support in this regard, in 1994 and 1995, focus on strengthening Burundi’s judicial system as the appropriate response to impunity. The Council speaks of reconciliation without explaining what this might mean—at one point referring to “the important role human rights monitors” might play in this context. (It is fair to say that practitioners’ discourse of the time rarely examined the concept of reconciliation deeply, including in refugee repatriation contexts.) In 1994, the Council met four times in consultations, and issued four PRSTs. Their focus, however, is on political dialogue, presidential succession and containing outbreaks of violence. In December, the Council endorsed efforts by the Burundi authorities in seeking to ensure that those who commit or invite acts of violence be held accountable for their actions. The term accountability recurs.

In a presidential statement of 29 March 1995 (S/PRST/1995/13), the Council introduced new language on individual accountability, “warn[ing] that those who commit crimes against humanity are individually responsible for their crimes and will be brought to justice. The Council specifically warns that, if acts of genocide are committed in Burundi, it will consider taking appropriate measures to bring to justice under international law any who may have committed such acts.” This PRST has more of a balance between calling for the national judicial system to be strengthened, and for international mechanisms to be set up. However, the Council was also preoccupied by the deteriorating security situation and escalating violence on the ground.

Earlier that year, the Security Council delegation that visited Burundi on 10-11 February 1995 (S/1995/163) reported that:

The persistence of a culture of impunity constitutes a fundamental problem in Burundi. In particular, there has been no accountability, political or judicial, on the part of those directly involved in the October 1993 coup attempt and the massacre that ensued. In addition, the judicial system has largely collapsed and is often perceived as being partial. These factors jeopardize the survival of the coalition Government, the Convention and even peace and security in Burundi and in the region as a whole.

¹ Vandeginste, Stef in *Transitional Justice for Burundi: A Long and Winding Road*, in K. Ambos et al. (eds.), *Building a Future on Peace and Justice: Studies on Transitional 393 Justice, Peace and Development*. c Springer-Verlag Berlin Heidelberg 2009. p. 394

ANNEX I: Case Studies (Burundi)

Security Council Resolution 1012 of 28 August 1995 established an international commission of inquiry, as recommended by the Secretary-General, into the assassination of Melchior Ndadaye and the massacres and “other related serious acts of violence” committed after 21 October 1993.² It was also “to propose measures to bring those responsible to justice”, to end impunity, and to promote national reconciliation.³ The Council describes itself as “deeply concerned that impunity creates contempt for law and leads to violations of international humanitarian law”.

In connection with the adoption of resolution 1012 on 28 August 1995, the Council held its first public briefing on Burundi, allowing members’ positions greater visibility. The statement by the Czech Republic corroborates that while the Council was thinking about the price of impunity, they believed that it would be addressed primarily via national mechanisms. China explicitly endorsed the international commission of enquiry the Secretary-General proposed to establish to look into the Ndadaye assassination in October 1993 and the massacres that followed, and to make recommendations on the punishment of those who committed the crimes, saying that they “hope this move by the Council will contribute to national reconciliation in Burundi”. (This mechanism would therefore incorporate elements of both truth and justice.) Germany called justice “a prerequisite for national reconciliation”. Italy said that “the commission of inquiry can also make specific proposals aimed at fostering better coexistence of the various ethnic groups”.

Council member Botswana, also speaking at the August 1995 briefing, noted—while bemoaning the lack of concerted efforts to deliver justice more swiftly in Burundi—that, “At the same time, we must be careful in dealing with this matter lest we open old wounds in our zeal to bring the perpetrators to book and find ourselves in a much worse situation when the commission leaves Burundi than when it came”. Botswana offered a rare warning against opening “old wounds”; arguments which, fifteen years later, would be used by the government to push back against advancing transitional justice.⁴

Botswana’s remarks underlined that the work of the commission should help foster national reconciliation, while the UK warned that it should not undermine the process of national reconciliation – a cleavage of Council members’ opinions that appeared to remain unexplored. At the same debate, the representative of Honduras heralded national reconciliation through “programmes for confidence-building”, adding to the list of activities Council members believe will foster reconciliation, which also included the presence of human rights monitors, the work of the commission of inquiry, observance of the rule of law, and national dialogue. There was little recorded Council attention to how and why reconciliation would occur in connection with these activities, or indeed what exactly it meant. While the Council called on opposition elements not to undermine

“the national reconciliation process”, which may refer to a Convention on Governance that Burundi adopted in September 1994, it was not clear that much of a national reconciliation process existed at this point. It is fair to say that Council members’ concept of the path towards “reconciliation” remains loose for the duration of its debates, but not all debates link reconciliation to transitional justice.

In a letter to the Council president of 29 December 1995—S/1995/1068—the Secretary-General described Burundi as the scene of a smouldering civil war, and as a situation that has continued to deteriorate and was characterised by daily killings, massacres, torture, and arbitrary detention. The Council, watching a situation of escalating violence, had as its top priorities political settlement and humanitarian relief. Here again, and through to 2014, the Council linked a lack of accountability with poorer prospects for a peaceful and secure Burundi.

In 1996, the Council met often to discuss the worsening situation in Burundi. In S/RES/1040 (1996) of 29 January 1996, the Council again called on the authorities in Burundi to pursue national reconciliation through political dialogue and observation of the rule of law. That same year, some pushback was also evident by the Burundian authorities on the UN (and Council)’s view of the situation in the country; the Burundian representative refers to his country’s “super-human efforts to restore peace and security”.⁵ Some analysts think that the process leading to the 2000 Arusha Peace and Reconciliation Agreement for Burundi—launched by Tanzanian President Julius Nyerere, who had facilitated talks as early as 1996—may have deflected the Council’s attention from justice initiatives for several years, as such initiatives formed part of the Arusha negotiations. The Arusha talks may mark the moment when the Council began to pay less attention to transitional justice in Burundi for the better part of a decade.

The national situation had grown extremely volatile, meanwhile, and in 1996, countries of the region imposed general economic sanctions on Burundi. The Secretary-General urged the Council to consider the possible establishment of a stand-by multinational intervention force to be sent to Burundi should large-scale ethnic violence erupt there.

In addition to the nascent talks led by former Tanzanian president Nyerere, a further pivotal event was the 1996 coup in Burundi led by the army and former president Pierre Buyoya (his second coup). Buyoya was a Tutsi, deposing a Hutu president, Sylvestre Ntibantunganya. A few days earlier, hundreds of people had been killed at a refugee camp, and in the coup’s aftermath, an estimated 6000 people were killed. The Council’s focus turned much more to ending the violence and to the restoration of constitutional order in the country.

Between August 1996, when it adopted resolution 1072, and May 1997, the Council made no public statements. In May 1997, the Council strongly approved the region taking the lead on the

2 By a letter dated 28 July 1995 addressed to the President of the Security Council (S/1995/631), “the Secretary General transmitted to the Council the report of the Special Envoy appointed to examine the feasibility of establishing either a commission on the truth or a judicial fact-finding commission in Burundi. The report concluded that neither a commission on the truth on the Salvadorian model nor an international judicial commission of inquiry, with a mandate limited to purely judicial matters, would be an adequate response to put an end to impunity in Burundi. However, an international judicial commission of inquiry could be viable and useful if its mandate guaranteed that its conclusions and recommendations would be implemented. The commission would be empowered not only to undertake a judicial inquiry but also to make recommendations of an institutional nature in the legal, political, and/or administrative fields. The cooperation of the Burundian authorities, including their explicit commitment to implement the commission’s recommendations would be required. Finally, the commission should be established by a resolution of the Security Council and the United Nations should verify that its recommendations were implemented.”

3 United Nations. Security Council Meeting Record. S/PV.3571. 28 August 1995. p. 6-7. <https://documents-dds-ny.un.org/doc/UNDOC/PRO/N95/858/74/PDF/N9585874.pdf?OpenElement>. Speaking before the vote, the representative of Botswana, supporting the establishment of an independent international commission of inquiry, also “warned that the matter must be dealt with carefully. The work of an international, independent and impartial Commission should at the end of the day help foster national reconciliation and political stability in Burundi”.

4 In a similar vein, with the requirements established by an unsuccessful transitional justice process in Liberia rapidly fading from around 2010, the authorities’ view was, broadly, “let bygones be bygones”.

5 United Nations. Security Council Meeting Record. S/PV.3623. 29 January 1996. p. 8. <https://documents-dds-ny.un.org/doc/UNDOC/PRO/N96/851/01/PDF/N9685101.pdf?OpenElement>

ANNEX I: Case Studies (Burundi)

Burundian negotiations. The next Council statement on Burundi was in November 1999. UN staff had been killed the previous month in Rutana, and the Council called for the perpetrators to be brought to justice; however, the Council's focus is on what one member calls "the African lead". In January 2000, the US presidency convened a briefing on Burundi. Former South African president Nelson Mandela had replaced Nyerere after the latter passed away. Then Secretary-General Kofi Annan noted in passing that "the question of reconciliation versus impunity" had yet to be seriously addressed, and Mandela mentioned as an outstanding issue for Arusha "the appropriate mechanism for dealing with the past", but these appear far from central preoccupations. By resolution 1286 of 19 January 2000, the Security Council expressed strong support for the peace efforts in Burundi, and condemned the violence, but did not echo its earlier calls pertaining to impunity, justice and related mechanisms.

The Arusha Agreement for Peace and Reconciliation, 2000

Mandela briefed the Council again, behind closed doors, at the end of September 2000, in all likelihood on the Arusha Agreement that had been signed on August 28 by 13 of the 19 parties involved in the talks. The Arusha Agreement provided for a National Truth and Reconciliation Commission (TRC), as well as:

stipulat[ing] that the transitional government request the establishment by the UN Security Council of an international judicial commission of inquiry on genocide, war crimes and crimes against humanity. This commission would be responsible for (a) investigating and establishing the facts relating to the period from independence to the date of signature of the Agreement; (b) classifying them; (c) determining those responsible. Furthermore, the Arusha Agreement stipulated that the government would request the establishment of an international criminal tribunal by the UN Security Council to try and punish those responsible "should the findings of the report point to the existence of acts of genocide, war crimes and other crimes against humanity".⁶

The TRC, for its part, was to establish the truth regarding the serious acts of violence committed during the conflicts between 1 July 1962 and 28 August 2000. It was also charged with arbitration and reconciliation and was to be set up during the national transitional period between 2001 and 2005. It is not clear that this emphasis on justice emanated from grassroots demand. However, the Arusha Agreement also provided that national consultations should be held before decisions were taken on appropriate national justice systems.

Post-Arusha: the Years 2000-2005

A major concern for the Council was the persistent failure of some armed groups to join the Agreement. The FNL and the CNDD-FDD, in particular, continued to engage in hostilities. Presidential Statements adopted in March, June and September 2001 focus on the Council's profound concern at the continuation of the conflict in Burundi and the deteriorating humanitarian situation. While the Council expressed concern at violations of humanitarian law and emphasised the importance of the protection of civilians, it did not refer to elements of transitional justice.

By October 2001, South Africa had taken the initiative to establish

a "regional protection force" with its own troops and others from Ghana, Nigeria and Senegal (later, as the African Mission in Burundi, with Ethiopia and Mozambique) to protect returning politicians and provide training to Burundian counterparts. At the adoption of resolution 1375, only the UK made a statement (making clear that the Council is not endorsing the protection force nor giving it a mandate)—continuing the opaque nature of Council debates at the time, with very limited opportunities of establishing what different Council members may have been thinking.

In February 2002, the Council did not mention transitional justice among Burundi's pending challenges, although it did enumerate national reconstruction and economic recovery. The final report of the commission of inquiry established in 1995, submitted to the Secretary-General on 7 June 2002, concluded, among other things, that acts of genocide had taken place, and that international jurisdiction applied to this and other international crimes in Burundi. By the end of the year, the FNL and the CNDD-FDD signed ceasefire agreements: the Council's focus then was on bringing them fully into the process, and on replacing the African mission (AMIB) with a UN peacekeeping mission. By the end of 2003, the calls for the UN to take over AMIB have become urgent.

A PRST of 2 May 2003 contained the Council's first reference to accountability in some time. In S/PRST/2003/4, the Council welcomed the Burundian Senate's approval in April "of legislation on genocide, war crimes, and crimes against humanity, and legislation establishing a truth and reconciliation commission", and "looks forward to their effective implementation", while also, in a note that will grow familiar, emphasising "the vital importance of the Burundian parties themselves taking ownership of the process to address the devastating impact of impunity, as detailed in the Arusha Accords".

It is clear that impunity and transitional justice fell away from the Council's attention in the lead-up to, and for some years after, the Arusha Agreement. By Security Council Resolution 1545 of 21 May 2004, the Council transformed AMIB into the United Nations Operation in Burundi (ONUB), for six months with an intention to renew with up to 5,650 military personnel. Its principal functions are security-related, including ceasefire monitoring, disarmament and demobilization, to contribute to halting the flow of illegal arms, protecting civilians, and securing an environment for free and peaceful elections.

In a preambular paragraph, the Council "reaffirms its determination to support the efforts of Burundians to bring the perpetrators of such acts and violations [of human rights and IHL] to justice on the basis of the rule of law, in order to put an end to situations of impunity, and call[ed] upon the parties and transitional authorities to take without delay all necessary measures to that end". OP 6 calls for ONUB, with OHCHR, to assist in investigating human rights violations to put an end to impunity. In OP 17, the Council reaffirms:

the continued need to promote peace and national reconciliation and to foster accountability and respect for human rights in Burundi, and urges the Government of Burundi, specialized agencies, other multilateral organizations, civil society and Member States to accelerate their efforts to establish the Truth and Reconciliation Commission, as provided for in the Arusha Agreement.

ONUB's direct responsibility for transitional justice-related

⁶ Vandeginste, op. cit. p 404.

ANNEX I: Case Studies (Burundi)

matters is, therefore, slight. However, in August 2004 over 150 refugees from the DRC were massacred in Burundi at Gatumba, near Bujumbura. This revived the Council's interest in impunity, and many members referred to it in December, when the Council voted to extend ONUB for six months. The US expressed concern that the resolution "lacks language concerning the precise forum in which the perpetrators of violence in Burundi may be brought to justice".⁷ Burundi had meanwhile announced that it would refer the Gatumba incident to the ICC, but never did so. A warrant was issued for the arrest of Agathon Rwasa of the FNL–Palipehutu, the group behind the massacre, but a criminal case, opened in 2013, stalled in 2014. (In 2015, Rwasa was elected deputy speaker of the Burundian parliament.)

The Council met often on Burundi in 2005. Security Council resolution 1602 of 31 May 2005 referred to ending the climate of impunity in the region and the importance of national reconciliation.

The Repertoire notes that at its 5203rd meeting, on 15 June 2005, the Council included in its agenda a letter dated 11 March 2005 (S/2005/158) from the Secretary-General addressed to the President of the Security Council, transmitting the report of the assessment mission on the establishment of an international judicial commission of inquiry for Burundi ("the Kalomoh report"). The assessment mission recommended a shift from what had been agreed at Arusha. From the Repertoire, the UN recommended:

...a twin mechanism: a non-judicial accountability mechanism in the form of a truth commission, and a judicial accountability mechanism in the form of a special chamber within the court system of Burundi. It also pointed out that the United Nations could no longer engage in establishing commissions of inquiry [four were established between 1993 and 1995, all recommending action against impunity but without any action by any UN organ] and then disregard their recommendations without seriously undermining the credibility of the Organization in promoting justice and the rule of law. It proposed, inter alia, a comprehensive approach to the pursuit of truth and justice by the United Nations; the engagement of the Secretary-General in negotiations with the Government of Burundi on the practical implementation of the proposals; and a broad-based, genuine and transparent process of consultation with a range of national actors and civil society to incorporate the views of the people of Burundi.

The UN Assistant Secretary-General for Legal Affairs, Ralph Zacklin, told the Council that the Kalomoh mission had recognised "that the proposal is a departure from the letter—although not the spirit—of the Arusha Agreement".⁸ The proposed mechanisms were envisaged as recounting a historical truth and placing the 1993 massacres in a broad historical perspective. Zacklin notes the mission's conclusion that the likelihood of a local trial process meeting international standards of justice was questionable. The proposed special chamber would be of mixed composition, with a majority of international judges and an international prosecutor and registrar.

The Council then adopted S/RES/1606 of 20 June, a brief resolution asking the Secretary-General "to initiate negotiations with the Government and consultations with all Burundian parties concerned

on how to implement his recommendations [aimed at the creation of a mixed Truth Commission and a Special Chamber within the court system of Burundi], and to report to the Council by 30 September 2005 on details of implementation, including costs, structures and time frame." The resolution reiterated the crucial importance of reconciliation for peace and national unity in Burundi, and the Council described itself as:

Convinced of the need, for the consolidation of peace and reconciliation in Burundi, to establish the truth, investigate the crimes, and identify and bring to justice those bearing the greatest responsibility for crimes of genocide, crimes against humanity and war crimes committed in Burundi since independence, to deter future crimes of this nature, and to bring an end to the climate of impunity, in Burundi and in the region of the Great Lakes of Africa as a whole, [and]

Emphasizing that appropriate international assistance to Burundi is needed to help the Burundian people end impunity, promote reconciliation, and establish a society and government under the rule of law,

Burundi, giving the Arusha Agreement the force of domestic law in late 2005, granted undefined "provisional immunities" from prosecution to many belligerents. By 2005, it was also evident that Burundian representatives wished to see greater emphasis on reconciliation initiatives than on justice and impunity. In late December 2005, the Council, in the preambular paragraphs of S/RES/1650, encouraged "the Burundian authorities to continue to work with the Special Representative of the Secretary-General, including on the establishment of the mixed Truth Commission and the Special Chamber within the court system of Burundi referred to in resolution 1606 of 20 June 2005". A concept that Zacklin referred to in his June 2005 briefing, and which came to be reiterated subsequently, is the importance of national ownership ("deep and genuine", and relying on a "broad-based, genuine and transparent consultation with a range of national actors") of the truth commission and the special chamber. The Burundian Minister of Justice, addressing the Council, said that there would be a [national] awareness-raising campaign. A number of Council members, in their remarks, linked transitional justice to reconciliation, although Denmark said that the recommendations "strike a good balance between justice and reconciliation". The US, however, hoped that "the commission will not become excessively bogged down in a detailed historical search for root causes in the course of Burundi's history".

Two months later, Pierre Nkurunziza was elected as President of the Republic of Burundi.

The Years 2006-2014

In early 2006, the Security Council was deeply concerned about the resumption of violence in Burundi. In January, the Tanzanian presidency convened a ministerial-level meeting on the Great Lakes Region, although it focused predominantly on the DRC and Rwanda. It acknowledged the establishment of the Peacebuilding Commission (PBC) in December 2005. Other than consensus PRSTs, there are no statements by Council members in the chamber between January 2006 and the end of November 2007, underscoring the challenge of tracking members' views.

⁷ United Nations. Security Council Meeting Record. S/PV.5093. 1 December 2004. <https://documents-dds-ny.un.org/doc/UNDOC/PRO/N04/629/32/PDF/N0462932.pdf?OpenElement>. Only France, the UK, the US, Germany, and Spain made statements at the meeting.

⁸ United Nations. Security Council Meeting Record. S/PV.5203. 15 June 2005. <https://documents-dds-ny.un.org/doc/UNDOC/PRO/N05/385/27/PDF/N0538527.pdf?OpenElement>

ANNEX I: Case Studies (Burundi)

In September, Burundi's last holdout rebel group signed a ceasefire agreement. S/RES/1719 of 25 October 2006 established BINUB, the UN's new Special Political Mission, tasking it with support to the implementation of the ceasefire agreement and including mandate elements directly relevant to transitional justice. These are "the promotion and protection of human rights and measures to end impunity", most particularly through the establishment of transitional justice mechanisms, including a truth and reconciliation commission and a special tribunal.

On 2 November, Burundi signed a "framework agreement" on the establishment of a Tripartite Steering Committee for National Consultations on Transitional Justice Mechanisms, which the Council welcomed in S/RES/1791 of 19 Dec 2007, while also: *stressing the importance of an early start of the Committee's activities, and encouraging the Burundian authorities and the Secretary-General, pursuant to resolution 1606 (2005), to continue to cooperate on this issue.*

These issues do not feature in the resolution's operative paragraphs, although it emphasises dialogue and justice.

With the December 2007 resolution, a pattern is established whereby the Security Council revisits justice-related issues in Burundi once a year upon renewing the UN mission's mandate. These annual briefings are delivered by the Special (or Executive) Representative of the Secretary-General in Burundi and the PBC Chair for Burundi (first Norway, then Sweden, then Switzerland, which continues to hold the position). In S/RES/1858 of 22 December 2008, the Council—again in its preambular paragraphs:

Recogniz[es] the importance of transitional justice in promoting lasting reconciliation among all the people of Burundi and welcome[d] progress in the preparations for national consultations on the establishment of transitional justice mechanisms, including through the establishment of a Technical Follow-up Committee and a forum of civil society representatives.

The Council also welcomed "the Burundian authorities' efforts to fight impunity, in particular the trial and conviction of some of the perpetrators of the Musinga massacre" and, in the operational paragraphs, reiterated its request that the Secretary-General, including through BINUB, play a "robust political role" in support of all facets of the peace process. It again encourages the government:

with the support of BINUB and other partners, to ensure that national consultations on the establishment of transitional justice mechanisms are begun as soon as possible, without further delay. [OP 12]

Similar language is repeated one year later, in S/RES/1902 of 17 Dec 2009, namely on "the importance of transitional justice in promoting lasting reconciliation among all the people of Burundi", and encouraging the Government, "with the support of BINUB and other partners, to continue the national consultations on transitional justice with a view to their timely completion and the publication of the final report, and to ensure that the results of these consultations

form the basis for the establishment of transitional justice mechanisms" [OP 17].⁹ An operative paragraph also calls on "the authorities and all political actors in Burundi to persevere in their dialogue on achieving stability and national reconciliation and to promote social harmony in their country". A pattern is revived in which the Council links transitional justice to reconciliation and future stability. However, as violence in the country has recrudesced, the Council's emphasis on transitional justice has waned somewhat. A PBC briefing to the Council in May 2008 set out nine extended priorities, which did not include transitional justice.¹⁰

After considerable negotiation, the UN and the government of Burundi reached agreement on the mandate for a tripartite steering committee composed of the UN, the government, and civil society to lead national consultations on transitional justice. While these consultations were to have started in late 2007, they ultimately took place between 2009 and 2010, including with the Burundian diaspora in Brussels and in Dar-es-Salaam. On 16 December 2010 in S/RES/1959, the Council:

Recogniz[es] the importance of transitional justice in promoting lasting reconciliation among all the people of Burundi, and noting with appreciation the completion of the national consultations on the establishment of the transitional justice mechanisms, in accordance with its resolution 1606 (2005) as well as the Arusha agreements 2000.

The resolution further encourages the Government of Burundi, with the support of international partners and BNUB as appropriate, to establish the proposed mechanisms [OP 13]. In OP 11, it expresses concern at "continuing human rights violations, in particular extrajudicial killings and torture, and restrictions on civil liberties, including restrictions on the freedom of expression, association and assembly of opposition parties and civil society organizations", and urges the government to investigate reports of human rights violations, prevent further violations, and ensure those responsible are brought to justice.

This resolution established BNUB from 1 January 2011, and included among its mandated tasks support to efforts to fight impunity, "particularly through the establishment of transitional justice mechanisms to strengthen national unity, promote justice and promote reconciliation within Burundi's society, and providing operational support to the functioning of these bodies". In May and again in December 2011, the Special Representative of the Secretary-General reported to the Council at some length on developments in the realm of transitional justice.

Near-identical language linking transitional justice to lasting reconciliation is found in S/RES/2027 of 20 December 2011, in which the Council also appreciates "the completion of the work of the Technical Committee and the commitment of the Government of Burundi to establishing transitional justice mechanisms, consistent with the results of the 2009 national consultations, Security Council resolution 1606 (2005) as well as the Arusha agreements 2000".

At greater length than previously, this resolution notes "with grave concern" (and in some detail) the ongoing human rights

⁹ The resolution also refers to impunity in connection with human rights: the Council "Calls upon the Government of Burundi to pursue its efforts to broaden the respect and protection of human rights, including through the establishment of a credible National Independent Human Rights Commission, in conformity with the Paris Principles outlined in General Assembly resolution 48/134 and further encourages it to end impunity and to take the necessary measures to ensure its citizens fully enjoy their civil, political, social, economic and cultural rights without fear or intimidation, as enshrined in the Constitution of Burundi and provided for by international human rights instruments, including those ratified by Burundi; [OP 18]

¹⁰ United Nations. Security Council Meeting Record. S/PV.5897. 22 May 2008. <https://www.securitycouncilreport.org/un-documents/document/pbc-spv-5897.php>

ANNEX I: Case Studies (Burundi)

violations, including extrajudicial killings. Once again, the Council encourages the government, “with the support of international partners and BNUB as appropriate, to establish transitional justice mechanisms, including the establishment of a Truth and Reconciliation Commission” [OP12].

The next resolution of this kind is S/RES/2090 of 13 February 2013, BNUB having been extended for 13.5 months to decongest the month of December on the Council’s packed calendar. BNUB, at this point, was actively using the prospect of forthcoming Council meetings and other events to encourage markers of progress in transitional justice. The Council, “underscoring the importance of transitional justice mechanisms in promoting lasting reconciliation among all the people of Burundi”, takes due note “of the draft law on the Truth and Reconciliation Commission developed by the Government of Burundi and passed to Parliament on 12 December 2012”, and recalls the government’s commitments to establishing transitional justice mechanisms.

This resolution also recalls:

that Burundi is a State Party to the Rome Statute of the International Criminal Court since 2004, and has undertaken obligations to fight impunity for crimes falling within the jurisdiction of the Court, and emphasizing that the International Criminal Court is complementary to the national criminal jurisdictions.

The resolution again called on the Government of Burundi to work with international partners and BNUB for the establishment of transitional justice mechanisms, including a “credible and consensual” Truth and Reconciliation Commission to help foster an effective reconciliation of all Burundians and durable peace in Burundi. [[OP8]]

In BNUB’s final mandate extension, S/RES/2137 of 13 February 2014, the Council, in a rare flash of irritation, tartly takes note “that no significant progress has been made towards the establishment of a Truth and Reconciliation Commission since the draft law was submitted to Parliament in December 2012”, and reminds the government of its commitments.

In its final word on this subject before BNUB came to an end on 31 December 2014, the Council:

Calls upon the Government of Burundi to work with international partners and BNUB for the establishment of transitional justice mechanisms, including a credible and consensual Truth and Reconciliation Commission to help foster an effective reconciliation of all Burundians and durable peace in Burundi, in accordance with the results of the work of the Technical Committee, the 2009 national consultations, Security Council resolution 1606 (2005) as well as the Arusha agreement of 28 August 2000; [OP15]

After 2014

Burundi adopted the Act for the TRC in April 2014, and the Commission officially began its work in 2016, in the fraught and divisive

political environment following President Nkurunziza’s 2015 election victory, reporting in 2018. Parliament prolonged the TRC for four years in October 2018, however, extending its mandate to cover Burundi’s colonial period from 1885 onwards—a period of 123 years.¹¹ Recalling the US comments to the Council in June 2005 warning about becoming bogged down in history, this expansion may have been intended to dilute the TRC’s focus, as well as to shine a spotlight back on former colonial power Belgium.

The commission has been criticised, with several analysts arguing that it has favoured the interests of the National Council for the Defence of Democracy—Forces for the Defence of Democracy (CNDD-FDD) – Burundi’s ruling party – and focused more closely on crimes committed against Hutus rather than Tutsis.¹²

The Security Council repertoire notes that at the end of 2015, in view of the deteriorating situation in Burundi, the Council asked the Secretary-General to present options for a future UN presence in Burundi. The Secretary-General “suggested a multidimensional integrated peacekeeping operation under Chapter VII of the Charter or a fully-fledged integrated special political mission,”¹³ a recommendation that was not implemented by the Council.

The Burundian government also demonstrated a reluctance to cooperate with the Council during this period, including over the mandated deployment of a UN police force in 2016 to monitor the security situation and support OHCHR’s work monitoring human rights violations and abuses. In December 2020, the Council decided to significantly limit its engagement on Burundi, adopting a presidential statement that called on the Secretary-General to end his periodic reporting on the situation and instead include Burundi in his regular reporting on the Great Lakes region and Central Africa. This decision was made despite the fact that the Council recognised in the statement that there was “important work ahead to advance national reconciliation, promotion of the rule of law and of an independent judiciary”, among other matters.

In November 2017, the International Criminal Court announced that it would open an investigation into crimes against humanity in Burundi, as urged by a UN-mandated commission of inquiry, days after Burundi became the first country to withdraw from the ICC.

As one analyst notes, “Ambitious mechanisms, such as a truth and reconciliation commission, are being implemented with imagined outcomes which they are unlikely to achieve.”¹⁴

Observations

This detailed review of the Council’s language in presidential statements, resolutions, and rare public briefings yields a handful of observations.

The Council’s attention to Burundi, already limited during many of the years under review, readily turned towards security, political and humanitarian realities on the ground. It foregrounded these issues over transitional justice, even though the events which first put “the situation in Burundi” on its agenda were the assassination of

11 Ephrem Rugiririza, “Burundi: A Truth Commission as Political Diversion”. justiceinfo.net. 1 November 2018. <https://www.justiceinfo.net/en/39395-burundi-a-truth-commission-as-political-diversion.html>

12 See, for example, Mireille Kanyange, “An Elusive Truth”, Development and Cooperation. 13 December 2021. <https://www.dandc.eu/en/article/burundis-truth-and-reconciliation-commission-faces-accusations-ethnic-bias>; and africanews.com, “Burundi’s Truth and Reconciliation Commission Presents New Findings”, 20 March 2021. <https://www.africanews.com/2021/03/20/burundi-s-truth-and-reconciliation-commission-presents-new-findings/>; and Ephrem Rugiririza, “Burundi: The Commission of Divided Truths”. justiceinfo.net. 25 November 2019. <https://www.justiceinfo.net/en/43042-burundi-the-commission-of-divided-truths.html#authorModal>

13 United Nations. Repertoire of the Practice of the Security Council. 2018. pp.13-14. https://www.un.org/securitycouncil/sites/www.un.org/securitycouncil/files/final_webfile_english_repertoire_-1-add.19_.pdf#page=26

14 Cori Wielenga, “Peacebuilding in Burundi: Is a truth and reconciliation commission the answer?”. February 2015. Abstract. https://www.researchgate.net/publication/310800216_Peacebuilding_in_Burundi_Is_a_truth_and_reconciliation_commission_the_answer

ANNEX I: Case Studies (Burundi)

the president and other senior political figures. And it did so despite acknowledging, in 1995, that “impunity creates contempt for law and leads to violations of international humanitarian law”—in other words, that transitional justice has a role in preventing recurrence. The relatively higher prioritisation of security, political and humanitarian elements was reflected in the mandate of the peacekeeping mission, ONUB, from 2004 until the end of 2006.

The fact of a regional political initiative—what became the Arusha talks and, ultimately, Agreement—may have reduced pressure on the Council. As far as transitional justice is concerned, it was understood that this, too, would be an element of the Arusha Agreement.

For many years, the Council’s calls for justice and an end to impunity were focused narrowly on the 1993 events. There was also a longstanding assumption among some members that these outcomes would be achieved via Burundian justice mechanisms. (The Council did not refer to reparations.)

The Council’s consensual statements, and the statements of members where these are known, indicate that reconciliation is important—this helps drive members’ thinking about what Burundi needs. What did they talk about, however, when they talked about reconciliation? The concept remained underdefined. Members variously presented reconciliation as a desirable process and product. Through the years illustrated in this report, Council members linked reconciliation, in ways that they usually do not elaborate, to a range of other activities and processes: justice (for the past as well as in the present), the rule of law, human rights and human rights monitoring, national dialogue, confidence-building activities, and at times with political-level reconciliation among the parties. In short, reconciliation was, to the Council, a desirable notion, but far from being linked solely or primarily to transitional justice.

The Council’s reliance on presidential statements, which require consensus, and the extremely rare nature of briefings and open debates for most of these years illustrated the complaint made at the 2005 World Summit of the Council’s overall lack of transparency. Even where it was possible for Council members to make statements, often only some did so. It was difficult to discern the thinking of individual members, or the dynamics within the Council. (For the

author, this research powerfully illustrates the rationale behind Security Council Report’s establishment.)

In March 1995, the Council “warn[ed]” that those who commit crimes against humanity are individually responsible and will be brought to justice, and underlines the problem of the “perception of impunity” endangering security in Burundi. But its focus on transitional justice in Burundi for the next two decades is inconsistent and, with occasional and important exceptions, follows a largely downward arc. With a persistently volatile situation on the ground, the Council regularly subsumed transitional justice and the fight against impunity to more immediate concerns. Then, as an African force, and a UN peacekeeping force, were followed in 2007 by a special political mission, the Council perceived a somewhat normalising situation, especially after elections in 2005 and again, less successfully, in 2010. The “African lead” and the importance of “national ownership” may signal reduced Council activism, although this is speculative. Arguably, the PBC, with different priorities, further distracted from the transitional justice agenda. The government of Burundi (which avidly makes statements at Council briefings) increasingly pushed back, from the mid-2000s, against the UN’s view that it is not doing enough, and also increasingly insisted that the security situation is normal. The UN itself stepped in to “reduce” the Arusha Agreement’s transitional justice elements.

The Burundian Government delivered on its transitional justice commitments in small doses. By the time it had failed to conclude the work of either a functioning TRC or a justice mechanism, the UN mission had ended (2014), and the Council’s appetite for transitional justice had also faded. A dispute persisted among Council members as to whether Burundi still belonged on the Council’s agenda, until it was taken off at the end of 2020.

Council members have argued about it being too soon for justice in some genocidal situations, such as Myanmar. The case of Burundi illustrates how it can easily become too late. Identifying an optimal sequencing of transitional justice and defining how it relates to other desirable post-conflict states, such as reconciliation, could be useful contributions to the Council’s work. Ultimately, however, politics significantly shapes Council members’ readiness to press for justice.

The Central African Republic

Introduction

The Central African Republic (CAR) is a valuable case study for tracing the development of the Security Council's approach to transitional justice over the years for several reasons, including the fact that the Council and UN entities identified impunity as one of the major drivers which fueled conflict and instability in the country from at least 1997 and until this day.

The Council's commitment to transitional justice issues in the early years of its engagement in the CAR (1997-2013) was lacklustre. Council members' statements were limited, expressing support for national reconciliation efforts initiated in the CAR by national and regional actors, and not using the term "transitional justice". In the early period, permanent members of the Council adopted a particularly short-term perspective that did not look beyond the crisis at hand. However, elected members emphasised the need to examine the root causes of the crisis while also advocating a forward-facing approach of national reconciliation as a means for sustaining peace.

Another important facet of this case study is that it allows exploration of how the Security Council uses peacekeeping missions and sanctions regimes as platforms for transitional justice efforts. Mandate renewal resolutions for peacekeeping and peacebuilding missions in the CAR are a barometer of Council perceptions of transitional justice processes, and of the relative importance it accords them. Throughout the years of the Council's engagement on the CAR, the Secretary-General on several occasions recommended increasing the capacities of UN missions in the country, including expansions to enable additional support for transitional justice processes. While the Council eventually agreed to such mandate expansions, Russia and the US expressed reservations. Russia, for example, wanted to avoid setting up a regular reporting mechanism on human rights violations, while the US often expressed the view that there was no merit in increasing resources for UN engagement in the CAR due to the government's lack of political will to carry out the necessary reforms.

The Council's reticence in articulating ambitious goals for transitional justice in the CAR in the late 1990s and early 2000s, in contrast to the high bar it set for other countries on its agenda in the same time period, such as Burundi, can perhaps be explained by the government's lack of evident commitment to implement national reconciliation initiatives. An international Commission of Inquiry (COI) determined in 2014 that political elites used these early national reconciliation initiatives as a fig leaf and a cover for adopting amnesty laws which bolstered impunity, which in turn dissuaded the Council from increasing UN involvement in the CAR. Another factor may be the relatively low severity of the events on the ground in the years before 2013.

The year 2013 was a turning point, with the overthrow of the government by the Séléka rebel group setting off the widespread sectarian violence that still persists. The Council shed its previous "wait-and-see" approach for a more proactive engagement to address impunity in the CAR. Reports of widespread human rights abuses along with repeated warnings from UN officials of an impending

genocide prompted Council members to agree in late 2013 to an initiative by Rwanda to launch an international COI to investigate grave violations of human rights since early 2013.

Furthermore, while the mandates of early UN missions in the CAR included only vague references to the need to support national reconciliation, the UN Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA), which was established in 2014, received far-reaching authorisation to assist the CAR authorities in the administration of justice, including through the arrest of those accused of committing violations of human rights and international law. In this regard, the CAR case study illuminates the Council's approach in country situations characterised by weak state institutions and a limited reach of state authority beyond the capital. In such a case, it appears that the severity of the situation and the understanding that implementation of transitional justice processes is crucial to stabilisation efforts was able to compel even Council members who are wary of activities that they deem impinge on national sovereignty, such as China and Russia, to agree to this involvement.

Lastly, this is an important case study since the CAR is still, at the time of writing, in the midst of conflict. The Council's engagement on transitional justice matters can have an impact on the country's future. Although the signing of a peace agreement in February 2019 lends some room for optimism, the CAR can be best described as being in a state of "precarious stability"¹⁵; until structural issues are addressed at national and community level, the possibility of a resurgence of widespread violence looms large.

1996-2003: The Bangui Agreements and the National Reconciliation Pact

The Security Council first discussed the situation in the Central African Republic as an item on its agenda during its 3808th meeting, held on 6 August 1997.¹⁶ The repertoire of the Security Council does not indicate that any Council meetings on the CAR took place prior to 1997—this, despite the continuous political instability and repeated cycles of violence which plagued the country since it gained independence from France in 1960.

The Council became involved in the situation in the CAR at the request of then-president Ange-Felix Patassé, who sent a letter to the Secretary-General in which he warned of a precarious situation in the country stemming from three consecutive failed mutinies staged by members of the armed forces in 1996.¹⁷ The revolts—which were largely sparked by widespread public discontent over social and economic problems and the prolonged non-payment of salary arrears—had left a large supply of weapons in the hands of ex-rebels and militias. Regional mediation efforts led by Burkina Faso, Chad, Gabon, and Mali facilitated a truce between the forces loyal to President Patassé and the rebels, leading to the signing of a series of documents which came to be known as the "Bangui Agreements" on 25 January 1997.¹⁸ At the request of Patassé, the Inter-African Mission to Monitor the Implementation of the Bangui Agreements (MISAB) deployed to

¹⁵ A term used, for example, in Security Council resolution 2121. United Nations. Security Council Resolution. S/RES/2121. 10 October 2013. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2121.pdf

¹⁶ United Nations. Security Council Meeting Record. S/PV.3808. 6 August 1997. <https://documents-dds-ny.un.org/doc/UNDOC/PRO/N97/859/12/PDF/N9785912.pdf?OpenElement>

¹⁷ United Nations. Letter to the Secretary-General and Security Council. S/1997/561. 22 July 1997. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CAR%20S1997561.pdf>

¹⁸ The text of the agreement is contained in S/1997/561. United Nations, Letter to the Secretary-General and Security Council. S/1997/561. 22 July 1997. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CAR%20S1997561.pdf>

ANNEX I: Case Studies (The Central African Republic)

Bangui on 8 February. MISAB was an 800-man force comprising personnel from the four regional mediating countries with the addition of Senegal and Togo, with the logistical and financial support of France, and was mandated to conduct operations to disarm former rebels. Patassé subsequently asked the Security Council to authorise the operations of MISAB, which the Council did through resolution 1125 of 6 August 1997.

The process leading to the Bangui Agreements included several ambitious goals for national reconciliation, which might indicate the importance of this aspect of transitional justice to some national and regional stakeholders. In the run-up to the signing of the Agreements, the Committee on Consensus-building and Dialogue—a body set up by the international committee which supported the Bangui Agreements to find solutions to the crisis in the CAR—met in Bangui from 11 to 16 January 1997. The committee issued a set of recommendations to help achieve peace in the CAR, which included a suggested framework for national reconciliation. In its report summarising the conclusions of the January meeting, the committee determined that “national reconciliation requires first taking into account the harm that has been suffered by all sides,” and called for the establishment of mechanisms to evaluate the damage caused by the various crises in the country and the distribution of compensation for victims. The committee recommended the holding of a national reconciliation conference and stated that for national reconciliation to last, it is necessary to “establish a system of government management in the Central African Republic based on the principles of good governance [...], transparency, the banning of impunity, the establishment of accountability and respect for human rights, so that a true culture of peace and democracy could take root in the country”.¹⁹

Following a national reconciliation conference in Bangui, the National Reconciliation Pact was signed on 5 March 1988 by CAR government representatives, political parties, trade unions, religious groups and human rights organisations. While it referenced the need to ensure good governance and address various social and economic ills in order to ensure stability in the country, it did not refer to some of the notions outlined by the Committee on Consensus-building and Dialogue, such as compensation for victims or eradication of impunity. The pact further established a Monitoring and Arbitration Committee, responsible for settling disputes arising from non-compliance with its provisions.²⁰

The National Reconciliation Pact became the main reference point for the Security Council’s engagement with transitional justice issues in the CAR, up until 2003 when the Patassé government was overthrown in a coup by François Bozizé. In the early years of the Council’s deliberations on the situation in CAR (1997–2000), Council members called in their statements and resolutions for reconciliation in the country and commended the government for its initiative of organising the national reconciliation conference and for having signed the National Reconciliation Pact. Council members’

statements were limited, focusing narrowly on reconciliation without any elaboration of steps to that end nor references to other pillars of transitional justice such as restitution, reparations for victims or the administration of justice.

The Security Council increased its involvement in the CAR in 1998 due to the expected reduction of French support to MISAB set for mid-April 1998. The Secretary-General recommended establishing a subsequent UN peacekeeping operation (the UN Mission in the Central African Republic, MINURCA), which the Council authorised in resolution 1159 of 27 March 1998.²¹ The resolution stressed the importance of assisting the people of the CAR “to consolidate the process of national reconciliation and help to sustain a secure and stable environment conducive to the holding of free and fair elections”. It further welcomed the appointment by the Secretary-General of a Special Representative and head of MINURCA, who is to, among other duties, “assist in the promotion of the reforms necessary to achieve national reconciliation, security and stability in the country”.²²

At the meeting in which resolution 1159 was adopted, some Council members, such as China, expressed their hope that their action would actively promote national reconciliation so that the country could move towards stability and prosperity. However, Russia seemed to doubt the need for MINURCA to assist with reconciliation efforts, saying that “the question of the future role of the United Nations in fostering national reconciliation, and in particular in preparations for holding elections, can be decided later in the light of developments”. The US for its part criticised the CAR authorities for their reliance on UN involvement, noting that they had “seen more progress by the Government of the Central African Republic in the last several weeks, as the threat of MISAB’s departure loomed, than in the previous year”. It further warned that the UN would not assume responsibility for security in the CAR indefinitely and urged the CAR government to make more progress on reforms towards national reconciliation that will “ensure the security and stability of the country”.²³

The US repeatedly expressed its objection to the extension of MINURCA’s mandate, up to the conclusion of its mission on 15 February 2000. After having assisted the CAR in conducting legislative elections in November and December of 1998 and supporting the September 1999 presidential elections in which Patassé was elected, MINURCA’s mission was deemed completed. Patassé implored the Council to extend the mission through the end of 2000, to no avail. MINURCA was succeeded in February 2000 by the UN Peace-Building Support Office in the Central African Republic (BONUCA), which was to assist the CAR government to consolidate progress towards peace and reconciliation.

While the Council welcomed the closure of MINURCA²⁴, UN officials and other interlocutors continued to express the view that the force’s departure had been premature.²⁵ Unrest in the CAR

¹⁹ Ibid.

²⁰ United Nations. Letter to the President of the Security Council. S/1998/219. 11 March 1998. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CAR1998219.pdf>.

²¹ United Nations. Security Council Resolution. S/RES/1159. 27 March 1998. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CAR%20SRES1159.pdf>

²² Ibid.

²³ United Nations. Security Council Meeting Record. S/PV.3867. 27 March 1998. <https://www.securitycouncilreport.org/un-documents/document/s-pv-3867.php>

²⁴ United Nations. Security Council Presidential Statement. S/PRST/2000/5. 10 February 2000. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CAR%20SPRST20005.pdf>

²⁵ For example, the Secretary-General in his report of 21 September 2001 (S/2001/886) mentioned that by the time MINURCA left, the collection of illegally held weapons was “far from being completed”. United Nations. Report of the Secretary-General to the Security Council. S/2001/886. 21 September 2001. <https://www.securitycouncilreport.org/atf/>

ANNEX I: Case Studies (The Central African Republic)

persisted, with the capital divided between forces loyal to Patassé in the north and opposition forces in the south. Tensions peaked in May 2001, when former CAR president André-Dieudonné Kolingba staged a coup against Patassé. The putsch attempt was defeated with assistance by Libyan and Chadian troops who intervened to defend Patassé, whose government was later accused of committing atrocities against members of Kolingba's Yokomba tribe as an act of retribution. As a result of the attempted coup, thousands of Central Africans were displaced or took refuge in neighbouring countries. The Secretary-General summed up the state of affairs in his 21 September 2001 report, saying that the coup "has worsened the situation to the point where the Central African Republic is in a particularly desperate situation".²⁶

Following the attempted coup, Council messages and deliberations on the CAR took on a more urgent tone. Council members at that point displayed more willingness to increase Council involvement in the CAR, by taking action to enhance BONUCA's capacity, including in areas relating to justice and accountability.

In a 17 July 2001 presidential statement, the Council asked the Secretary-General to present recommendations on "strengthening BONUCA, in particular in areas such as human rights monitoring, assistance to the judicial system and capacity-building, and enhancing the effectiveness of its early-warning capacity".²⁷ In the same statement, Council members reiterated that the "responsibility for national reconciliation, stability and the reconstruction of the country lies primarily with the political leaders and the people of the Central African Republic", while taking a more critical tone than usual in warning that the "full effectiveness of the assistance of the international community depends on the implementation in parallel of appropriate structural reforms"—perhaps reflecting the Council's exasperation with the CAR government having dragged its feet over reform and national reconciliation efforts.²⁸

In his report of 21 September 2001, the Secretary-General recommended several modifications to BONUCA's mandate, chief of which was the promotion of national reconciliation, through support for the implementation of the 1998 National Reconciliation Pact and the effective functioning of the Monitoring and Arbitration Committee. It further suggested more involvement of BONUCA in upholding human rights.²⁹

In an uncharacteristically long meeting on 21 September 2001, where all Council members took the floor, most Council members agreed to the Secretary-General's recommendations. However, although they eventually joined the consensus in approving the recommendations, Russia and the US both expressed initial reservations regarding the enhancement of BONUCA's mandate. Russia said that in light of the crisis precipitated by the coup, there was a need to consolidate peace and attain national reconciliation, and called on the people of the CAR to "demonstrate political will and far-sightedness in the interest of national reconciliation and of the recovery of their country". While Russia agreed with

the general thrust of the Secretary-General's recommendations, it stressed that a Security Council decision on this matter "must come after the budgetary implications of restructuring the United Nations Peace-building Support Office in the Central African Republic are submitted to the Council". The US was blunter in saying that since it had not seen a serious commitment from the CAR government in cooperating with BONUCA, it did not see the merit of increasing mission resources. France for its part admitted that perhaps the withdrawal of MINURCA had been too abrupt, in its instant diminishing of the UN presence in the CAR, and expressed its support for strengthening BONUCA.³⁰

As indicated earlier, permanent members of the Council tended to take a narrower approach to transitional justice issues, concentrating on national reconciliation, while elected members presented a broader view. Singapore stated that "even as we work toward political reconciliation, we must also focus on the root causes of the problem" in the CAR. Ireland similarly stressed the importance of addressing the political root causes of the conflict, particularly weak governance. It appears that elected members not only placed importance on understanding how the past affected the current situation in the CAR, but also looked ahead to the importance of sustaining peace in the aftermath of upheavals in the country. In a January 2001 meeting, several elected members had also focused on the need to sustain peace in the country; Jamaica, for example, remarked that the CAR served as a case study to examine "how the international community can become constructively involved in the process of sustaining peace in the aftermath of a conflict". It stressed that to consolidate peace in post-conflict situations, there must be efforts to promote national reconciliation, tolerance and the peaceful management of differences, which require political will from the parties but also financial backing.³¹

It is possible that the attempted coup catalysed the Council's agreement to enhance BONUCA's mandate, signalling that the Council's actions thus far were insufficient.

2003-2013: Limited Council Involvement during Bozizé's Rule

On 15 March 2003, François Bozizé, who previously served as army chief of staff under Patassé, overthrew Patassé's government while the president was out of the country. Bozizé suspended the constitution and dissolved parliament, promising to hold elections. After initially excluding himself from running and postponing elections for two years, he participated in, and won, the March 2005 presidential elections. The years of Bozizé's rule were characterised by minimal Council involvement in the situation in the CAR. It appears that no Council member expressed a strong objection to Bozizé's unlawful seizure of power, and the Council accepted him as the rightful authority after his victory in the 2005 election. It should be mentioned that most of the deliberation on the CAR in this period took place in consultations (and prior to the founding of Security Council

[cf/%7B65BF9F9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CAR%20S2001886.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BF9F9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CAR%20S2001886.pdf)

²⁶ Ibid.

²⁷ United Nations. Security Council Presidential Statement. S/PRST/2001/18. 17 July 2021. <https://www.securitycouncilreport.org/atf/cf/%7B65BF9F9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CAR%20SPRES200118.pdf>

²⁸ Ibid.

²⁹ United Nations. Report of the Secretary General to the Security Council. S/2001/886. 21 September 2001. <https://www.securitycouncilreport.org/atf/cf/%7B65BF9F9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CAR%20S2001886.pdf>

³⁰ United Nations. Security Council Meeting Record. S/PV.4380. 21 September 2001. <https://www.securitycouncilreport.org/un-documents/document/s-pv-4380.php>

³¹ United Nations. Security Council Meeting Record. S/PV.4261. 23 January 2001. <https://www.securitycouncilreport.org/un-documents/document/s-pv-4261.php>

ANNEX I: Case Studies (The Central African Republic)

Report), and therefore little can readily be gleaned about the positions of individual Council members on issues relating to transitional justice in the CAR.

The Council did not raise any transitional justice-related issues in connection with alleged human rights violations committed by Chadian mercenaries and troops under the command of Jean-Pierre Bemba, the former Vice President of the Democratic Republic of Congo (DRC), when they intervened in the conflict in the CAR between 2002 and 2003 to support then-embattled CAR President Patassé. Bemba eventually faced trial at the International Criminal Court (ICC) on 27 April 2010 on three counts of war crimes and two of crimes against humanity, including criminal responsibility for rapes, murders and pillage committed in the CAR. His conviction was overturned on appeal.

It seems that during this period Council members were reluctant to take up wider aspects of the domestic situation in the CAR or any issues relating to justice and accountability beyond general support for the political reconciliation activities of BONUCA. Indeed, it appears the Council was more focused on the situation in eastern Chad as well as avoiding spillover of the DRC crisis into the CAR.

In December 2008, an inclusive political dialogue took place in Bangui, bringing together participants from the government, opposition parties, rebel movements and civil society, leading to the adoption of several recommendations aimed at building sustainable peace and development in the CAR. The recommendations included transitional justice initiatives such as introduction of measures to identify and indemnify victims of past conflicts and the establishment of a High Court of Justice. The holding of the dialogue was premised, among other things, on the signing of a comprehensive peace agreement between the government and major rebel movements and the adoption of amnesty laws by the government, to allow political stakeholders—including members of rebel movements and exiled opposition leaders—to participate in the inclusive political dialogue.³² The Libreville Comprehensive Peace Agreement, which was signed on 21 June 2008, called for the disarmament and demobilisation of the signatory armed groups and stipulated amnesty for rebel fighters and their leaders.³³ BONUCA was instrumental in encouraging the signing of the June 2008 agreement and the holding of the inclusive political dialogue.³⁴

Against the backdrop of the inclusive political dialogue, the Secretary-General wrote to the Council on 3 March 2009 saying that BONUCA should be succeeded by a UN integrated peacebuilding office with a revised mandate, including assisting efforts to restore state authority in the provinces and enhance national human rights capacity and promote respect for human rights and the rule of law, justice and accountability.³⁵ BONUCA was succeeded on 1 January 2010 by the UN Integrated Peacebuilding Office in the Central African Republic (BINUCA). The Council requested in a presidential

statement on 21 December 2009 that the Secretary-General provide a set of clear and measurable benchmarks to guide the progress made by BINUCA and to enable the mission to evaluate progress against its mandate.³⁶

During a 10 March 2009 briefing to the Council on the situation in the CAR, Special Representative of the Secretary-General and head of BONUCA François Lonsény Fall stated that “the dialogue provides a new opportunity to take significant steps towards sustainable peacebuilding in the Central African Republic”.³⁷ It appears that while Council members generally agreed on the need to support the peacebuilding process in CAR, as reflected in the approval of the expanded mandate for BINUCA, Council members did not take additional steps to address such structural issues as combatting impunity in the country. The events of 2013 suggest that the Council may have missed a window of opportunity to promote genuine peace, reconciliation and stability.

2013- present: International Commission of Inquiry (COI), Special Criminal Court (SCC) and Truth, Justice, Reparation and Reconciliation Commission (TJRRC)

In 2013, the Council increased its attention to the situation in the CAR due to the resumption of armed conflict. On 24 March 2013, the Séléka rebel coalition, a predominantly Muslim group, overthrew the government of François Bozizé, forcing him to flee to Cameroon. The rebels accused Bozizé of failing to implement the Libreville Comprehensive Peace Agreement. Michel Djotodia, a Séléka leader, announced the annulment of the constitution and said he would rule by decree until the 2016 scheduled elections. Following the overthrow of the government, Séléka forces proceeded to loot and sack the capital, Bangui.

As tensions mounted ahead of the coup, the Council heard a briefing in consultations from Margaret Vogt, then-Special Representative of the Secretary-General and head of BINUCA, on 20 March. Vogt apparently informed the Council about reports of widespread rape, looting, recruitment of children and starvation, with villagers hiding in the bush because they feared the rebels. She pointed out that the most violent actions against civilians had come from foreign elements within the rebel alliance. She added that the international community had been absent when it comes to the CAR.³⁸

In a 16 September 2013 report, the Secretary-General painted an alarming picture of the situation in the CAR, with gross violations of human rights and humanitarian law being committed by the Séléka rebels with impunity. The report warned that “the Central African Republic is a failing State, with no cohesive national authority capable of guaranteeing the security of the State and its people in an accountable manner”. According to the Secretary-General, the utter collapse of the rule of law provoked calls

32 United Nations. Report of the Secretary General to the Security Council. S/2008/733. 26 November 2008. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CAR%20S2008733.pdf>

33 “Global Peace Agreement between The Government of the Central African Republic and the Central African Political Movements: The Popular Army for the Restoration of Democracy (APRD) The Democratic Front of the Central African People (FDPC) The Union of Democratic Forces for Unity (UFDR)”. 21 June 2008. <https://www.peaceagreements.org/viewmasterdocument/669>

34 “UN official condemns violations of 2008 peace agreement for Central African Republic”. 10 December 2012. <https://news.un.org/en/story/2012/12/427882>

35 United Nations. Letter from the Secretary General to the President of the Security Council S/2009/128. 3 March 2009. <https://www.securitycouncilreport.org/un-documents/document/car-s-2009-128.php>

36 United Nations. Statement by the President of the Security Council. S/PRST/2009/35. 21 December 2009. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CAR%20SPRST%202009%2035.pdf>

37 United Nations. Security Council Meeting Record. S/PV.6091. 10 March 2009. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CAR%20SPV6091.pdf>

38 Security Council Report. Central African Republic Monthly Forecast. 28 March 2013. https://www.securitycouncilreport.org/monthly-forecast/2013-04/2013_04_central_african_republic.php

ANNEX I: Case Studies (The Central African Republic)

from the population for an urgent UN deployment, including an increase in human rights monitors.³⁹

This turn of events led the Council to adopt resolution 2121 on 10 October 2013. This resolution includes the Council's first explicit reference to transitional justice with regard to the CAR. It expanded BINUCA's mandate to "help strengthen the capacities of the judicial system, including transitional justice mechanisms, and of the national human rights institutions and assist with national reconciliation efforts". It further requested BINUCA to investigate and report to the Council on violations of human rights or violations of international humanitarian law committed in the country. The resolution strongly condemned human rights violations committed by armed groups, such as extrajudicial killings, enforced disappearances, arbitrary arrests and torture, while calling for accountability and stressing that perpetrators "shall be brought to justice"⁴⁰ (the use of "shall" rather than the more customary "should" may be indicative of Council resolve to see justice done).

During the negotiations on resolution 2121, it appears that a compromise was struck to delete the word "regular" in relation to BINUCA's human rights reporting, apparently at the insistence of at least one Council member (possibly Russia) who objected to the possibility that it would create a recurring, separate human rights-specific reporting obligation for BINUCA.⁴¹

Another milestone in the development of the Council's engagement on the administration of justice in the CAR came with the adoption of resolution 2127 on 5 December 2013. The resolution established a sanctions regime, imposing an arms embargo on the CAR. The resolution warned that targeted measures, including travel bans and assets freezes, may be considered in the future against those obstructing the transitional political process and committing violations of human rights and international humanitarian law.⁴²

The resolution also formed an International Commission of Inquiry (COI) with the aim of investigating reports of violations of international humanitarian law, international human rights law and abuses of human rights in CAR by all parties since 1 January 2013. The COI was to "compile information, to help identify the perpetrators of such violations and abuses, point to their possible criminal responsibility and to help ensure that those responsible are held accountable".⁴³ Rwanda, who by then had experience with transitional justice mechanisms, was among Council members pushing for this commission to be included in the draft.⁴⁴

The resolution was adopted on the heels of a further escalation of the situation in the CAR, brought about by the emergence of predominately Christian militia groups known as the "anti-balaka" in November 2013. In response to previous actions of the Séléka coalition, which were perceived to be targeting Christian civilians, the

anti-balaka began committing reprisals against Muslim civilians, who constituted roughly 15 percent of the population in the CAR. Thousands of Muslims were forced to flee towards the majority Muslim northeast, creating a sort of separation line between the two religious groups and the zones of influence of the Séléka and anti-balaka. The attacks prompted a rapidly escalating cycle of sectarian violence and reprisals, with a particularly grave toll on the civilian population; on 5-6 December 2013 alone, at least 1,000 people were killed in Bangui. In a 1 November Arria-formula meeting on the human rights and humanitarian situation in the CAR, UN officials warned Council members of a looming danger of genocide in the CAR due to this new and dangerous dynamic, with OCHA stating that the CAR held the same seeds for genocide as those seen in Bosnia and Rwanda.

Resolution 2127 describes in stark terms the severity of the situation in the CAR, expressing the Council's concern that the dynamic of violence might plunge the country into a religious and ethnic divide which can "spiral into an uncontrollable situation, including serious crimes under international law in particular war crimes and crimes against humanity".⁴⁵ It further referenced the inability of the transitional authorities, then headed by Djotodia, to administer justice and hold perpetrators of human rights violations accountable. The imposition of a sanctions regime may have reflected the Council's understanding of the need to take a more active role in promoting peace and stability in the CAR. It seemed that the Council was trying to avoid any references to the problematic fact that the transitional government was headed by a leader of the Séléka forces (who by then were disbanded and therefore referred to as "ex-Séléka"), who was increasingly losing the little control he had over them.

In light of the turbulent events in the CAR, 2014 proved to be a pivotal year in the development of transitional justice mechanisms in the country. On 14 January, a new transitional government was formed, and the National Transitional Council elected Catherine Samba-Panza, the then-mayor of Bangui, as the new interim president of the CAR. Her election was welcomed by the Secretary-General and BINUCA. In resolution 2134, adopted on 28 January 2014, the Council imposed targeted sanctions on individuals who hinder the political process or violate human rights and international humanitarian law. However, there was provision for exemptions for persons who promote the objectives of peace and national reconciliation—demonstrating the Council's view that the threat of sanctions and their removal can serve as a tool to promote transitional justice. The resolution further enhanced BINUCA's mandate to assist in reconciliation efforts through "inter-religious dialogue and truth and reconciliation mechanisms". The Council authorised the deployment of additional human rights officers to BINUCA to strengthen monitoring and accountability.⁴⁶ Council members

39 United Nations. Letter from the Secretary General to the President of the Security Council S/2013/557. 16 September 2003. https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2013_557.pdf

40 United Nations. Security Council Resolution. S/RES/2121. 10 October 2013. https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2121.pdf

41 Security Council Report. "Central African Republic: Reinforcing BINUCA's Mandate". 9 October 2013. <https://www.securitycouncilreport.org/whatsinblue/2013/10/central-african-republic-reinforcing-binucas-mandate.php>

42 United Nations. Security Council Resolution. S/RES/2127. 5 December 2013. https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2127.pdf

43 Ibid.

44 Security Council Report. "Adoption of a Resolution on the Central African Republic". 4 December 2013. <https://www.securitycouncilreport.org/whatsinblue/2013/12/adoption-of-a-resolution-on-the-central-african-republic.php>

45 United Nations. Security Council Resolution. S/RES/2127. 5 December 2013. https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2127.pdf

46 United Nations. Security Council Resolution. S/RES/2134. 28 January 2014. https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2134.pdf

ANNEX I: Case Studies (The Central African Republic)

made no remarks explaining the impetus behind this move in the open chamber when adopting the resolution. It is possible that the change in the transitional government persuaded it to pursue more ambitious projects relating to transitional justice.

On 10 April 2014, the Council established in resolution 2149 the UN Multidimensional Integrated Stabilisation Mission in the Central African Republic (MINUSCA), which was authorised to include 10,000 military personnel and 1,800 police personnel.⁴⁷ BINUCA was subsumed into MINUSCA and served as its political component. Russia and the US initially resisted a peacekeeping force in the CAR, arguing that more time should be given for other international forces that were then present in the country, such as an AU-led force and French troops, to try and stabilise the situation. Moreover, since 2008, the global financial crisis led Council members to seek ways to cut back on peacekeeping expenditures (for example, at the same time as a peacekeeping force was being considered for the CAR, the Council was reluctant to increase peacekeepers in South Sudan, instead transferring troops from other UN missions to the country).

Eventually, it appears that the dire situation in the country persuaded even the more reluctant Council members of the need to act. In a briefing to the Council on 6 March 2014, António Guterres, the then-UN High Commissioner for Refugees, briefed on his recent visit to the CAR and described the situation as “a humanitarian catastrophe of unspeakable proportions” with “indiscriminate killings and massacres” and continuing “massive ethno-religious cleansing”. Guterres noted that the country needed international help to protect its civilians and establish security and law and order.⁴⁸

MINUSCA’s mandate included the most far-reaching provisions for support to transitional justice efforts in the CAR since the Council began engaging with the agenda in 1997. A key component of the force’s mandate related to provision of support for national and international justice and rule of law efforts. Resolution 2149 expressed the need to end impunity in the CAR by bolstering national accountability mechanisms, while calling on the government to ensure that those responsible for human rights violations be excluded from the security sector. MINUSCA’s mandate included extensive support for accountability through the documentation and publication of information on human rights violations, provision of good offices to address the root causes of the conflict, support for transitional justice and conflict-resolution mechanisms at the regional and local level and capacity-building for the national judicial system.⁴⁹

Crucially, MINUSCA was authorised to support the transitional government, which lacked effective authority outside Bangui, in arresting and bringing to justice those responsible for war crimes and crimes against humanity in the country. This provision in particular was an extraordinary measure which was added at the request of the CAR transitional authorities. During the negotiations on the resolution, it appears that China and Russia insisted on language to reflect that this is an urgent temporary measure, adopted on an exceptional

basis. It is likely, considering the emphasis placed by these Council members on upholding the principle of state sovereignty, that they wished to avoid setting a precedent for other peacekeeping forces’ involvement in justice procedures they regarded as within the purview of the state. The “urgent temporary measures” allowing MINUSCA to perform arrests remain part of its mandate.

On 22 December 2014, the International COI issued its second and final report on human rights violations in the CAR. The report noted that the commission was guided by “the fact that the one thing that the Security Council particularly wished to put an end to [is] the reigning climate of impunity in CAR”. The report stated that the impunity in the country was a major driver of the crisis which erupted in 2013, since previous conflicts had not been followed by measures to hold major perpetrators accountable. It accused major players of having used past national reconciliation processes as a cover for adopting amnesty laws which would shield them from facing justice. The COI concluded that between 1 January 2013 and November 2014, members of the Armed Forces of the CAR (FACA) under President Bozizé and the principal militia groups—the Séléka and the anti-balaka—had all been “involved in serious violations of international humanitarian law and gross abuses of human rights”. As previously noted, it appears that the impending fear of possible genocide had been a key factor in the Council’s decision to establish the COI. However, the COI report stated that it could not identify genocidal intent from any of the involved parties, while stressing that this conclusion did not diminish the severity of the crimes they had perpetrated or preclude the risk of a future genocide.

In 2015, it appears that the situation on the ground had stabilised somewhat, allowing the CAR transitional authorities to pursue new transitional justice initiatives. The Bangui Forum for National Reconciliation was held between 4 and 11 May 2015, bringing together nearly 700 attendees from the transitional government, political parties, factions of the armed groups (including ex-Séléka and anti-balaka), the private sector, civil society, traditional chiefs and religious leaders. The participants agreed on several measures relating to transitional justice, including expressions of support for the creation of a Special Criminal Court (SCC) with jurisdiction over serious violations of human rights and of international humanitarian law. The forum further recommended the establishment of the Truth, Justice, Reparation and Reconciliation Commission (TJRRC). In resolution 2217 adopted on 28 April 2015, the Council authorised MINUSCA to assist the Transitional Authorities in establishing the SCC.⁵⁰ In subsequent statements, members of the Council stressed the urgency for the court to take up its functions.⁵¹ The SCC, a hybrid transitional justice mechanism established with UN assistance and comprised of 22 national and international magistrates, represented a new level of Council support for transitional justice in the CAR. The SCC began conducting investigations in October 2018 and opened its first trial in April 2022.

Although the Council did call for the timely establishment of the

47 United Nations. Security Council Resolution. S/RES/2149. 10 April 2014. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2149.pdf

48 United Nations. Security Council Meeting Record. S/PV.7128. 6 March 2014. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_7128.pdf

49 United Nations. Security Council Resolution. S/RES/2149. 10 April 2014. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2149.pdf

50 United Nations. Security Council Resolution. S/RES/2217. 28 April 2015. <https://www.securitycouncilreport.org/un-documents/document/sres2217.php>

51 For example: United Nations. Statement by the President of the Security Council. S/PRST/2015/17. 20 October 2015. <https://www.securitycouncilreport.org/un-documents/document/sprst201517.php>

ANNEX I: Case Studies (The Central African Republic)

TJRRC by the CAR authorities in subsequent statements, it did not mandate MINUSCA to support the establishment of the TJRRC. MINUSCA provided technical support to the process, but the work was led by a Steering Committee set up by the CAR authorities. The TJRRC was eventually established in July 2021.

On 30 March 2016, Faustin-Archange Touadéra was inaugurated as president of the CAR after winning national elections, which were deemed to have been free and transparent. Touadéra repeatedly expressed his support for reconciliation, while emphasising that “reconciliation cannot be achieved at the cost of impunity” and vowing to hold accountable those who committed crimes in the past.⁵² In a presidential statement issued on 16 November 2016, the Council welcomed the “achievement of significant post-transition milestones” and for the first time officially described the need to address the root causes of the conflict in the country by “addressing marginalization and local grievances of all the components of society over the whole territory of the CAR”.⁵³

The latest peace agreement in the CAR, which was signed in Bangui by the CAR government and 14 armed groups on 6 February 2019, includes comprehensive references to the need to implement transitional justice mechanisms. In particular, it notes the need to combat impunity and accelerate the process of establishing the TJRRC. Under the terms of the agreement, the government pledged to establish a database of victims of the different crises which took place in the CAR and to consult with victims’ associations on the “first symbolic and collective reparation measures”.⁵⁴

The Council, perhaps taking a cue from the momentum offered by the signing of the Bangui agreement, included a comprehensive reference to pillars of transitional justice in resolution 2499 adopted on 15 November 2019, which renewed MINUSCA’s mandate until November 2020. The resolution refers to the need to address the root causes of the conflict in the country and to adopt victim-focused approaches. It also calls on the CAR authorities to take concrete steps without delay to strengthen justice institutions at national and local levels, including through the “establishment of transitional justice mechanisms, based on a victim-centered approach, including the operationalisation of the Truth, Justice, Reparation and Reconciliation Commission”.⁵⁵ The Council reiterated these messages in its resolutions renewing MINUSCA’s mandate in 2020⁵⁶ and in 2021⁵⁷.

Since the signing of the February 2019 peace agreement, the UN has reported a notable decrease in human rights violations related to the conflict. However, implementation of the peace agreement remains limited, as the government continues to exercise limited control in many areas outside the capital and mostly relies on MINUSCA’s support to ensure security. As a result, civilians

continue to bear the brunt of violence which is perpetrated by armed groups operating across the country.⁵⁸ This state of events highlights the complexity of the situation in CAR: while it is still experiencing conflict-related violence, it is also expected to address impunity and provide redress for victims to prevent further instability. The national authorities and MINUSCA continue to face many challenges in implementing transitional justice-related processes due to the widespread activity of armed groups and the near absence of state institutions across the country.

Observations

Several trends in the Security Council’s approach to transitional justice are discernible from the CAR case study. First, the type of language used by the Council during the early period (1997-2003) shows the Council focused only on reconciliation, avoiding explicit reference to the term “transitional justice”. It is possible to suggest that the Council had a limited understanding of the terminology at the time (indeed, the Secretary-General only issued a definition of transitional justice in a 2004 report).⁵⁹ However, in its engagement on other country situations such as Burundi at the time, the Council goes further in referring to the need to eradicate impunity and underlining that impunity can lead to the deterioration of security.⁶⁰

Council resolutions on the CAR began using the term transitional justice rather late, with resolution 2121 (October 2013). Only after this did Council members also invoke in earnest themes such as root causes of conflict and victim-focused approaches. Since the Council tended to refer to the need for transitional justice in the aftermath of violent events which involved large-scale human rights violations, a takeaway appears to be that the Council was more focused on putting out fires rather than adopting a *longue durée* approach. This is reinforced by the fact that until 2013, the Council did not refer to the preventative nature of transitional justice mechanisms in staving off future conflict and in sustaining peace.

Council statements and actions, as reflected in peacekeeping mandates and sanctions regimes, reveal an understanding of justice as primarily relating to punitive measures. While addressing impunity is a crucial pillar of transitional justice, it does not preclude adopting a mixed approach which also places importance in distributive or reparative forms of justice which focus on redress for victims or on the right to truth. During the national consultations held in preparation for the 2015 Bangui Forum on National Reconciliation, many in the CAR population expressed support for the principle of dialogue and reconciliation, but emphasised that justice and reparations for the damages inflicted were a necessary condition to achieve this.⁶¹ With compensation for victims

52 Speech by CAR President Faustin-Archange Touadéra at CSOs side event to CAR Donors’ Conference in Brussels, 16 November 2016.

53 United Nations. Statement by the President of the Security Council. S/PRST/2016/17. 16 November 2016. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_prst_2016_17.pdf

54 Text of the agreement contained in: United Nations. Letter from the Secretary-General to the President of the Security Council. S/2019/145. 14 February 2019. <https://www.securitycouncilreport.org/un-documents/document/s-2019-145.php>

55 United Nations. Security Council Resolution. S/RES/2499. 15 November 2019. [https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_RES_2499\(2019\)_E.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_RES_2499(2019)_E.pdf)

56 United Nations. Security Council Resolution. S/RES/2552. 12 November 2020. <https://www.securitycouncilreport.org/un-documents/document/s-res-2552-2.php>

57 United Nations. Security Council Resolution. S/RES/2605. 12 November 2021. <https://www.securitycouncilreport.org/un-documents/document/s-res-2605.php>

58 See conclusions of the latest final report of the Panel of Experts assisting the 2127 CAR Sanctions Committee: United Nations. Letter from the Panel of Experts on the Central African Republic to the President of the Security Council. S/2019/930. 6 December 2019. <https://www.securitycouncilreport.org/un-documents/document/s-2019-930.php>

59 United Nations. Report of the Secretary-General. S/2004/616. 23 August 2014. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/PCS%20S%202004%20616.pdf>

60 See: United Nations. Statement by the President of the Security Council. S/PRST/1994/47. 25 August 1994. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N94/342/33/PDF/N9434233.pdf?OpenElement>

61 Rapport général des consultations à la base en République Centrafricaine (document de travail élaboré par l’équipe de rapporteurs). 15 March 2015, Bangui, p. 13, para.11. <https://ifaki.blog/wp-content/uploads/2016/05/rapport-consultations-populaires.pdf>

ANNEX I: Case Studies (The Central African Republic)

and the fair distribution of resources a major concern for many communities in the CAR, it is possible to suggest that transitional justice processes focusing on truth and reparation may help promote some form of stability, especially in areas with limited state presence where there are no institutions such as court and prisons to administer justice in the classic sense.

Second, it appears that the main drivers of Council decisions to act on the establishment of transitional justice measures were cues the Council received from the CAR authorities and from the Secretary-General. The most important tool it deployed to support transitional justice in the CAR was the mandating of peacekeeping and peacebuilding missions. When the Council sensed a lack of political will from the CAR authorities, it was reluctant to support the expansion of mission mandates in respect of transitional justice. In most mandate modifications aimed at addressing transitional justice, the Council deferred to recommendations from the Secretary-General, usually accepting them with few changes.

In its decision to establish the COI in 2014, the Council demonstrated that one threshold for its action on transitional justice is the possibility of genocide. The Council's reluctance to call for investigations into other serious crimes, such as the alleged violations reported in 2003—which were later referred to the ICC—shows

that it also ignored serious violations which later served as destabilising factors in the country. It is therefore perhaps incumbent on the Council to “lower” the threshold in its considerations of situations which might merit or require a thorough investigation into allegations of human rights violations.

Finally, the effect of measures adopted by the Council since 2013 show substantial progress in the administration of justice in the CAR. For example, as of January 2017, MINUSCA, in cooperation with national security forces, arrested 384 people suspected of crimes related to the conflict that occurred between September 2014 and October 2016.⁶² Regardless of important advances in transitional justice initiatives, the shadows of the past appear to be constantly present since former leaders continue to return to the CAR unscathed, adding to a growing perception of impunity in the country. The most notable recent example is the return of former president Bozizé—who is designated by the 2127 sanctions regime—to the CAR ahead of the December 2020 presidential elections. Instead of condemning Bozizé for breaching his travel ban, the Council welcomed the meeting that took place between Bozizé and president Toudéra as a factor contributing to reconciliation. There is still scope for the Council to express itself firmly on transitional justice in the interest of preventing history repeating itself in the CAR.

⁶² Amnesty International. “The Long Wait for Justice in the Central African Republic.” 11 January 2017. <https://www.amnesty.org/en/documents/afr19/5425/2017/en/>

Sierra Leone

Introduction

Sierra Leone is a unique case study due to the presence of both a Truth and Reconciliation Commission and the Special Court for Sierra Leone, a reminder that post-conflict transitional justice and accountability mechanisms can include different processes. The approach Sierra Leone took in implementing diverse processes is one that many, including practitioners and scholars, regard as a success story for accountability and transitional justice. In March 2014, then Secretary-General Ban Ki-moon said: “Sierra Leone represents one of the world’s most successful cases of post conflict recovery, peacekeeping and peacebuilding.”⁶³ The comparative success of this model could be considered as precedent-setting for transitional justice initiatives. The relationship between the Security Council and the Truth and Reconciliation Commission and the Special Court for Sierra Leone will be examined in more detail below, in particular the Council’s role in their establishment. This is followed by an analysis of excerpts of relevant language from selected Security Council resolutions.

Brief timeline of the Security Council’s Formal Engagement on Sierra Leone

The Security Council held its first formal meeting on the situation in Sierra Leone on 27 November 1995.⁶⁴ The first mission authorised by the Security Council to Sierra Leone was in 1998, when 70 UN military observers were deployed to the country well into its decade-long civil war (1991-2002). This was followed by the establishment of the UN Mission in Sierra Leone (UNAMSIL) in 1999, which eventually totalled more than 17,400 peacekeepers. It was replaced by the UN Integrated Office in Sierra Leone (UNIOSIL) in 2006, followed by the UN Integrated Peacebuilding Office in Sierra Leone (UNIPSIL) in 2008; UNIPSIL closed in 2014. The UK was penholder on the issue. The Council held its final meeting on Sierra Leone on 26 March 2014.

Truth and Reconciliation Commission

The Lomé Peace Accord between the government of Sierra Leone and the Revolutionary United Front of Sierra Leone (RUF), signed on 7 July 1999, established the Truth and Reconciliation Commission (TRC) with a mandate to “create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from the beginning of the conflict in 1991 to the signing of the Lomé Peace Agreement; to address impunity, to respond to the needs of the victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered”. The Parliament of Sierra Leone passed the Truth and Reconciliation Commission Act in 2000, specifying its scope, mandate and jurisdiction. The TRC was composed of seven members, four of whom were Sierra Leonean, and operated from November 2002 to October 2004. It gathered 7,706 statements and held countrywide public hearings. Its final report, published in 2004, included the names of individual perpetrators and recommendations for government action.⁶⁵ The main recommendations concerned the fight against corruption, the creation of a

new Bill of Rights, establishing the rule of law, promoting good governance, reform of security services and the inclusion of youth and women in political decision-making. The report also recommended the establishment of a reparations programme and an implementing agency, as suggested in the Lomé Peace Accord, as well as guiding principles to further reconciliation efforts.

Although the Security Council was not formally or directly involved in the establishment, or mandate, of the TRC, it explicitly and consistently noted its importance and necessity through calling for its swift establishment and subsequently for the government to implement its recommendations.

Special Court for Sierra Leone

In contrast to the TRC, the UN and the Security Council played a far more active and formal role in the establishment of the Special Court for Sierra Leone. On 12 June 2000, Alhaji Ahmad Tejan Kabbah, then the President of Sierra Leone, sent a letter to the Security Council requesting its assistance “in establishing a strong and credible court that will meet the objectives of bringing justice and ensuring lasting peace. To achieve this, a quick response from the Secretary-General and the Security Council is necessary.”⁶⁶ The letter also stated that “unless a court such as that now requested is established here to administer international justice and humanitarian law, it will not be possible to do justice to the people of Sierra Leone or to the UN peacekeepers who fell victim to hostage-taking.”

The above request stemmed from events on the ground following the signing of the Lomé Peace Accord. Under the terms of the Peace Accord, the government of Sierra Leone agreed to grant amnesty to the RUF leadership and decided not to pursue individual criminal accountability or to establish a special court to do so at that time. However, following its signature, the Peace Accord was violated, with the RUF continuing to commit atrocities. Another significant contributing event took place in May 2000, when the RUF abducted over 500 UN peacekeepers. These events led the government to change its position, namely that granting amnesty was not the only way forward, and to decide that the RUF leadership needed to be held individually accountable for such crimes. This position was stated in Tejan Kabbah’s 12 June letter, which said that “it is only by bringing the RUF leadership and their collaborators to justice in the way now requested that peace and national reconciliation and the strengthening of democracy will be assured in Sierra Leone”.

Several factors influenced Sierra Leone’s decision to request the UN’s assistance in establishing the Special Court, including the severity and extent of the crimes committed, which included violations of international law; the reality that Sierra Leone did not have sufficient resources or expertise to prosecute such crimes, following years of civil war; and the fact that its domestic criminal laws did not include violations of international humanitarian law, such as crimes against humanity and war crimes. It has been noted that the UN’s involvement was also requested to “establish the credibility of the court”.⁶⁷ The US played a particularly active role in its establishment, including at the urging of then US Ambassador to the UN, Richard

63 United Nations. Joint Press Conference with the Secretary General and the President of Sierra Leone. 5 March 2014.

64 United Nations. Security Council Meeting Record. S/PV.3597. 27 November 1995. <https://documents-dds-ny.un.org/doc/UNDOC/PRO/N95/867/92/PDF/N9586792.pdf?OpenElement>

65 Final Report of the Sierra Leone Truth and Reconciliation Commission <https://www.sierraleoneonetr.com/index.php/view-the-final-report/table-of-contents>.

66 United Nations. Letter from the Permanent Representative of Sierra Leone to the President of the Security Council. S/2000/786. 9 August 2000. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2000_786.pdf

67 Michelle Sieff in Global Policy Forum, 2001. <https://archive.globalpolicy.org/component/content/article/203-sierra-leone/39438.html>

ANNEX I: Case Studies (Sierra Leone)

Holbrooke.⁶⁸ Some have commented that Holbrooke and the US saw this as an opportunity to regain lost credibility following its role in brokering the subsequently violated Lomé Peace Accord, which granted amnesty to the RUF.⁶⁹

In response to the 12 June 2000 request from Tejan Kabbah, the Security Council adopted resolution 1315 on 14 August 2000, requesting “the Secretary-General to negotiate an agreement with the government of Sierra Leone to create an independent special court consistent with this resolution”. Following the adoption of resolution 1315, the Security Council continued to play a vital and active role in the process. On 4 October 2000, the Secretary-General submitted a report to the Security Council, including a draft agreement between the UN and the government of Sierra Leone, as well as a draft statute for the establishment of the Special Court.⁷⁰ The Security Council and the Secretary-General exchanged several letters between December 2000 and July 2001, making amendments to the statute.⁷¹ In July 2001, just over one year after Tejan Kabbah’s request, the Security Council approved plans for a court that would prosecute “persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996.” On 16 January 2002, the government of Sierra Leone and the UN signed an agreement on the establishment of a Special Court for Sierra Leone, as envisaged by resolution 1315.

Selected Resolutions

Although the term “transitional justice” does not appear in any Security Council resolutions on Sierra Leone, there is substantial use of several related terms, most notably “reconciliation”, “truth” and “accountability”. These key terms were largely used with reference to the TRC and in the context of the Special Court for Sierra Leone. Meanwhile, other key terms such as “healing”, “reparations”, “compensation”, and “restitution” were notably absent from the resolutions. The term “amnesty” was only used twice. The Council’s use of these key terms is set out in further detail below.

Resolution 1260 (20 August 1999)

The resolution welcomed the signing of the Lomé Peace Accord on 7 July 1999 and authorised the provisional expansion of the United Nations Observer Mission in Sierra Leone (UNOMSIL). It:

10. Stresses the urgent need to promote peace and national reconciliation and to foster accountability and respect for human rights in Sierra Leone...welcomes the provisions in the Peace Agreement on the establishment of the Truth and Reconciliation Commission and the Human Rights Commission in Sierra Leone, and calls upon the Government of Sierra Leone and the RUF to ensure these Commissions will be established promptly within the time-frame provided for in the Peace Agreement

The language below refers to the scheme of reparations—though without using that term—that was put in place in Sierra Leone. Reparations to victims are considered “a critical part of Sierra Leone’s transitional justice process. The Council regards them as one of the primary tools for rebuilding national trust and encouraging reconciliation, and as vital to any effort to create and support an environment conducive to long-term peace and stability in Sierra Leone.”⁷²

12. Stresses the need for the international community and the Government of Sierra Leone to design and implement programmes to address the special needs of war victims, in particular those who have suffered maiming mutilation, and, in this regard, welcomes the commitment of the Government of Sierra Leone as set out in the Peace Agreement to establish a special fund for this purpose

Subsequent resolutions reiterated similar language calling for national reconciliation and the prompt establishment of the Truth and Reconciliation Commission. Resolution 1270 (22 October 1999) built on and strengthened the language of resolution 1260 by additionally emphasising “the key role of the Truth and Reconciliation Commission”. It also “urges” instead of “calls upon” the government to ensure its prompt establishment and adds language calling for “effective functioning...with the full participation of all parties and drawing on the relevant experience and support of Member States, specialized bodies, other multilateral organizations and civil society”. Resolution 1289 (7 February 2000) reiterates the need to promote national reconciliation as in resolution 1260 and resolution 1270. It strengthens previous language by urging the government, specialized agencies, other multilateral organisations, civil society, and Member States “to accelerate their efforts to establish the Truth and Reconciliation Commission”. In doing so, resolution 1289 places the responsibility for its establishment not only on the government, but on the other actors identified as well, and calls for “accelerated” rather than just “prompt” establishment.

Thus, the language used in resolutions adopted in 1999 and early 2000 in relation to the TRC did evolve by becoming more urgent and slightly more specific with the identification of relevant actors in addition to the government. However, the language overall remained fairly limited (a single paragraph in each resolution) and did not identify specific activities beyond the need for establishment and “effective functioning” generally. It could indicate that the Council did not base its recommendations on a particularly nuanced understanding of the context or transitional justice processes. On the other hand, the limited and general nature of the language used may suggest that while the Security Council understood the establishment of the TRC to be important, it was ultimately to be a domestic and nationally-led institution.

In 2000, the Council exponentially increased its engagement on Sierra Leone, as evidenced by the unanimous adoption of eight

68 Ibid.

69 Ibid.

70 United Nations. Report of the Secretary General. S/2000/915. 4 October 2000. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/SL%20S2000915.pdf>

71 S/2000/1234 (22 December 2000); S/2001/40 (12 January 2001); and S/2001/693 (12 July 2001)

72 Mohamad Suma and Cristián Correa. International Center for Transitional Justice. Report and Proposals for the Implementation of Reparations in Sierra Leone. December 2009. <https://www.ictj.org/sites/default/files/ICTJ-SierraLeone-Reparations-Report-2009-English.pdf>

ANNEX I: Case Studies (Sierra Leone)

resolutions⁷³ and three presidential statements⁷⁴ that year. Several of these outcomes were in response to the collapse of the Lomé Peace Accord and the deterioration in security conditions on the ground. As a result, most of these resolutions dealt with extending and strengthening the mandate of UNAMSIL, which had been set up in October 1999. The Council also imposed a diamond embargo on 5 July 2000.

Resolution 1315 (14 August 2000)

The resolution requested “the Secretary-General to negotiate an agreement with the government of Sierra Leone to create an independent special court consistent with this resolution”. It also made several recommendations, including on the jurisdiction of the court, and requested the Secretary-General to submit a report to the Security Council on the implementation of the resolution, within 30 days. The Council adopted the resolution unanimously due to several factors: it was preceded by a request from the President of Sierra Leone;⁷⁵ the situation on the ground had not improved since the signing of the Lomé Peace Accord a year earlier; atrocities continued to be committed along with flagrant violations of the Peace Accord; and attacks had taken place earlier that year on civilians and UN peacekeepers sent by the Security Council to assist in implementing the Peace Accord, including the kidnapping of over 500 UN peacekeepers in May 2000. As a result of this situation, Council members (particularly the US and UK) recognised the need to hold perpetrators of serious crimes accountable and that reconciliation efforts alone would not be sufficient at that time.

The resolutions subsequently adopted in 2001⁷⁶ continued to refer to the need for both accountability and national reconciliation and called for the expedited establishment of the TRC and the Special Court for Sierra Leone, including urging donors to commit

funds towards these. As already described, on 16 January 2002 an agreement was concluded between the government of Sierra Leone and the UN on the establishment of a Special Court for Sierra Leone.

Resolution 1436 (24 September 2002)

The resolution welcomed the peaceful elections held in Sierra Leone in May 2002, extended the mandate of UNAMSIL and reduced its troop ceiling. It welcomed “the launch of the Special Court for Sierra Leone and the Truth and Reconciliation Commission and emphasiz[ed] their importance in taking effective action on impunity and accountability and in promoting reconciliation”.

Resolution 1470 (28 March 2003)

The resolution extended the mandate of UNAMSIL and requested the Secretary-General to provide the Council with detailed plans for the remainder of the drawdown of the mission. It again reiterated the Council’s “strong support for the Special Court for Sierra Leone”.

Subsequent resolutions⁷⁷ continued to express the Council’s strong support for the “essential work” of the Special Court. On the TRC, subsequent resolutions adopted in 2004 and 2005 contained preambular language that encouraged it “to produce its report as soon as possible”⁷⁸; encouraged the government “to disseminate widely the Commission’s report”⁷⁹; and welcomed the publication of the report and encouraged the government “to take further steps to implement its recommendations”⁸⁰, without specifying any details of these recommendations. (The TRC ceased operation in October 2004, following the completion of its report.)

Resolution 1688 (16 June 2006)

This resolution welcomed the transfer of former President Taylor to the Special Court on 29 March 2006 and declared “that the proceedings

73 United Nations. Security Council Resolution. S/RES/1289. 7 February 2000. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Disarm%20SRES1289.pdf>

United Nations. Security Council Resolution. S/RES/1299. 19 May 2000. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N00/439/60/pdf/N0043960.pdf?OpenElement>

United Nations. Security Council Resolution. S/RES/1306. 5 July 2000. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/SL%20SRES%201306.pdf>

United Nations. Security Council Resolution. S/RES/1313. 4 August 2000. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N00/591/96/PDF/N0059196.pdf?OpenElement>

United Nations. Security Council Resolution. S/RES/1315. 14 August 2000. <https://www.securitycouncilreport.org/un-documents/document/ij-sres1315.php>

United Nations. Security Council Resolution. S/RES/1317. 5 September 2000. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N00/630/93/PDF/N0063093.pdf?OpenElement>

United Nations. Security Council Resolution. S/RES/1321. 20 September 2000. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N00/651/02/PDF/N0065102.pdf?OpenElement>

United Nations. Security Council Resolution. S/RES/1334. 22 December 2000. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N00/812/31/PDF/N0081231.pdf?OpenElement>

74 United Nations. Statement by the President of the Security Council. S/PRST/2000/14. 4 2000. <https://undocs.org/S/PRST/2000/14>

United Nations. Statement by the President of the Security Council. S/PRST/2000/24. 17 July 2000. <https://undocs.org/S/PRST/2000/24>

United Nations. Statement by the President of the Security Council. S/PRST/2000/31. 3 November 2000. <https://undocs.org/S/PRST/2000/31>.

75 United Nations. Letter from the Permanent Representative of Sierra Leone to the President of the Security Council. S/2000/786. 9 August 2000. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2000_786.pdf

76 United Nations. Security Council Resolution. S/RES/1370. 18 September 2001. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/WPS%20SRES%201370.pdf>

77 United Nations. Security Council Resolution. S/RES/1508. 19 September 2003. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/SL%20SRES1508.pdf>

United Nations. Security Council Resolution. S/RES/1537. 30 March 2004. <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/SL%20SRES1537.pdf>

United Nations. Security Council Resolution. S/RES/1610. 30 June 2005. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/SL%20SRES1610.pdf>

United Nations. Security Council Resolution. S/RES/1620. 31 August 2005. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/SL%20SRES1620.pdf>

78 United Nations. Security Council Resolution. S/RES/1537. 30 March 2004. <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/SL%20SRES1537.pdf>

79 United Nations. Security Council Resolution. S/RES/1610. 30 June 2005. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/SL%20SRES1610.pdf>

80 United Nations. Security Council Resolution. S/RES/1620. 31 August 2005. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/SL%20SRES1620.pdf>

ANNEX I: Case Studies (Sierra Leone)

in the Special Court in the case against former President Taylor will contribute to achieving truth and reconciliation in Liberia and the wider subregion". It also requested the Secretary-General to assist in the transfer of Taylor to the Special Court's seat in the Netherlands. At the adoption of the resolution, Russia was the only Council member to take the floor, saying it "shares the view of members of the Security Council on the need to hold a trial" for Taylor in the Netherlands, while adding that "for the purposes of this resolution, action under Chapter VII of the Charter is unique and exceptional in nature, and does not set a precedent for resolving similar issues in the same way."⁸¹

At a Security Council meeting on 22 December 2006, the UK expressed its position as follows: "Crucial to reconciliation and the establishment of the rule of law has been the work of the Special Court for Sierra Leone, and in particular the detention and forthcoming trial in The Hague of former Liberian President Charles Taylor. That sends a clear message that there is no impunity."⁸²

Between 2006 and 2013, the Council continued to express its support for the work of the Special Court in the resolutions it adopted, as shown below. On 26 April 2012, Taylor became the first African head of state to be convicted for his part in war crimes.

Resolution 1829 (4 August 2008)

This resolution requested the Secretary-General to establish UNIPSIL. It reiterated "appreciation for the work of the Special Court for Sierra Leone and its vital contribution to reconciliation, peacebuilding and the rule of law in Sierra Leone, reiterating its expectation that the Court will finish its work expeditiously, and recognizing that further arrangements will be needed to address residual matters after trials and appeals are completed".

Resolution 2065 (12 September 2012)

This resolution extended the mandate of UNIPSIL. It also reiterated the Council's "appreciation for the work of the Special Court for Sierra Leone", welcomed the verdict in the trial of Taylor and called on "Member States to contribute generously to the Court".

Resolution 2097 (26 March 2013)

This resolution extended the mandate of UNIPSIL and decided it should be fully drawn down by 31 March 2014. It reiterated "strong support for the Special Court for Sierra Leone and its appreciation for the Court's work, welcoming the conclusion of oral hearings in the Charles Taylor appeal, requesting the Court to make every effort to complete its remaining work by 30 September 2013".

The Special Court for Sierra Leone was dissolved in 2013 and replaced by the Residual Special Court for Sierra Leone in order to complete its mandated tasks and manage a variety of ongoing and ad-hoc functions, including witness protection and support,

supervision of prison sentences and claims for compensation. The Council held its final formal meeting on Sierra Leone on 26 March 2014⁸³ and adopted a presidential statement⁸⁴ welcoming the conclusion of UNIPSIL and commending Sierra Leone for its achievements in consolidating peace 12 years after the conclusion of its civil war. The mission's mandate formally concluded on 31 March 2014.

Observations

The Council remained engaged and maintained its focus on the situation in Sierra Leone, particularly between 1999 and 2013. This owed something to the Council's role in the establishment of the Special Court in Sierra Leone in 2002. The Council backed the creation of the Court⁸⁵ in response to an explicit request from the government of Sierra Leone, which asked for the Council's assistance in "establishing a strong and credible court that will meet the objectives of bringing justice and ensuring lasting peace".⁸⁶ For several years, the Council renewed the mandates of successive peace operations in Sierra Leone: UNAMSIL (1999-2006), UNIOSIL (2006-2008), and UNIPSIL (2008 – 2014). As a result, the Council was able to discuss, monitor and respond to progress and setbacks in the country, including in relation to Sierra Leone's transitional justice process. For example, in 2000, the deterioration of the security situation and violations of the 1999 Lomé Peace Accord probably contributed to the Council's finding that accountability mechanisms such as the Special Court for Sierra Leone were necessary in addition to the truth and reconciliation processes envisaged in the Peace Accord. On the other hand, in 2002, following Sierra Leone's peaceful elections and the launch of the Special Court for Sierra Leone and the TRC, the Security Council welcomed these positive developments and decided to reduce UNAMSIL's troop ceiling. In general, from the mid-2000s onwards, members felt that the country remained on a positive trajectory towards peace consolidation. Stabilisation of the situation in the country led to the drawdown of UNAMSIL, followed by the establishment of successive political missions in 2006 (UNIOSIL) and in 2008 (UNIPSIL). UNIPSIL ultimately closed in 2014. Formal Council meetings on Sierra Leone ended the same year.

The TRC and the Special Court for Sierra Leone, the institutions on which Security Council resolutions on Sierra Leone focus, were not the only transitional justice processes adopted in the context of Sierra Leone, which also utilized community-based reconciliation initiatives known as "Fambul Tok".⁸⁷ The Council's emphasis on the TRC and the Special Court included encouraging their establishment; expressing strong support for their work; urging donors to commit the necessary funds towards their operation; emphasising their importance in taking effective action on impunity and accountability and in promoting reconciliation; and

81 United Nations. Security Council Meeting Record. S/PV.5467. 16 June 2006. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_5467.pdf

82 United Nations. Security Council Meeting Record. S/PV.5608. 22 December 2006. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_5608.pdf

83 United Nations. Security Council Meeting Record. S/PV.7148. 26 March 2014. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_7148.pdf

84 United Nations. Statement by the President of the Security Council. S/PRST/2014/6. 26 March 2014. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_prst_2014_6.pdf

85 United Nations. Security Council Resolution. S/RES/1315. 14 August 2000. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/IJ%20SRES1315.pdf>

86 United Nations. Letter from the Permanent Representative of Sierra Leone to the President of the Security Council S/2000/786. 10 August 2000. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2000_786.pdf

87 Courtney E. Cole. "A Case Study of Local/Global Approaches to Peacebuilding and Transitional Justice in Sierra Leone." 2012. <https://www.usip.org/sites/default/files/files/case-study-competition/20130322-All-in-the-Fambul.pdf>

ANNEX I: Case Studies (Sierra Leone)

calling for their work to be concluded expeditiously. By doing so, the Council repeatedly and clearly communicated its expectations to the government of Sierra Leone to fulfil its obligations in working towards the anticipated transitional justice outcomes envisaged. The Council was also particularly engaged in following the work of the Special Court after the arrest of Charles Taylor and his subsequent transfer and trial, as demonstrated in the resolutions referred to above.

The Special Court for Sierra Leone was unlike the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY), which were established by the Security Council in resolutions explicitly adopted under Chapter VII of the UN Charter.⁸⁸ Instead, it was established by an agreement between the government of Sierra Leone and the UN based on resolution 1315, which was not adopted under Chapter VII. It has been observed that Security Council members were not seeking to establish another UN tribunal similar to the ICTY and ICTR for reasons including the significant financial and personnel requirements for these, and thus preferred a hybrid court administered jointly by the Sierra Leone government and the UN.⁸⁹ The TRC, on the other hand, was a national institution with its legal basis in domestic law, and reflected domestic political support for taking this mechanism forward. As a result of the Security Council and UN being more directly involved in the establishment and operation of the Special Court than in the TRC, the Council engaged more prominently with the work of the Court.

While the simultaneous existence of the Special Court and TRC was uniquely complementary in furthering the goals of transitional justice, the relationship between the two institutions was not clearly defined, despite their potential for overlap. Resolution 1315 did not request the Secretary-General to provide clarity on this relationship, and the agreement between the government of Sierra Leone and the UN establishing the Special Court did not make any direct reference to the TRC. This led to uncertainty around primacy as well as resource and information sharing and perhaps a missed opportunity in better coordinating the roles of the two institutions.

The Council visited Sierra Leone in 2000,⁹⁰ 2003,⁹¹ 2004⁹² and, for the final time, as part of a visiting mission to several countries in West Africa, in May 2012, with the UK and South Africa as the co-leads.⁹³ The purpose of the final one-day visit was for Council members to reaffirm support for peace consolidation, see for themselves progress being made on the peacebuilding agenda and emphasise the importance of ensuring that the 17 November 2012 elections would be peaceful, free and fair. Overall, Council members appeared to have been impressed by the detailed and frank discussions during the

visit to Sierra Leone. While successes were highlighted, the groups they met with were open about the challenges facing the country. The Council came away with an overall impression that Sierra Leone was moving forward in implementing peacebuilding goals, that there was good potential for economic growth, and that the different stakeholders in Sierra Leone were firmly committed to trying to create the appropriate environment for credible and fair elections which would move the country into the next phase of development. Council members appeared impressed by the leaders of the country and appreciated the frank discussions about the problems they were facing. Council members agreed that the mission enabled them to get a first-hand understanding of the situation.

The UK, as penholder and a leading member of the Council on Sierra Leone, had a productive working relationship with the government of Sierra Leone and apparently consulted closely with it ahead of the drafting of resolutions. The US was also considered another leading Council member for several reasons, including as penholder on neighbouring Liberia as well as a strong desire to see Charles Taylor held accountable, particularly following the killing of five American nuns in Liberia in 1992 allegedly by soldiers in Charles Taylor's army.

Sierra Leone can be described as a largely consensual issue on the Council's agenda, with members over the years generally in agreement on following the lead of the UK, in particular since it was consulting closely with the host government. African members on the Council were generally united in their support of the government of Sierra Leone in seeking to rebuild the country after the civil war and to hold accountable those responsible for crimes and violations. China and Russia, who were influenced by the positions of the African members, similarly sought to support the views and requests of the government of Sierra Leone, including in relation to the establishment of the Special Court, viewing national ownership of such processes as important.

At the final formal Council meeting on Sierra Leone on 26 March 2014, Jens Toyberg-Frandzen, the Executive Representative of the Secretary-General to Sierra Leone, briefed and said: "the general atmosphere of peace that now prevails is the culmination of more than 15 years of successive Security Council-mandated peace operations in the country...It is also the result of a remarkable level of steady engagement by the United Nations and international partners, demonstrating that concerted international action can yield positive results."⁹⁴ Ambassador Guillermo Rishchynski (Canada), chair of the Peacebuilding Commission's Sierra Leone country-configuration, also briefed and said: "It is often said that there can be no peace without justice. A pertinent development in Sierra Leone is that, in partnership with the international community, the country

88 United Nations. Security Council Resolution. S/RES/955. 8 November 1994. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/IJ%20SRES955.pdf>

United Nations. Security Council Resolution. S/RES/827. 25 May 1993. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/IJ%20SRES827.pdf>

89 Michelle Sieff in Global Policy Forum, 2001. <https://archive.globalpolicy.org/component/content/article/203-sierra-leone/39438.html>

90 United Nations. Report of the Security Council mission to Sierra Leone. S/2000/992. 16 October 2000. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/SC%20Mission%20S%202000%20992.pdf>

91 United Nations. Report of the Security Council mission to West Africa. S/2003/688. 7 July 2003. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/SL%20S2003688.pdf>

92 United Nations. Report of the Security Council mission to West Africa. S/2004/525. 2 July 2004. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/SC%20Mission%20S%202004%20525.pdf>

93 Security Council Report. "Council Visiting Mission to Africa: Sierra Leone." 24 May 2012. <https://www.whatsinblue.org/2012/05/council-visiting-mission-to-africa-sierra-leone.php>

94 United Nations. Security Council Meeting Record. S/PV.7148. 26 March 2014. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_7148.pdf

ANNEX I: Case Studies (Sierra Leone)

established a Special Court for Sierra Leone to bring to justice the perpetrators of horrific crimes committed during their war...The Special Court was a true partnership between Sierra Leone, the United Nations and Member States”.⁹⁵

In their statements at the 26 March 2014 briefing, all Council members assessed the country’s progress favourably. Several members referred to the Special Court, including the US, which said it had “fostered reconciliation by bringing the worst perpetrators of that terrible war to justice, including Charles Taylor”. The representative of the government of Sierra Leone noted the country “is healing itself, thanks to the Truth and Reconciliation Commission, the Special Court for Sierra Leone, the perseverance of our people and the commitment of the United Nations and our many international friends”. Several Council members also referred to transitional justice specifically. Australia said it was “a successful model of how post-conflict countries can address transitional justice in a way that holds

perpetrators of past crimes to account, while promoting national reconciliation”. Nigeria welcomed “the hybrid mechanism of utilizing the courts and the Truth and Reconciliation Commission in fighting impunity. The most visible fruits of that effort are the considerable lessons that serve to address the issue of transitional justice”. Rwanda said it “highly appreciates the tremendous achievements of Sierra Leone in addressing transitional justice through the Truth and Reconciliation Commission”. Several members also referred to the Council’s role. While Russia emphasized the importance of national ownership, it also noted “the international community played an important role...mainly the United Nations and the Security Council. Comprehensive, coordinated and agreed upon efforts were undertaken. The experience gained in Sierra Leone will be useful in finding long-term, lasting solutions to other conflict situations”.⁹⁶

⁹⁵ Ibid.

⁹⁶ Ibid.

South Sudan

Introduction

On 9 July 2011, the Republic of South Sudan became the world's newest country following a referendum in January 2011 to determine the status of Southern Sudan, with 98.83% of participants voting for independence from Sudan. On 8 July 2011, the Security Council established the UN Mission in South Sudan (UNMISS) by resolution 1996. At a Security Council briefing on 13 July 2011, then Secretary-General Ban Ki-moon said: "There are tremendous challenges on every front...Our responsibilities are enormous, and the role of the United Nations is vital, but complicated...This is the ultimate test of peacebuilding and nation-building. The United Nations must be at the centre, and the leadership and direction of the Security Council will be crucial."⁹⁷

On 15 December 2013, violence broke out in South Sudan's capital Juba following tensions between President Salva Kiir and opposition leader Riek Machar, whom Kiir accused of attempting a coup d'état. In the following years, there was violence between party factions across the country, resulting in a protracted political and security crisis, with significant negative impacts on the human rights and humanitarian situation. In its final report, released in October 2014, the AU Commission of Inquiry on South Sudan found "reasonable grounds to believe that acts of murder, rape and sexual violence, torture and 23 other inhumane acts of comparable gravity, outrages upon personal dignity, targeting of civilian objects and protected property, as well as other abuses, have been committed by both sides to the conflict".⁹⁸ In September 2018, it was estimated that since 2013, about 400,000 people had been killed⁹⁹ and millions displaced, with both sides responsible for ethnically-targeted attacks on civilians and failing to comply with international humanitarian and human rights law.

2015 Peace Agreement

In August 2015, the warring parties signed the "Agreement on the Resolution of the Conflict in the Republic of South Sudan" [2015 Peace Agreement] to establish a Transitional Government of National Unity.¹⁰⁰ Chapter V dealt with "Transitional Justice, Accountability and Healing" and required the newly formed government, "upon inception", to establish three "transitional justice institutions" in line with detailed specifications. These were:

- The Commission for Truth, Reconciliation and Healing;
- An independent hybrid judicial body, to be known as the Hybrid Court for South Sudan; and the
- Compensation and Reparation Authority.

According to the terms of the agreement, the Hybrid Court "shall be established by the African Union Commission", which will also provide guidelines relating to its location, infrastructure, funding, enforcement mechanism, number and composition of judges and other related matters.

Council support for the Hybrid Court in South Sudan, expressed in several resolutions, demonstrated the recognition that South Sudan lacked the institutional capacity to adjudicate atrocity crimes (with the majority of judges and lawyers expected to come from other African countries), while at least giving a nod to South Sudanese ownership. In this regard, prosecutions would focus on individuals violating international law and/or applicable South Sudanese law (emphasis ours), according to the 2015 peace agreement. Less controversial than ICC engagement, the Hybrid Court aligned closely with the AU Commission of Inquiry's recommendation for "the establishment of an ad hoc African legal mechanism under the aegis of the African Union which is Africa led, Africa owned, Africa resourced with the support of the international community, particularly the United Nations to bring those who bear the greatest responsibility at the highest level to account".¹⁰¹

2018 Revitalized Peace Agreement

On 12 September 2018, following three more years of fighting and a lack of implementation of the 2015 Peace Agreement, the warring parties signed the Revitalized Agreement on the Resolution of the Conflict in South Sudan (2018 Revitalized Peace Agreement) in Addis Ababa, Ethiopia.¹⁰² This was facilitated with intensive engagement by regional actors and, in particular the Intergovernmental Authority on Development (IGAD). The 2018 Revitalized Peace Agreement replaced the 2015 Peace Agreement, and incorporated substantial parts of it. As no progress had been made in relation to establishing the institutions under Chapter V of the 2015 Peace Agreement, the 2018 Revitalized Peace Agreement included Chapter V without any changes (except for the addition of requiring 35 percent women representation in these institutions). To date, none of the three transitional justice institutions have been established. One modest sign of progress was the launch in April 2022 of nationwide consultations for the establishment of the Commission for Truth, Reconciliation and Healing. At the time of writing, it was too early to determine the effects of this initiative.

Selected Resolutions

Security Council resolutions on South Sudan include substantial reference to several key terms, including "transitional justice", "reconciliation", "truth", "accountability", "healing", and "reparations". From 2015 onwards, these key terms were largely, but not exclusively, used with reference to the three institutions provided for in Chapter V of the 2015 and 2018 Peace Agreements. References to these key terms are set out in further detail below by examining the language in selected resolutions as well as the context in which the language arose and relevant Council dynamics. The US is the penholder on South Sudan.

97 United Nations. Security Council Meeting Record. S/PV.6583. 13 July 2011. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96F9%7D/Sudan%20SPV%206583.pdf>

98 The AU Commission of Inquiry on South Sudan, Final Report. 15 October 2014. pp. 22-23. <https://www.peaceau.org/uploads/auiciss.final.report.pdf>

99 Megan Specia. "38,000 Estimated Death Toll in South Sudan's War." 26 September 2018. <https://www.nytimes.com/2018/09/26/world/africa/south-sudan-civil-war-deaths.html>

100 Intergovernmental Authority on Development (IGAD). "Agreement on the Resolution of the Conflict in the Republic of South Sudan." 17 August 2015. <https://peacemaker.un.org/sites/peacemaker.un.org/files/Agreement%20on%20the%20Resolution%20of%20the%20Conflict%20in%20the%20Republic%20of%20South%20Sudan.pdf>

101 The AU Commission of Inquiry on South Sudan, Final Report. 15 October 2014. p. 23. <https://www.peaceau.org/uploads/auiciss.final.report.pdf>

102 "The Revitalized Agreement on the Resolution of the Conflict in South Sudan". 12 September 2018. <https://docs.pca-cpa.org/2016/02/South-Sudan-Peace-Agreement-September-2018.pdf>

ANNEX I: Case Studies (South Sudan)

Resolution 2132 (24 December 2013)

The resolution authorized an increase in the military and police capacity of UNMISS in response to the rapidly deteriorating humanitarian and security situation in several parts of the country. The adoption of this resolution just over a week after violence erupted in Juba indicates that Council members were in agreement over the severity of the crisis and the need for the Council to respond.¹⁰³ In December 2013, the Council engaged intensively on the issue and was briefed on the situation in South Sudan once under “any other business” (17 December 2013) and three times in consultations (20, 23 and 30 December 2013). It issued two press statements on the issue, on 17 December (SC/11221) and on 20 December (SC/11227).

Resolution 2155 (27 May 2014)

The resolution streamlined the UNMISS mandate to focus on four key tasks: protection of civilians, monitoring and investigating human rights, creating enabling conditions for the delivery of humanitarian assistance, and supporting the implementation of the cessation of hostilities agreement. The resolution does not explicitly refer to “transitional justice”, focusing instead on the need to respond to the immediate political and security crisis, but it does mandate UNMISS “to facilitate inter-communal reconciliation in areas of high risk of conflict as an essential part of long-term State-building activity”. The resolution also stated that “those responsible for violations of international humanitarian law and violations and abuses of human rights must be held accountable” and urged “all parties to engage in an open and fully inclusive national dialogue seeking to establish lasting peace, reconciliation and good governance”.

On 12 August 2014, Security Council members visited South Sudan for one day (as part of a wider mission to the Horn of Africa and Europe). The South Sudan leg of the trip was co-led by the US and Rwanda.¹⁰⁴ In a meeting with the South Sudan cabinet in Juba, US Ambassador Samantha Power spoke on behalf of the Council and urged the government to develop in earnest plans for a transitional government of national unity, underscored that there was no military solution to the conflict and warned that the Council was prepared to impose “consequences” on spoilers to the peace process, a term understood to include sanctions.¹⁰⁵

Resolution 2206 (3 March 2015)

In response to the continuing deterioration of the political, security and humanitarian situation in South Sudan, the resolution established a targeted sanctions regime, with a travel ban and assets freeze, including setting out listing criteria, and created a panel of experts to assist the sanctions committee. Despite differences of opinion among Council members over the timing of the resolution, there was a surprising spirit of cooperation during negotiations, given the

longstanding divisions in the Council on whether sanctions would promote or harm the South Sudan peace process. The unanimous adoption in part reflected a desire to put pressure on the parties to honour a commitment they had made to finalise a peace agreement by 5 March in the IGAD-mediated negotiations, a deadline they failed to meet.¹⁰⁶ More importantly, it appears that Russia, which had strong reservations about the usefulness of sanctions in South Sudan, deferred to the preference of African members of the Council, such as Angola and Chad, to support the draft, and Nigeria, which did not oppose it.¹⁰⁷

While again not explicitly referring to “transitional justice”, the resolution contained relevant language, stressing “the importance of accountability, reconciliation, and healing as prominent elements of a transitional agenda, while taking note of the important role international investigations, and where appropriate, prosecutions can play with respect to holding those responsible for war crimes and crimes against humanity” and welcomed “further engagement of the African Union to ensure justice and accountability, as well as healing and reconciliation for South Sudan”.

On 12 May 2015, a little more than two months after the adoption of resolution 2206, Council members held consultations on options for criminal accountability and transitional justice in South Sudan at the request of the US. The importance of accountability had been consistently raised by several members during consultations since late 2013, and was an important focus of the Council’s message to the leaders of South Sudan when they visited the country in August 2014.¹⁰⁸ While members expressed general support for the pursuit of accountability and transitional justice in South Sudan, there were differences over the timing of prospective accountability measures.¹⁰⁹ Some believed that accountability should be pursued in tandem with the search for peace, as a tool to fight impunity and modify behaviour for the better in the midst of the conflict.¹¹⁰ Others appeared to hold the view that such efforts during the fighting could be counter-productive and create disincentives for key actors to pursue peace.¹¹¹

Resolution 2223 (28 May 2015)

The resolution extended the mandate of UNMISS for six months. It contained preambular language that stressed “the importance of accountability, reconciliation and healing in ending impunity, and ensuring a sustainable peace” and called on the parties to “contribute to promoting peace and reconciliation”. The mandate of UNMISS included “to foster sustainable local and national reconciliation as an essential part of preventing violence and long-term State building”. This represented a geographical expansion of the scope of the mission’s reconciliation-related role from previous language in resolutions 2155 and 2187, which mandated the mission

¹⁰³ Security Council Report. “Adoption of a Resolution on South Sudan.” 24 December 2013. <https://www.whatsinblue.org/2013/12/adoption-of-a-resolution-on-south-sudan.php>

¹⁰⁴ Security Council Report. “Dispatches from the Field: Council Meetings in South Sudan.” 13 August 2014. <https://www.whatsinblue.org/2014/08/dispatches-from-the-field-council-meetings-in-south-sudan.php>

¹⁰⁵ Security Council Report. “October 2014 Monthly Forecast.” 30 September 2014. https://www.securitycouncilreport.org/monthly-forecast/2014-10/south_sudan_11.php

¹⁰⁶ Security Council Report. “Council to Adopt Sanctions Resolution on South Sudan.” 2 March 2015. <https://www.whatsinblue.org/2015/03/council-to-adopt-sanctions-resolution-on-south-sudan.php>

¹⁰⁷ Ibid.

¹⁰⁸ Security Council Report. “South Sudan Consultations: Options for Accountability.” 12 March 2015. <https://www.whatsinblue.org/2015/05/south-sudan-consultations-options-for-accountability.php>

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Ibid.

ANNEX I: Case Studies (South Sudan)

“to facilitate inter-communal reconciliation in areas of high risk of conflict as an essential part of long-term State-building activity”.

On 28 August 2015, the Council adopted a presidential statement welcoming the signing of the 2015 Peace Agreement (see above).¹¹² During negotiations on the presidential statement, language on the need to ensure accountability proved difficult to agree on, with differing positions about whether this would reinforce or undermine implementation of the agreement.¹¹³ Russia appears to have been uncomfortable with including any language on accountability that went beyond what the parties had agreed to in the 2015 Peace Agreement, and as a result the presidential statement does not refer to the establishment of a credible and effective accountability mechanism in South Sudan.¹¹⁴

Resolution 2241 (9 October 2015)

The Council adopted resolution 2241 well ahead of the UNMISS mandate expiry on 15 November 2015 in order to adjust the mandate to include supporting implementation of the recently signed 2015 Peace Agreement, as set out below. This indicates that the Council was yet again willing and able to respond as soon as possible to the significant developments taking place in South Sudan. However, the adoption was not unanimous, with two abstentions, from Russia and Venezuela.

The resolution included agreed preambular language from resolution 2223, again stressing “the importance of accountability, reconciliation and healing in ending impunity, and ensuring a sustainable peace” and calling on the parties to “contribute to promoting peace and reconciliation”. It contained new preambular language referring to “justice and reconciliation activities” as factors required for sustainable peace, without detailing what these activities may involve. The UNMISS mandate contained the same language as resolution 2223, “to foster sustainable local and national reconciliation”.

The resolution contained new paragraphs dealing with the 2015 Peace Agreement, including several directly relating to Chapter V.¹¹⁵ It requested the Secretary-General to make available technical assistance for the implementation of Chapter V and to report back to the Council within six months at which time the Council would “assess the work that has been done in the establishment of the hybrid court, in line with international standards”.

During negotiations on resolution 2241, there was considerable disagreement on the language related to the Hybrid Court for South Sudan, in particular. Angola, Russia and Venezuela argued that under the 2015 Peace Agreement, issues pertaining to the Hybrid Court were the sole responsibility of the AU. Consequently, Russia complained that the Council should not—as the resolution specified—play a role in assessing efforts to establish the court. Russia further objected to language indicating that the court would be

established in keeping with “international standards,” maintaining that this reference lacked clarity. Ultimately, the paragraph on the Hybrid Court was slightly modified to include language inviting the AU to share information with the Secretary-General on issues related to Chapter V of the 2015 Peace Agreement. However, this appeared to be as far as the penholder (the US) was willing to compromise, and with the resolution not going further to address the concerns of Angola, Russia and Venezuela, the latter two countries abstained on the adoption. (Russia and Venezuela also expressed their disapproval of the language on sanctions, as they believed it was inappropriate to include this in a draft resolution intended to revise the mandate of UNMISS.)

Resolution 2252 (15 December 2015)

The resolution extended the mandate of UNMISS for six months. It contained new preambular language “welcoming the release of the AU Commission of Inquiry report on South Sudan and the Separate Opinion, and emphasizing its hope that these and other credible reporting will be duly considered by any transitional justice and reconciliation mechanisms for South Sudan including those established in the Agreement”. It essentially retained all the language from resolution 2241, referred to above. During negotiations, there was again considerable disagreement on the language related to the Hybrid Court, with opposition again from Angola, Russia and Venezuela.¹¹⁶ The US, as penholder, made no changes to the language taken from October’s resolution 2241, which again contributed to abstentions from Russia and Venezuela.

Despite the 2015 Peace Agreement, violence continued across the country and the human rights, humanitarian and economic conditions continued to deteriorate. There was limited implementation of the Agreement, with the three transitional justice mechanisms provided for in Chapter V not being established, partly as a result of delays in forming the Transitional Government of National Unity. The Council remained actively engaged on the issue and continued to monitor the situation closely. For example, on 17 March 2016, it adopted a presidential statement expressing deep alarm and concern over the situation and lack of implementation of the 2015 Peace Agreement.¹¹⁷ It also called for the establishment of the Hybrid Court and other mechanisms under Chapter V of the Agreement.

On 31 March 2016, the Council held a briefing on implementation of the 2015 Peace Agreement.¹¹⁸ Then-Deputy High Commissioner for Human Rights Kate Gilmore, briefing, highlighted the lack of progress in establishing the three mechanisms under Chapter V and referred to the conditions necessary in this regard. She said: “Above all, the necessary preconditions for the establishment of those transitional justice mechanisms — a complete cessation of

112 United Nations. Statement by the President of the Security Council. S/PRST/2015/16. 28 August 2015. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_PRST_2015_16.pdf

113 Security Council Report. “Presidential Statement on the Signing of the Peace Agreement in South Sudan.” 28 August 2015. <https://www.whatsinblue.org/2015/08/presidential-statement-on-the-signing-of-the-peace-agreement-in-south-sudan.php>

114 Ibid.

115 United Nations. Security Council Resolution. S/RES/2241. 9 October 2015. p.11. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2241.pdf

116 Security Council Report. “Council to Vote on a Resolution on UN Mission in South Sudan.” 14 December 2015. <https://www.whatsinblue.org/2015/12/council-to-vote-on-a-resolution-on-un-mission-in-south-sudan.php>

117 United Nations. Statement by the President of the Security Council. S/PRST/2016/1. 17 March 2016. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_prst_2016_1.pdf

118 United Nations. Security Council Meeting Record. S/PV.7663. 31 March 2016. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_7663.pdf

ANNEX I: Case Studies (South Sudan)

hostilities, improved security, commensurate resources and a high level of political commitment — must all be met... The High Commissioner calls on the African Union to swiftly establish the hybrid court... However... the court will try only the most senior officials responsible for human rights violations and abuses. Many more perpetrators need to face the justice that is so critical to lasting peace. That responsibility will fall to South Sudan's courts, which currently do not have the capacity to conduct such trials. Failure to address the deeply ingrained disregard for human life will only lead to further violations." (Council members did not make statements during the open briefing.)

In April 2016, following several postponements, opposition leader Riek Machar returned to South Sudan from exile and was sworn in as First Vice President, and the Transitional Government of National Unity was constituted. However, implementation of other aspects of the 2015 Peace Agreement, including Chapter V, remained largely stalled. With the country's security, humanitarian, human rights and economic situation still a cause for grave concern, Security Council members visited South Sudan in early September 2016, a trip co-led by the US and Senegal, to engage with government officials and members of civil society.¹¹⁹ Council members also stopped in Addis Ababa to meet with IGAD and the AU Peace and Security Council to discuss the situation in South Sudan. At a press briefing on arrival at Juba airport, Ambassador Samantha Power of the US stressed that the Council wanted to engage the government during the visit regarding the need to establish the Hybrid Court for South Sudan.¹²⁰ Notwithstanding the Council's visit and continued active engagement in the following months, the security and humanitarian environment deteriorated and progress on implementation of the 2015 Peace Agreement faltered with no progress on the establishment of the institutions under Chapter V.

Resolution 2327 (16 December 2016)

The resolution renewed the mandate of UNMISS for one year. It included agreed preambular language from previous resolutions, including stressing "the importance of accountability, reconciliation and healing in ending impunity, and ensuring a sustainable peace". It contained a new operative paragraph that "underscores that truth-seeking and reconciliation is essential for achieving peace in South Sudan and in this regard stresses that the Commission of Truth, Reconciliation and Healing, as stipulated in the Agreement, is a critical part of the peacebuilding process in South Sudan, to spearhead efforts to achieve national cohesion, promote peace, national reconciliation and healing". It also contained new language which "notes that implementing holistic transitional justice measures, including accountability, truth-seeking and reparations, are key to

healing and reconciliation".

As in resolution 2252, the resolution requests the Secretary-General to provide technical assistance to the AU Commission and the Transitional Government of National Unity regarding the establishment of the Hybrid Court for South Sudan. An earlier draft of the resolution requested the Secretary-General to report within 90 days on options relevant to the provision of technical assistance and the facilitation of the collection and preservation of evidence for use by the Court's prosecutor.¹²¹ This was controversial to members such as China, Egypt, Russia, and Venezuela, who maintained that the establishment of the Hybrid Court was the AU's prerogative according to the 2015 Peace Agreement, and that the language on UN engagement was excessive. Some of these members would have preferred more of an emphasis on truth and reconciliation. As a compromise, the penholder removed references to detailed reporting from the Secretary-General on technical assistance and the facilitation of the collection and preservation of data. The resolution simply requests the Secretary-General to report on technical assistance provided by the UN to the AU in establishing the Court in his regular 90-day reports to the Council.

As requested, subsequent regular 90-day reports of the Secretary-General contained such updates where applicable. For example, as reported in 2017, the Office of Legal Affairs provided suggestions for consideration in the preparation of draft constitutive legal instruments for the Hybrid Court,¹²² but progress towards establishment continued to be slow¹²³, with the AU Commission holding its first meeting with the government almost two years after the Hybrid Court was first mandated¹²⁴.

Meanwhile, the situation in South Sudan deteriorated even further: the Council followed the situation closely and received briefings virtually every month in 2017. In 2017, Kiir announced that a "national dialogue" that he proposed in late 2016 would be a government priority. The dialogue, with Kiir as the chair, received criticism from the start, including that it was not a genuine effort at reconciliation and could not replace the establishment of the transitional justice mechanism set out in Chapter V of the 2015 Peace Agreement. At a briefing on 24 August 2017, Assistant Secretary-General for Peacekeeping Operations El-Ghassim Wane and Special Envoy for Sudan and South Sudan Nicholas Haysom raised serious concerns over the credibility of the process and its lack of inclusivity and that "the government has created an appearance of reconciliation effort".¹²⁵ Among Council members, there was no consensus on the degree to which the Council should welcome the national dialogue presented by the government. Some Council members were concerned over its credibility and that a focus on the national dialogue could come at the cost of reviving the inclusive political process and fully implementing the 2015 Peace Agreement.

119 Security Council Report. "Security Council Visiting Mission to South Sudan and Addis Ababa." 1 September 2016. <https://www.whatsinblue.org/2016/09/security-council-visiting-mission-to-south-sudan-and-addis-ababa.php>

120 Security Council Report. "Dispatches from the Field: Council Members Arrive in Juba, South Sudan." 2 September 2016. <https://www.whatsinblue.org/2016/09/dispatches-from-the-field-council-arrives-in-juba-south-sudan.php>

121 Security Council Report. "Renewal of Mandate of the UN Mission in South Sudan." 15 December 2016. <https://www.whatsinblue.org/2016/12/renewal-of-mandate-of-un-mission-in-south-sudan.php>

122 United Nations. Report of the Secretary-General. S/2017/224. 16 March 2017. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2017_224.pdf

123 United Nations. Report of the Secretary-General. S/2017/505. 15 June 2017. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2017_505.pdf

124 United Nations. Report of the Secretary-General. S/2017/784. 15 September 2017. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2017_784.pdf

125 United Nations. Security Council Meeting Record. S/PV.8030. 24 August 2017. <https://www.securitycouncilreport.org/un-documents/document/spv8030.php>

ANNEX I: Case Studies (South Sudan)

Resolution 2406 (15 March 2018)

The resolution extended the mandate of UNMISS for one year, following a three-month technical rollover in December 2017. The resolution contained a number of new references to the role of UNMISS in supporting the peace process, including good offices. The resolution also expressed the Council's intention to "consider all measures, including an arms embargo, as appropriate, to deprive the parties of the means to continue fighting".

The resolution included agreed preambular language from previous resolutions, including stressing "the importance of accountability, reconciliation and healing in ending impunity, and ensuring a sustainable peace" while adding "and in this regard, sharing the concern of the AUPSC about the delays in establishing the Hybrid Court for South Sudan". It also included the operative paragraph on the Commission of Truth, Reconciliation and Healing that was added to resolution 2327 as well as language on "holistic transitional justice measures" contained in that resolution. A new operative paragraph was added that "calls upon the Government of South Sudan to sign without further delay the Memorandum of Understanding with the African Union to establish the Hybrid Court for South Sudan, and further calls on the international community to extend support to establishing the Hybrid Court for South Sudan". The resolution retains the request in resolution 2327 for the Secretary-General to report on technical assistance provided by the UN to the AU in establishing the Hybrid Court in his regular 90-day reports to the Council.

Amid continued fighting across South Sudan and flagrant violations of the 2015 Peace Agreement, on 13 July 2018 the Council adopted resolution 2428, imposing an arms embargo on South Sudan and designating two additional individuals to be subject to targeted sanctions. It was adopted with nine votes in favour and six abstentions (Bolivia, China, Equatorial Guinea, Ethiopia, Kazakhstan, and Russia).

On 12 September 2018, the warring parties signed the 2018 Revitalized Peace Agreement (see above). Overall levels of political violence diminished. However, ethnic and intercommunal violence continued and the human rights, humanitarian, food security and economic conditions remained dire, with an enormous impact on civilians.

Resolution 2459 (15 March 2019)

The resolution extended the mandate of UNMISS for one year.¹²⁶ It was adopted with 14 votes in favour. Russia abstained, in part because the resolution only "noted", rather than "welcoming", the 2018 Revitalized Peace Agreement, which the penholder (the US) refused to do. It contained new language in relation to the 2018 Revitalized Peace Agreement, including a preambular paragraph describing this Agreement as "an important step forward in the peace process that provides a window of opportunity to achieve sustainable peace and stability in South Sudan".

New language was added on "the importance of the rule of law to advancing the peace process", urging the government "to prioritize restoration and reform of the rule of law and justice sector" and welcoming initial steps the government has taken "with the deployment

¹²⁶ Security Council Report. "UN Mission in South Sudan (UNMISS) Mandate Renewal." 14 March 2019. <https://www.securitycouncilreport.org/whatsinblue/2019/03/un-mission-in-south-sudan-unmiss-mandate-renewal.php>

¹²⁷ Security Council Report. "Dispatches from the Field: Security Council Visiting Mission to South Sudan." 21 October 2019. <https://www.securitycouncilreport.org/whatsinblue/2019/10/security-council-visiting-mission-to-south-sudan.php>

of mobile courts facilitated by UNMISS, and further urges the government to take further steps in this regard".

Despite decreased political violence following the signing of the 2018 Revitalized Peace Agreement, its implementation lagged significantly behind schedule, and Machar continued to refuse to return to South Sudan, citing fears for his safety. In light of the lack of progress and fragile situation in the country, on 20 October 2019, Security Council members visited Juba for one day, meeting with Kiir and other signatory parties and stakeholders of the 2018 Revitalized Peace Agreement, including opposition leader Machar, who had returned to Juba the day prior to the Council's visit.¹²⁷ The mission was co-led by the US and South Africa, as Council president for the month, with a focus on pressing the parties to implement the 2018 Revitalized Peace Agreement.

On 22 February 2020, following several extensions of the May 2019 deadline stipulated in the 2018 Revitalized Peace Agreement, the Transitional Government of National Unity was established in South Sudan, marking the start of a 36-month transitional period before elections would be held. Machar was sworn in as First Vice President, followed by four other vice presidents. At the ceremony on 22 February 2020, Kiir remarked: "This action signifies the end to the war. Peace has come, and it has come to stay", and Machar pledged to work with Kiir.

Resolution 2514 (15 March 2020)

The resolution extended the mandate of UNMISS for one year. It included the agreed language contained in resolutions 2406 and 2459, as outlined above. It contained some new preambular language "stressing the importance of transitional justice measures, including those in the Revitalised Agreement" and new language expressing concern about the "lack of cooperation from the government of South Sudan, as stated by the AU Chairperson in February 2020 during the Opening Session of the AU's Executive Council" in establishing the Hybrid Court. Reference to "holistic transitional justice measures, including accountability, truth-seeking and reparations" contained in previous resolutions was removed and replaced with "transitional justice measures, including those in the Revitalised Agreement".

Resolution 2625 (15 March 2022)

This resolution renewed the mandate of UNMISS for one year. One change from previous UNMISS mandate renewals was the call for the mission to support the "full, equal and meaningful participation of women" and the inclusion of youth, faith-based organisations and civil society in transitional justice processes. (The mission had already been tasked with supporting the participation of these groups in the peace process; transitional government bodies and institutions; and conflict resolution, peacebuilding and constitution-making efforts.) These tasks are outlined in the section of the resolution on supporting the implementation of the revitalised agreement and the peace process.

ANNEX I: Case Studies (South Sudan)

Observations

“Transitional justice in the context of South Sudan is critical and indispensable to achieving sustainable peace, national reconciliation and healing, and rebuilding the rule of law... Chapter V of the [2015 and 2018 Peace Agreements], lays down a holistic programme for achieving these goals,” according to the January 2020 report of the Commission on Human Rights in South Sudan.¹²⁸ The fact that the 2015 and 2018 Peace Agreements contain extensive language on transitional justice, and the specific institutions to be established, informed and contributed to the Council’s ability to include in its resolutions fairly comprehensive and holistic transitional justice-related language. It also allowed for Council members to have a generally better comprehension of the concept of transitional justice in the specific context of South Sudan, making the relevant language contained in Council resolutions appropriate and context-specific. In addition, Chapter V of the 2015 and 2018 Peace Agreements provided the Council with a framework to assess progress, or lack thereof, by the parties. The US as penholder (often supported by the UK, France, and European elected members) also played an important role in including and retaining relevant language on transitional justice in the resolutions adopted, particularly on seeking to hold the parties accountable for upholding the commitments made under the 2015 and 2018 Peace Agreements.

However, ongoing conflict and a lack of political will on the part of the government, along with limited action and pressure by the AU and regional actors, has contributed to the failure to establish the institutions required under Chapter V. The AU’s 2017 negotiations with the government to establish the Hybrid Court ended in a stalemate and to date a draft Memorandum of Understanding between the AU and the government has not been signed by the president. In December 2019, the Office of the Legal Counsel of the AU made some progress in finalising a draft statute of the Hybrid Court, but further progress has stalled, along with any agreed timeline for establishment. The argument has been made by the Commission on Human Rights in South Sudan, as well as civil society groups, that under the terms of the 2015 and 2018 Peace Agreements, the AU Commission has the authority to establish the Hybrid Court with or without the cooperation of the government of South Sudan (that is, unilaterally). However, it has so far not shown any willingness to do so.

Kiir and Machar have publicly expressed their reluctance to establish the Hybrid Court. On 7 June 2016, The New York Times published an opinion piece co-signed by Kiir and Machar, which called for the international community, and the UK and US in particular, to reconsider its backing for the Hybrid Court.¹²⁹ The article argued that “disciplinary justice... would destabilize efforts to unite our nation by keeping alive anger and hatred”. Instead, it emphasised the importance of truth and reconciliation and expressed the intention to “create a national truth and reconciliation commission modeled on those of South Africa and Northern Ireland... to investigate and interview the people of South Sudan... to compile a true account of events during the war.” In April 2022, the South Sudanese government initiated public consultations for the creation of

the Commission for Truth, Reconciliation and Healing. These have been carried out through South Sudan; however, at the time of writing in the second half of 2022, consultations had yet to occur in refugee camps where South Sudanese reside in neighbouring countries, and the Commission had yet to be established. In relation to the Hybrid Court, the government has continued to demonstrate a lack of political will. For example, in May 2019, as noted in the Secretary-General’s report, the government entered into a multimillion-dollar contract with a US lobbying firm to block the establishment of the Hybrid Court, raising “significant concerns about the government’s genuine political will to establish the Hybrid Court.”¹³⁰

A lack of unity among Security Council members at certain moments, as described, has undermined the Council’s leverage with the government, including its response to ongoing reports of violence against civilians, impediments to humanitarian access and a lack of implementation of the 2015 and 2018 Peace Agreements, including the establishment of the institutions specified under Chapter V. The contentious issue of sanctions has also contributed to division within the Council, with members who have argued against stronger or expanded sanctions—usually, Russia, China and sometimes the African members of the Council—typically seeing any progress, even if limited, as a positive sign and using this to argue that stronger sanctions would be counter-productive. Other members, who were more sceptical of the commitment by the parties to implement the 2015 and 2018 Peace Agreements, have argued in favour of the use of sanctions to pressure the parties to comply with their obligations (typically France, the UK, the US, and European elected members).

These diverging views have influenced how members assessed implementation of the 2015 and 2018 Peace Agreements, as well as how the Council should respond. Similarly, on issues of accountability and transitional justice, members have over the years disagreed on the extent to which the Council should be involved and exert pressure on the parties to fulfil their obligations. For example, Russia, along with the support of China and several elected members such as Angola, Venezuela and Egypt at various times, has maintained since 2015 that the establishment of the Hybrid Court is the AU’s prerogative and has tried to resist the inclusion of language on UN engagement.

These longstanding and divergent Council views on key South Sudan issues have also limited the impact of the Council’s visiting missions to South Sudan in 2014, 2016 and 2019. While individual members may have benefited from these missions by gaining a deeper understanding of the political climate and security challenges, there was little discernible effect on the positions of Council members such as Russia and China once back in New York. The impact on the parties on the ground appears to have been equally minimal.

Despite little progress by the parties in implementing Chapter V, the Council has provided for an UNMISS role. From the adoption of resolution 2155 on 27 May 2014 to the present, the protection of civilians aspect of the mandate has included language on furthering reconciliation efforts. At the time of writing, this includes facilitating the prevention, mitigation, and resolution of intercommunal conflict through mediation and community engagement in

¹²⁸ United Nations. Human Rights Council Report. A/HRC/43/56. 31 January 2020. <https://www.securitycouncilreport.org/un-documents/document/a-hrc-43-56.php>

¹²⁹ Salva Kiir and Riek Machar. “South Sudan Needs Truth, Not Trials.” 7 June 2016. <https://www.nytimes.com/2016/06/08/opinion/south-sudan-needs-truth-not-trials.html>

¹³⁰ United Nations. Report of the Secretary General. S/2019/491. 14 June 2019. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2019_491.pdf

ANNEX I: Case Studies (South Sudan)

order to foster sustainable local and national reconciliation. This language has remained essentially the same since 2015. The addition of “mediation” in 2018 and “community engagement” in 2019 added specificity to the mission’s activities and responded to calls from civil society, in particular, for the mission to engage more frequently and directly with communities.

Although there is substantial relevant language in Council resolutions adopted on South Sudan in relation to the need for accountability and transitional justice, disagreements and divisions within the Council at various points concerning how, when and whether to pressure the parties in South Sudan to uphold their obligations have sent mixed messages and limited the Council’s effectiveness in

pressing for transitional justice measures. The fact that the conflict in the country has been an ongoing one has presented, and will continue to present, further challenges in relation to the question of timing of transitional justice efforts and the political will of the parties to fulfil their obligations. As the Transitional Government of National Unity was finally established in February 2020, according to the terms of the 2018 Peace Agreement, the newly formed government is now required to establish the three “transitional justice institutions” under Chapter V. At this critical moment in South Sudan’s history, it remains to be seen what steps the parties will take in this regard, and how insistent the Council will be.

Annex II: Participants in Consultations on Transitional Justice organized by Security Council Report

Participants at Security Council Report's virtual consultation on the Security Council's approach to transitional justice, 10 June 2020.

| | |
|---------------------|------------------------|
| Barney Afako | Karin Landgren |
| Dr Valerie Arnould | Alexander Mayer-Rieckh |
| Elazar Barkan | Marcie Mersky |
| Dr Rebecca Brubaker | Dr Julia Raue |
| Adam Day | Cale Salih |
| Pablo de Greiff | Christian Schläpfer |
| Alina Entelis | David Tolbert |
| Priscilla Hayner | Sebastiaan Verelst |
| Nicholas Haysom | Joanna Weschler |
| Shamala Kandiah | Dr. Marieke Wierda |
| Lindiwe Knutson | Sarah Zemp |

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Annex III: Key UN Documents on Transitional Justice

SECURITY COUNCIL RESOLUTIONS

[S/RES/2605](#) (12 November 2021) renewed the mandate of the UN Multidimensional Integrated Stabilisation Mission in the Central African Republic (MINUSCA).

[S/RES/2574](#) (11 May 2021) expanded the mandate of the UN Verification Mission in Colombia to include monitoring compliance with sentences handed down by the Special Jurisdiction for Peace (SJP).

[S/RES/2567](#) (12 March 2021) renewed the mandate of the UN Mission in South Sudan (UNMISS).

[S/RES/2514](#) (12 March 2020) renewed the mandate of the UN Mission in South Sudan (UNMISS).

[S/RES/2459](#) (15 March 2019) renewed the mandate of UN Mission in South Sudan (UNMISS).

[S/RES/2387](#) (15 November 2017) renewed the mandate of the UN Multidimensional Integrated Stabilisation Mission in the Central African Republic (MINUSCA).

[S/RES/2366](#) (10 July 2017) established the UN Verification Mission in Colombia, a successor mission to the UN Mission in Colombia.

[S/RES/2306](#) (6 September 2016) was a resolution amending the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY).

[S/RES/2282](#) (27 April 2016) was a concurrent resolution with the General Assembly on the review of the UN peacebuilding architecture.

[S/RES/2261](#) (25 January 2016) established a political mission to monitor and verify the laying down of arms and the bilateral ceasefire and cessation of hostilities between the Government of Colombia and the FARC-EP.

[S/RES/2242](#) (13 October 2015) was a resolution that addressed women's roles in countering violent extremism and terrorism, improving the Council's own working methods in relation to women, peace and security and taking up gender recommendations made by the High-Level Independent Panel on Peace Operations and the Global Study.

[S/RES/2241](#) (9 October 2015) adjusted the mandate of the UN Mission in South Sudan (UNMISS) to support implementation of the "Agreement on the Resolution of the Conflict in the Republic of South Sudan".

[S/RES/2217](#) (28 April 2015) renewed the mandate of the UN Multidimensional Integrated Stabilisation Mission in the Central African Republic (MINUSCA) and mandated MINUSCA to support, as part of its human rights mandate, the implementation of the relevant recommendations of the Commission of Inquiry.

[S/RES/2206](#) (3 March 2015) created a sanctions regime for South Sudan.

[S/RES/2196](#) (22 January 2015) renewed the Central African Republic sanctions regime and the mandate of the Panel of Experts assisting the 2127 CAR Sanctions Committee.

[S/RES/2155](#) (27 May 2014) reprioritized the mandate of the UN Mission in South Sudan (UNMISS).

[S/RES/2149](#) (10 April 2014) established the UN Multidimensional Integrated Stabilisation Mission in the Central African Republic (MINUSCA).

[S/RES/2137](#) (13 February 2014) took note of the lack of progress towards the establishment of a Truth and Reconciliation Commission in Burundi.

[S/RES/2127](#) (5 December 2013) authorised the deployment of the African-led International Support Mission in the Central African Republic (MISCA). The resolution also requested the Secretary-General to establish an international commission of inquiry, and it established an arms embargo, sanctions committee and panel of experts.

[S/RES/2121](#) (10 October 2013) updated the UN Integrated Peacebuilding Office in CAR (BINUCA) mandate in five areas.

[S/RES/1996](#) (8 July 2011) established the UN Mission in South Sudan (UNMISS).

[S/RES/1970](#) (26 February 2011) referred the situation in Libya to the International Criminal Court (ICC), imposed an arms embargo and targeted sanctions (assets freeze and travel ban) and established a sanctions committee.

[S/RES/1959](#) (16 December 2010) reconfigured the United Nations Integrated Office in Burundi (BINUB) into the new UN Office in Burundi (BNUB).

[S/RES/1902](#) (17 December 2009) extended the mandate of the United Nations Integrated Office in Burundi (BINUB).

[S/RES/1858](#) (22 December 2008) extended the mandate of the United Nations Integrated Office in Burundi (BINUB).

[S/RES/1829](#) (4 August 2008) authorised the creation of a follow-on peacebuilding office in Sierra Leone, the UN Integrated Peacebuilding Office in Sierra Leone (UNIPSIL), to replace the UN Integrated Office in Sierra Leone (UNIOSIL).

[S/RES/1719](#) (25 October 2006) requested the Secretary-General to establish a United Nations Integrated Office in Burundi (BINUB), taking the role of the Peacebuilding Commission into account.

[S/RES/1688](#) (16 June 2006) requested the Secretary-General to assist in the transfer of former Liberian President Charles Taylor to the Special Court's special outpost in the Netherlands.

[S/RES/1650](#) (21 December 2005) extended the UN Operation in Burundi (ONUB) and authorised the sharing of troops between the UN Mission in the Democratic Republic of Congo (MONUC) and the UN Operation in Burundi (ONUB).

[S/RES/1620](#) (31 August 2005) established the UN Integrated Office in Sierra Leone (UNIOSIL) and replaced the UN Mission in Sierra Leone (UNAMSIL).

[S/RES/1606](#) (20 June 2005) requested that the Secretary-General to initiate negotiations on the establishment of a Truth Commission and a Special Chamber within the court system of Burundi.

[S/RES/1593](#) (31 March 2005) referred the situation in Darfur to the International Criminal Court (ICC).

[S/RES/1545](#) (21 May 2004) established the UN Operation in Burundi (ONUB).

[S/RES/1431](#) (14 August 2002) was a resolution amending the Statute of the International Criminal Tribunal for Rwanda (ICTR).

[S/RES/1315](#) (14 August 2000) requested the Secretary-General to negotiate an agreement to create the Special Court for Sierra Leone.

[S/RES/1270](#) (22 October 1999) established the UN Mission in Sierra Leone (UNAMSIL).

[S/RES/1181](#) (13 July 1998) authorised the initial UN Observer Mission in Sierra Leone (UNOMSIL).

[S/RES/1159](#) (27 March 1998) established the United Nations Mission in the Central African Republic (MINURCA).

[S/RES/1012](#) (28 August 1995) established an international commission of inquiry on Burundi.

SECRETARY-GENERAL'S REPORTS

[S/2018/865](#) (25 September 2018) was a report on children and armed conflict in South Sudan.

Annex III: Key UN Documents on Transitional Justice

[S/2018/143](#) (20 February 2018) was a special report on the renewal of the mandate of the UN Mission in South Sudan (UNMISS).

[S/2017/224](#) (16 March 2017) was a report on the UN Mission in South Sudan (UNMISS).

[S/2016/138](#) (9 February 2016) was a report on South Sudan.

[S/2015/655](#) (21 August 2015) was a report on the UN Mission in South Sudan (UNMISS).

[S/2014/158](#) (6 March 2014) was a report on the UN Mission in South Sudan (UNMISS).

[S/2006/980](#) (14 December 2006) was a report on “Uniting our strengths: Enhancing United Nations support for the rule of law”.

[S/2004/616](#) (23 August 2004) was a report on the rule of law in conflict and post-conflict societies.

SECURITY COUNCIL PRESIDENTIAL STATEMENTS

[S/PRST/2020/12](#) (4 December 2020) requested the Secretary-General to cover Burundi in the context of regular reporting on Central Africa and the Great Lakes Region.

[S/PRST/2014/16](#) (8 August 2014) expressed concern at the political, security and humanitarian situation in South Sudan and expressed readiness to consider, in consultation with relevant partners, all appropriate measures, including targeted sanctions.

[S/PRST/2009/35](#) (21 December 2009) welcomed the establishment of the UN Integrated Peacebuilding Office in the Central African Republic (BINUCA).

[S/PRST/2004/34](#) (6 October 2004) was on the Council's intention to consider the matter of justice and the rule of law in conflict and post-conflict societies.

[S/PRST/2004/2](#) (26 January 2004) was on post-conflict national reconciliation. It asked the Secretary-General to give consideration to the views expressed in the 26 January open debate in the preparation of his report on justice and the rule of law.

[S/PRST/2003/15](#) (24 September 2003) welcomed the offer by the Secretary-General to provide a report to guide further consultations on justice and the rule of law.

SECURITY COUNCIL LETTERS

[S/2019/145](#) (15 February 2019) was the Secretary-General's letter containing the Political Agreement for Peace and Reconciliation in the Central African Republic.

[S/2017/481](#) (7 June 2017) attached the letter by Colombian President Santos regarding the second special political mission.

[S/2017/272](#) (21 April 2017) was the Secretary-General's letter containing the Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace in Colombia.

[S/1999/1235](#) (10 December 1999) was the Secretary-General's letter to the President of the Security Council proposing the establishment of the UN Peace-Building Support Office in the Central African Republic (BONUCA).

[S/1997/561](#) (22 July 1997) was the letter from the Central African Republic President Patassé to the Secretary-General requesting the Council to authorise the members of the Inter-African Mission to Support the Bangui Agreements.

SECURITY COUNCIL MEETING RECORDS

[S/PV.8853](#) (9 September 2021) was a meeting on the situation in Afghanistan.

[S/PV.8723](#) (13 February 2020) was an open debate on “transitional justice in conflict and post-conflict situations” under the peacebuilding and sustaining peace agenda item.

[S/PV.8668](#) (19 November 2019) was an open debate to discuss reconciliation. There was also an emphasis on the need to adapt to increasingly complex situations and ensure inclusivity at every stage.

[S/PV.7148](#) (26 March 2014) was the final meeting of the Council on the situation in Sierra Leone.

[S/PV.4903](#) (26 January 2004) was an open debate on the role of the United Nations in post-conflict national reconciliation.

[S/PV.4835](#) (30 September 2003) was a debate on the UN's role in promoting justice and the rule of law in post-conflict situations.

[S/PV.3808](#) (6 August 1997) was the Council's first formal meeting on the situation in the Central African Republic.

[S/PV.3597](#) (27 November 1995) was the Council's first formal meeting on the situation in Sierra Leone.

OTHER UN DOCUMENTS

[SC/14713](#) (24 November 2021) was a press statement in which Council members congratulated Colombians on the fifth anniversary of the 2016 peace agreement.

[A/76/180](#) (19 July 2021) was a report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on “Transitional justice measures and addressing the legacy of gross violations of human rights and international humanitarian law committed in colonial contexts”.

[A/HRC/48/60](#) (9 July 2021) was a report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on “Accountability: Prosecuting and punishing gross violations of human rights and serious violations of international humanitarian law in the context of transitional justice processes”.

[A/HRC/RES/46/20](#) (23 March 2021) was a resolution adopted by the Human Rights Council that established the OHCHR Fact-finding Mission to Belarus.

[A/HRC/RES/42/25](#) (27 September 2019) was a resolution adopted by the Human Rights Council that established the Independent International Fact-Finding Mission on the Bolivian Republic of Venezuela.

[SC/13782](#) (16 April 2019) was a Council press statement reiterating the call for full respect for the Colombian Special Jurisdiction for Peace's independence and autonomy.

[A/HRC/RES/S-28/1](#) (22 May 2018) was a resolution adopted by the Human Rights Council that established the United Nations Commission of Inquiry on the 2018 Protests in the Occupied Palestinian Territory.

[A/HRC/RES/36/31](#) (29 September 2017) was a resolution adopted by the Human Rights Council that established the Group of Eminent Experts on Yemen.

[A/HRC/RES/34/22](#) (24 March 2017) was a resolution adopted by the Human Rights Council that established an international fact-finding mission to Myanmar.

[A/RES/71/248](#) (11 January 2017) was a resolution adopted by the General Assembly that established the International, Impartial and Independent Mechanism to assist in the investigation and prosecution of those responsible for the most serious crimes under international law committed in Syria since March 2011.

[A/HRC/RES/31/20](#) (27 April 2016) was a resolution adopted by the UN Human Rights Council establishing the Commission on Human Rights in South Sudan.

Annex III: Key UN Documents on Transitional Justice

[A/HRC/RES/S-24/1](#) (17 December 2015) was a resolution adopted by the Human Rights Council that established an OHCHR mission to Burundi to investigate violations and abuses of human rights.

[A/HRC/RES/29/13](#) (2 July 2015) was a resolution adopted by the Human Rights Council that established the OHCHR assessment mission to improve human rights, accountability and reconciliation for South Sudan.

[A/HRC/RES/28/20](#) (27 March 2015) was a resolution adopted by the Human Rights Council that extended the mandate of the Independent International Commission of Inquiry on the Syrian Arab Republic.

[S/2014/928](#) (22 December 2014) was the final report of the Central African Republic Commission of Inquiry.

[A/HRC/RES/26/24](#) (27 June 2014) was a resolution adopted by the Human Rights Council that established a commission of inquiry to investigate all alleged human rights violations in Eritrea.

[A/HRC/RES/25/1](#) (9 April 2014) was a resolution adopted by the Human Rights Council that established an OHCHR investigation in Sri Lanka.

[A/RES/68/165](#) (21 January 2014) was a resolution adopted by the General Assembly that set out the right to the truth.

[A/HRC/RES/23/18](#) (13 June 2013) was a resolution adopted by the Human Rights Council that established an OHCHR fact-finding mission to the Central African Republic.

[A/HRC/RES/22/18](#) (21 March 2013) was a resolution adopted by the Human Rights Council that established an OHCHR fact-finding mission on the situation of human rights in Mali.

[A/HRC/RES/18/7](#) (13 October 2011) was a resolution adopted by the UN Human Rights Council appointing the Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence.

[A/HRC/RES/S-17/1](#) (22 August 2011) was a resolution adopted by the UN Human Rights Council establishing the Independent International Commission of Inquiry on the Syrian Arab Republic.

[A/HRC/RES/S-16/1](#) (29 April 2011) was a resolution adopted by the Human Rights Council that established an OHCHR fact-finding mission to the Syrian Arab Republic.

[A/HRC/RES/16/25](#) (25 March 2011) was a resolution adopted by the Human Rights Council that established an international independent commission of inquiry on the situation of human rights in Côte d'Ivoire.

[A/HRC/RES/S-15/1](#) (25 February 2011) was a resolution adopted by the Human Rights Council that established an international commission of inquiry on Libya.

[A/HRC/RES/S-4/101](#) (13 December 2006) was a resolution adopted by the Human Rights Council that established a high-level mission on the situation of human rights in Darfur.

[A/HRC/RES/S-3/1](#) (15 November 2006) was a resolution adopted by the Human Rights Council that established a high-level finding mission to Beit Hanoun.

[A/HRC/RES/S-2/1](#) (11 August 2006) was a resolution adopted by the Human Rights Council that established a commission of inquiry on Lebanon.

[A/RES/60/147](#) (16 December 2005) was a resolution adopted by the General Assembly that set out 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.

[A/RES/54/185](#) (17 December 1999) was a resolution adopted by the General Assembly that established an investigative team for Afghanistan.

[A/RES/52/135](#) (27 February 1998) was a resolution adopted by the General Assembly that called for the appointment of a group of experts to evaluate evidence of human rights violations in Cambodia.

[A/RES/3114\(XXVIII\)](#) (12 December 1973) was a resolution adopted by the General Assembly establishing a commission of inquiry on reported massacres in Mozambique.

[A/PV.1239](#) (11 October 1963) was a meeting of the General Assembly concerning, among other things, the secondment of a fact-finding mission to South Viet Nam.

OTHER DOCUMENTS

Cooperation Agreement between the Office of the Prosecutor of the International Criminal Court and the Government of Colombia (28 October 2021).

"The UN Security Council and Transitional Justice", United Nations University Centre for Policy Research (5 March 2021).

"Penholders and Chairs", Security Council Report (29 January 2021).

"Prioritisation and Sequencing of Council Mandates", Security Council Report (4 February 2020).

"The Rule of Law: Retreat from Accountability", Security Council Report (23 December 2019).

Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan (12 September 2018).

African Union (Assembly of the Union), Decision on the International Criminal Court (30-31 January 2017).

Final Report of the African Union Commission of Inquiry on South Sudan (27 October 2015)

Agreement on the Resolution of the Conflict in the Republic of South Sudan (17 August 2015).

African Union (Assembly of the Union), Decision on International Jurisdiction, Justice and the International Criminal Court (ICC) (26-27 May 2013).

Guidance Note of the Secretary-General, "United Nations Approach to Transitional Justice" (March 2010).

Comprehensive Peace Agreement between the Government of Sudan and the Sudan People's Liberation Movement (9 January 2005).

Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone (12 January 2002).

Arusha Peace and Reconciliation Agreement for Burundi (28 August 2000).

Lomé Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (7 July 1999).

Rome Statute of the International Criminal Court (17 July 1998).

Bangui Accords (25 January 1997).

Annex IV

Transitional Justice: Overview of Key Security Council Open Debates

| DATE | TOPIC | DOCUMENT SYMBOL | CONVENER | BRIEFERS |
|-------------------|---|----------------------------|----------------|--|
| 2 June 2022 | Maintenance of international peace and security: Strengthening accountability and justice for serious violations of international law | S/PV.9052 | Albania | President of the International Court of Justice (ICJ) Judge Joan Donoghue, UN High Commissioner for Human Rights Michelle Bachelet, and Oxford University Professor of Public International Law Dapo Akande |
| 13 February 2020 | Peacebuilding and sustaining peace: Transitional justice in conflict and post-conflict situations | S/PV.8723 | Belgium | Michelle Bachelet, High Commissioner for Human Rights (via VTC); Francisco de Roux, President of the Commission for the Clarification of Truth, Coexistence, and Non-Repetition of Colombia; and Yasmin Sooka, Executive Director of the Foundation for Human Rights in South Africa, Trustee of the Desmond Tutu Peace Centre, and Chair of the Commission on Human Rights in South Sudan |
| 19 November 2019 | Peacebuilding and sustaining peace: the role of reconciliation in maintaining international peace and security | S/PV.8668 | United Kingdom | Secretary-General António Guterres; Alpaslan Özerdem, Dean of the School for Conflict Analysis and Resolution at George Mason University; and Ilwad Elman, Director of Programs and Development, Elman Peace and Human Rights Centre |
| 6 October 2004 | Justice and the rule of law: the United Nations role | S/PV.5052 and Resumption I | United Kingdom | Secretary-General Kofi Annan; Juan Méndez, Special Adviser to the Secretary-General on the Prevention of Genocide and Director of the International Centre for Transitional Justice; and Mark Malloch Brown, Administrator of the United Nations Development Programme |
| 26 January 2004 | Post-conflict national reconciliation: Role of the United Nations | S/PV.4903 and Resumption I | Chile | Tuliameni Kalomoh, Assistant Secretary-General for Political Affairs; Mark Malloch Brown, Administrator of the United Nations Development Programme; and Carolyn McAskie, Deputy Emergency Relief Coordinator |
| 30 September 2003 | Justice and the rule of law: the United Nations role | S/PV.4835 | United Kingdom | Jean-Marie Guéhenno, Under-Secretary-General for Peacekeeping Operations |

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