The UN Security Council and Transitional Justice: A Preliminary Look

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The United Nations (UN) Security Council is an insufficiently understood source of support for transitional justice interventions on the ground. In the best-case scenarios, the Council has assisted national and local endeavours by amplifying the voices of domestic stakeholders, exerting pressure over recalcitrant actors, guarding the integrity of existing peace agreements from internal attacks, leveraging resources, and mandating supportive mechanisms. In other cases, the Security Council’s support has backfired, frustrating national efforts or eroding local capacity. Given these contrasting outcomes, this report seeks to provide a preliminary look, across five case studies, at the conditions under which support from the Security Council – as one of many actors in the UN’s transitional justice architecture – can positively impact transitional justice efforts on the ground.

This report is written for a general audience, though should also be of interest to transitional justice specialists and those interested in the role of the Security Council. This was a deliberate choice given a general finding through the research that outside the community of transitional justice theorists and practitioners, too little is known about this field. Diverging understandings of the definition and scope of transitional justice permeate both the chamber of the Security Council as well as key corridors of the UN Secretariat and the broader UN system. To this end, it was thought useful to frame the findings from this exploratory project as part of a broader discussion on transitional justice, to help foster greater understanding and a more coherent, coordinated approach within the UN system.

This cross-cutting paper is divided into five parts. The first part offers an overview of the concept of transitional justice and its core components and then situates transitional justice concepts in the broader practice of international law. The second section provides a brief introduction to transitional justice and the UN system, examining the primary entities charged with supporting its implementation. The third section zooms in on one particular and, as of yet, understudied UN entity with regards to transitional justice – the Security Council. Drawing on recent work, it briefly touches on how the Council’s approach to transitional justice has evolved over the last three decades and the various debates within the Council on transitional justice’s relation to the Council’s broader work. The fourth section, as the core of the report, looks at the impact of Security Council strategy and actions on transitional justice efforts on the ground. Drawing from the case studies in this report, it describes the mechanisms used, the challenges faced, and the factors that facilitated impact in these cases. The paper concludes with a number of recommendations for the Security Council, the Secretariat, and transitional justice advocates as they think through whether, when and how to engage Council members on these issues going forward.

The paper is designed as a preliminary look at the issue of impact with the goal of sparking discussion and further research. The report and the adjoining case studies – which were completed in August 2020 – are a first attempt at identifying issues that deserve further deliberation.
Introduction to Transitional Justice

Brief Introduction to the Field

The field of transitional justice emerged out of a realization that purely judicial and punitive mechanisms – through courts and trials – were insufficient for addressing instances of widespread violations of rights following violent or particularly disruptive societal transitions. A main impetus of the new approach was to prevent recurrent cycles of violence and build more socially rooted transitions away from widespread crimes. Broadly, transitional justice can be defined as “covering all processes and mechanisms associated with a society’s attempts to come to terms with a legacy of massive human rights abuses and large-scale violence.” The field emerged in a context of transitions from authoritarian rule in Latin America in the 1980s. Currently, transitional justice endeavours, in contrast to the 1980s, are increasingly considered in the context of exits from widespread, devastating armed conflict. The goal of these interventions is to not only ‘deal with the past,’ but also to lay the foundation for preventing such devastating returns to conflict in the future. Importantly, these more recent contexts involve weaker institutions, perpetrators other than the State, and severely diminished capacity and often bandwidth amongst those charged with or responsible for seeing such changes through on the ground. Since the mid-2000s, transitional justice measures are increasingly applied to address situations of ongoing conflict, which comes with an additional set of challenges. These two shifts in the field have led to questions about whether transitional justice measures that were “born” in post-authoritarian contexts were still adequate and effective tools
to use in post-conflict and conflict settings. The context of the field’s origins, in transitions from authoritarian rule, however, continues to colour the current expectations around what is ideal versus what is realistic to expect of societies undergoing a transition. The paper will return to the implications of both of these shifts in the section on Security Council impact and recommendations.

Four Components of Transitional Justice

The UN’s approach to transitional justice is comprised of four elements: criminal justice, fact-finding/truth-seeking, reparations, and guarantees of non-recurrence. These four elements combined, pursued in a context-sensitive and survivor-centred manner, are said to both help a society heal from past instances of widespread violence and prevent future violence. In other words, transitional justice, in this broad framing, is an integral piece in the overall UN effort to prevent conflict.

In practice, each of these elements has taken a variety of forms depending on the specific context, priorities of the stakeholders involved, and the political room for manoeuvre. Manifestations of criminal justice have included, for example, national, hybrid, regional, international and community-based trials. Consider the purely national trials of ancien régime members in Chile or Argentina or the hybrid courts in Cambodia, Sierra Leone and, most recently, the newly proposed hybrid court in South Sudan, which draws from local law but engages international judges. Criminal justice as part of a transitional justice agenda has also been pursued through local and informal approaches, grounded in traditions other than formal or conventional law doctrines. The most widely cited examples are the community-led gacaca courts in Rwanda used to try Rwandan nationals accused of crimes committed during the 1994 genocide against Rwanda’s Tutsis. Regional courts, such as the Inter-American Court of Human Rights, proved critical in combatting impunity and ending widespread amnesties for those involved in mass human rights violations in Latin America in the 1980s. Consider the international endeavours: the ad hoc international tribunals relating to Former Yugoslavia and Rwanda as well as the permanently established International Criminal Court (ICC). The ICC is the most prominent and controversial amongst this last category. Established in 2002, the Court was designed as a mechanism of last resort – a recourse for those who had exhausted local and national remedies and resided under the authority of governments who were either unable or unwilling to try those accused of the most serious crimes under international law. The Security Council holds the authority to refer cases for investigation to this international court.

Fact-finding/truth-seeking, reparations and guarantees of non-recurrence often receive less attention than criminal justice. This is due, in part, to a common misperception that these three other pillars are equivalent to a “soft form of justice” and that they are “a means of pursuing the aim of reconciliation bypassing the implementation of the four measures under the mandate.” From the case studies for this report, it nevertheless appears that the other three elements have a role in Council considerations. Moreover, given the current dynamics on the Council, some experts predict that such elements will be even more likely than prosecutions to garner Council support going forward.

Truth-seeking endeavours take different forms. But they share, as an overall goal, the fulfilment of the “right to truth,” understood as institutions, mechanisms or procedures “seek[ing] information and facts about what has actually taken place, to contribute to the fight against impunity, the reinstatement of the rule of law, and ultimately to reconciliation.” Truth commissions constitute one well-known form of truth-seeking. They aim to contribute to building knowledge on, and a record of, past abuses. They can also be used as a means of breaking the silence, launching a national conversation and beginning to help a society to heal. The best known case of such an approach was the South African Truth and Reconciliation Commission.
A lesser known case is Guatemala, where the Catholic Church spearheaded “one of the most comprehensive unofficial truth commissions ever conducted.”17

Similar to truth commissions, fact-finding endeavours can contribute to building knowledge on, and a record of, past abuses. There are many instances of domestically-led fact-finding endeavours following the toppling of an authoritarian regime or the cessation of hostilities. At times, these initiatives are conducted as a means of preserving memory by documenting and archiving past abuses. Other times, they provide the foundation for future prosecutions, once there is sufficient momentum or political space to try perpetrators. International fact-finding endeavours may also contribute to truth-seeking. In 2005, the UN Commission on Human Rights mandated the Office of the High Commissioner for Human Rights (OHCHR) to establish a monitoring mission on the ground in Nepal.18 In South Sudan, the UN mission monitors human rights violations by the parties and uses public reporting to combat a culture of impunity.19 Reports of such missions help establish an impartial record of events - records that often feed into transitional justice initiatives.

Reparations also come in many forms; they can be both material and symbolic as well as individual and collective. Examples include financial compensation as well as renaming public spaces, the construction of museums or sites of memory, commemorative events, public apologies, etc. The 2014 Special Rapporteur's report on reparations referred to the “scandalous” gap in implementation of (particularly material) reparations, when compared to the other three elements of transitional justice. However, important instances exist and merit careful study.20 The 2016 Colombia peace accord, for example, features reparations as one means for perpetrators to make amends to victims following a voluntary confession in Colombia's “Commission for the Clarification of Truth, Coexistence, and Non-Repetition.”21 Some of the longest standing reparations in modern times include those paid by the German Government
to survivors of the Holocaust\textsuperscript{22} and those paid by the United States to Japanese Americans interned during World War II.\textsuperscript{23}

Acting on guarantees of non-recurrence, in contrast to the other three elements, generally requires a longer time horizon. But such actions are essential for sustaining the gains derived from the other transitional justice endeavours. For example, reforms of the security sector or the judiciary and the bolstering of the rule of law contribute to the prevention of future large-scale violations of human rights and thereby help fulfil the commitment to prevent future violations.\textsuperscript{24}

Accordingly, this fourth element most closely ties the field of transitional justice 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.\textsuperscript{25}

Taken together, these four elements and their various manifestations make up the backbone of the UN’s approach to transitional justice. To summarize, while the field of transitional justice is made up of four elements, there is no one way to apply the elements in a given case. Knowing the available elements and approaches in a transitional justice toolbox is only the start. For an intervention to be effective, actors at the local, national, regional, and international level must consider context-specific approaches. Each situation, for example, may call for unique timing, design and application given the country context, and, opportunistically, the political space for manoeuvre.\textsuperscript{26} In other words, tailoring rather than templates are most effective.\textsuperscript{27} And even when context-specific interventions are identified, it must be noted that transitional justice endeavours are extremely difficult to carry out. Thus, any analysis of impact must be made with an understanding of the overall likelihood of success in the short and long term. At times, this may mean pursuing the path of least resistance until a community, national elites, an administration, meddling State neighbours, or Great Powers are more amenable to a broader approach.\textsuperscript{28}

The Emphasis on a Holistic, Integrated Approach

According to a 2012 report by the UN Special Rapporteur, interventions work best when transitional justice architects adopt an integrated and comprehensive approach to the four “pillars” of transitional justice – justice, truth, reparations and guarantees of non-recurrence.\textsuperscript{29} This leads to what is often referred to as approaching transitional justice in a “holistic” way rather than focusing simply on judicial versus non-judicial remedies or singling out one group of perpetrators or one level of responsibility over others.\textsuperscript{30}

Consider the following two case examples for an illustration of how a particular transitional justice intervention might suffer when approached in a segmented rather than a holistic and integrated manner. The international community’s intervention in Rwanda, explored in this volume, gave great weight to the right of (most) victims to an effective remedy, as well as the right to reparations and moderate institutional reform. However, Dr Gerald Gahima, former Rwanda Chief Prosecutor, argued that the right to truth was summarily brushed aside in the Rwandan context. As a result, this led to what some experts have characterized as a one-sided account of violations and, thus, an unfulfilled obligation by the State to provide accountability for all victims of widespread violence, no matter the identity of the perpetrator.\textsuperscript{31} By contrast, the Afghanistan case in this volume describes how permanent members of the Security Council blocked efforts to promote accountability for those involved in violations of human rights over the course of the conflict. According to the author, this hesitancy arose from permanent members’ and other powerful States’ military involvement in the conflict and their subsequent concerns that their soldiers’ actions could be construed as war crimes. As a result of this blockage, the Council’s mission in Afghanistan focused its efforts on information gathering, especially around civilian causality reporting, rather than on judicial mechanisms.
In 2004, the UN Secretary-General published a seminal report defining transitional justice as “covering all processes and mechanisms associated with a society’s attempts to come to terms with a legacy of massive human rights abuses and large-scale violence.” In this same report, the Secretary-General emphasized the legitimate authority of domestic actors to determine injustices and design responses at the national level. In 2006, the Secretary-General called for transitional justice to be “consistently integrated” into the UN’s peace operations, thereby linking it to the Security Council’s mandate to maintain international peace and security. In this same report, he also recognized that the Security Council mandated several peace operations and special political missions to support and promote justice efforts. In 2009, the Security Council made reference, for the first time, to the broad range of transitional justice mechanisms, reflecting the wider UN system’s “holistic approach to the issue of fighting impunity for serious violations of international law.” In 2010, the Secretary-General published a Guidance Note on transitional justice, outlining the UN system’s and States’ responsibilities.

OHCHR is the most common point of engagement on transitional justice issues within the UN Secretariat. OHCHR also supports the Special Rapporteur devoted to transitional justice (on truth, justice, reparations and guarantees of non-recurrence). Since its establishment, the mandate of the Special Rapporteur has issued nearly 20 reports on issues covering interpretation and implementation of the four
central elements, as well as specific country reports. The inaugural post-holder played an essential role in conceptualizing and circumscribing the four elements, while at the same time addressing the current challenges that transitional justice advocates face.

Looking to the UN system more broadly, many other UN entities conduct significant work on transitional justice. For example, the United Nations Development Programme (UNDP), UN Women, the Department of Peace Operations and its Rule of Law Unit, and the Peace Building Support Office all lead important endeavours in this space. Historically, however, there has been no evident coordination mechanism on transitional justice issues within the UN system. Rather, actors have operated in parallel and coordinated on a more *ad hoc* basis. However, the UN is currently renewing its approach to transitional justice through extensive, system-wide consultations led by the Executive Office of the Secretary-General and OHCHR. A new guidance note will be issued in 2021.
Over the last 30 years, the Security Council has supported the four pillars of transitional justice to varying degrees and in different ways. It has introduced transitional justice-relevant language in peace operation mandates and held missions and States responsible for their implementation. Its members have also issued joint statements calling for the respect of the elements underpinning transitional justice and issued country-specific resolutions drawing from these elements. The Council has hosted thematic debates on reconciliation, rule of law, and historical memory and called for reports from the Secretariat. Security Council country visits have also been a crucial way in which the Council’s members have been able to signal their support for domestically-driven endeavours and their condemnation of efforts by some to skirt or overlook a survivor or “victim”-centred and human rights-based approach.

In February 2020, the Security Council held a meeting on “transitional justice in conflict and post-conflict situations” under the peacebuilding and sustaining peace agenda item. While this was the Council’s first meeting exclusively on transitional justice, as a thematic issue, it considered transitional justice indirectly in various contexts for decades. This open debate was intended to provide the opportunity to examine the role of the Council, amongst other actors, in supporting transitional justice processes.

The February 2020 briefing was held in a context in which the Council, according to some, has played an increasing role in promoting the rule of
Between 2004 and 2020, for example, the Council made references to the two in over 160 Security Council resolutions. This was a marked increase over the same period prior to the 2004 report of the Secretary-General on the Rule of Law and Transitional Justice, in which the term was defined. At the time of the Council briefing, transitional justice activities were also increasingly integrated into Security Council resolutions prescribing actions in thematic areas. In the concept note prepared for the open debate, the UN’s approach in supporting transitional justice processes was described as having become more clearly articulated over the past two decades. It also stated that the Security Council has made more frequent use of the instruments at its disposal in support of transitional justice, “be it through the creation of commissions of inquiry to support the pursuit of truth and justice, or through giving peacekeeping missions [...] or special political missions [...] a mandate to support the design and implementation of nationally owned transitional justice initiatives.”

The show of unity on the issue, however, belies different approaches within the Council. At some moments, States have highlighted criminal accountability as the most important element of any transitional justice agenda. At other times, States see criminal justice, especially when internationally-led, as the most threatening and perhaps unwelcome element. At other times, States have advocated for a “holistic” approach to transitional justice drawing from the four elements described above. All members have conceded the importance of initiatives being context-specific. But some put more weight than others on the importance of measuring and aligning country-specific approaches with existing international standards when these seem to conflict. Given these differences of opinion, it can at times be challenging for the Security Council to rally sufficient support within its own ranks for a particular transitional justice initiative. When it does, the leverage, as discussed in the cases to come, can be unparalleled and significant.

It is also important to highlight that the February 2020 debate occurred in a climate of increasing disunity on the Council in general and, some have argued, an overall decline in the prominence of human rights and questions of accountability in Council practice more specifically. In such a climate, it is less realistic to expect robust action from the Council on this topic, especially regarding the creation of new, internationally-led accountability mechanisms. But internationally-led endeavours are only one form of judicial intervention and judicial mechanisms are only one aspect of transitional justice. Concurrently, there are many, less remarked, ways in which the Council has continued to collectively engage at the national and local level on transitional justice. In order to shed light on the instances in which the fifteen members of the Council were able to impact the national transitional justice agenda, the remaining sections of this paper will examine findings from five country case studies. The instances of Council involvement described in these case studies illuminate the variety of ways in which the Council has engaged on this file and the range of outcomes following the Council’s interventions.
This section offers a brief overview of cross-cutting findings from five case studies: Afghanistan, Colombia, the Democratic Republic of Congo (DRC), Rwanda and South Sudan. It describes the rationale for case selection, highlights the variety of transitional justice mechanisms featured across the cases, and outlines common inhibiting and enabling factors for enhancing the Council’s impact.

The findings shared are only preliminary. Further research is needed, drawing on a larger universe of cases in order to generate assessments of general trends. However, these five cases shed light on a number of potential factors affecting the conditions under which Security Council action has had a positive impact, no impact or a negative impact. They also provide insights on the nature and the degree of the impact – as it is not always as the Council members themselves expected or intended.

Case Selection and Summaries

These particular cases were selected in order to provide a diverse set of examples of Security Council impact in efforts to support – or, in some cases, block – transitional justice endeavours. The case authors took a broad interpretation of Security Council activity, including both the decisions, resolutions, and statements of the
Council’s members as well as the actions of the missions they mandated. Accordingly, the cases demonstrate variations in the Council’s impact over time and across three geographical contexts. The five cases also illustrate the use of quite different transitional justice mechanisms and demonstrate impact at the international, regional, national and communal level. The cases are based on a mix of desk and fieldwork.

**Afghanistan:** This case examines the Security Council’s impact on transitional justice initiatives in the post-2001 era, in a context of high significance to key permanent members on the Security Council. The author looks at the impact of Council action around Afghanistan’s “reconciliation” programs, its support for the Afghanistan Independent Human Rights Commission (AIHRC) – the institutional lead on transitional justice in Afghanistan – and at the UN special political mission’s (UNAMA) human rights monitoring. Overall, the author assesses the impact of the Council as one that was generally detrimental to the judicial transitional justice agenda, as Council members accepted and even endorsed the Government’s trading of “reconciliation” for immunity. But the author also highlights the contribution of UNAMA’s civilian casualties reporting, as well as the AIHRC’s efforts to document abuses committed in the context of the conflict. The author argues that such efforts should be more explicitly and actively supported by the Council, and that they could contribute to establishing a fact-base for future prosecution or historical memory purposes. The case study also explores how the direct involvement of powerful foreign States in the conflict contributed to the body’s collective reticence to push for accountability. This position was further enabled by the Afghan Government’s own reluctance to push for accountability at the time under study.

**Colombia:** This case traces recent Council efforts to support the broader peace agreement, including its comprehensive transitional justice elements between 2016 and 2019. The author documents how the Council strategically worked with the Government and key transitional justice stakeholders to defend the independence of the JEP – the independent institutional lead on the judicial transitional justice stream – when it came under attack. The author describes how this support was enabled not only by unity of position on the Council, but also by a unique investment of its members in protecting the terms of the 2016 peace agreement. This investment was bolstered by the Government of Colombia’s (both past and current administrations’) recognition of the international reputation and leverage built on the success of their agreement and the international community’s subsequent efforts to see implementation run smoothly. The case illustrates missed opportunities for intervention as well, noting the potential blindspots that can arise when the Council’s membership is determined to see a case as a success. In accounting for the Council’s constructive impact vis-à-vis the JEP, the case describes how the Council and its special political mission balance keeping the relevant parties onside while also nudging them (back) towards compliance with the 2016 agreement. This approach was largely built on Council members’ clear respect of the fact that the process was Colombian-designed and led, careful picking of battles, and intervening on the basis of a holistic understanding of the peace deal and the interdependence of its various parts.

**DRC:** From the First Congolese War in 1996 to the present day, the Council has supported national actors employing a range of tools, spanning the four pillars of transitional justice. The author reveals how shifting and contradictory approaches by the Security Council and its peacekeeping mission, particularly around amnesties, led to the breakdown of certain transitional justice endeavours in the DRC. The author also highlights how the Council’s efforts to engage with community-led transitional justice processes have served, at times, to undermine those same processes, as a result of the longstanding close working relationship between the Council’s mission and the State and its institutions. Yet, the case also highlights how this longstanding relationship has led to the strengthening of domestic transitional justice efforts, primarily through the Congolese military courts and the mobile gender units.

**Rwanda:** This is the earliest case examined in this project. It captures a different period of engagement with international and national
transitional justice agendas, in which the establishment of international criminal bodies was broadly supported amongst Council members. The beginning of this case precedes the establishment of the ICC. Through the case, the authors helpfully illustrate Council efforts to influence transitional justice endeavours, not only at the international but also at the national and community level. As in the South Sudan and the DRC case studies, it involves a UN peacekeeping mission and spans the period of active and post-conflict settings. The authors begin in 1994, with public statements by the Council during the conflict, which, in turn, facilitated the establishment of accountability mechanisms once the violence ceased. The authors conclude with the closing of the UN International Criminal Tribunal for Rwanda (ICTR), the referral of the Tribunal’s cases to national jurisdictions, and the establishment of the residual mechanism. Overall, the case describes the significant impact of Council efforts to embed a legal response to international crimes at the national, international and localized level. It also shows, however, the risk of neglecting to consider how parallel transitional justice endeavours will interact with each other, leading at times to perverse incentives at odds with the goals of those pursuing transitional justice.

South Sudan: Transitional justice in South Sudan became a central issue in the context of the civil war that broke out in 2013. Following reports of widespread atrocities by both the Government and the rebel factions, the 2015 and 2018 peace agreements incorporated specific provisions for transitional justice, including some requiring the UN's support. However, in contrast to other transitional justice processes, in South Sudan the Security Council has played a secondary role, with the African Union and the Intergovernmental Authority on Development placed as more direct supporters and guarantors. According to the case author, the Security Council has, therefore, had a more limited ability to influence transitional justice processes, including regarding the proposed hybrid court. Nonetheless, the author argues that the Council and the UN mission on the ground have played important roles in keeping transitional justice high on the agenda of the conflict parties, contributing to an impartial factual accounting of violations on all sides, building better public knowledge of transitional justice, and helping to strengthen national capacities relating to the rule of law.

Initial Findings

Across the five cases, authors cited instances of impact relating to all four pillars of transitional justice. The four elements manifested through fact-finding missions and truth commissions as a form of truth-seeking, reforms to the justice sector and institution building as a means of encouraging non-recurrence, reparations, and local, hybrid, national and international trials applied in the pursuit of justice. The fact that the cases focused on these particular manifestations of transitional justice is in no way an indication of their superiority as mechanisms. Rather, they are simply the approaches adopted in the cases under study.

Fact-finding: Each of the cases touched on examples of fact-finding on human rights abuses and civilian casualty reporting during and/or immediately following a period of widespread abuse as a key tool that lays the foundations for possible future truth-seeking or justice endeavours. The South Sudan case, for example, describes how the UN Mission in South Sudan (UNMISS) has produced a series of high-profile human rights reports that have demonstrated serious and widespread violations by both sides in the civil war. These reports not only help to provide an impartial basis for future transitional justice processes, but have also been used by the UN to directly call for greater restraint during the conflict. Since 2016, the UN's human rights reporting has been bolstered by complementary reports from the UN Human Rights Commission for South Sudan, created by the Human Rights Council. According to the case author, there is some hope that these reports will feed into the broader transitional justice process such as by contributing to the building of a factual record for the hybrid court.

Truth commissions: Explicit Council support for truth commissions across these five cases was less common. A majority of the Council’s
members did, however, specifically support the idea of establishing a truth commission in South Sudan designed with the goal of encouraging truth-seeking and eventual reconciliation. In the Colombia case, in contrast, the author observes that the Council has been less vocal in its defense of the truth commission than in its support of the JEP. This is in spite of the fact that both institutions have come under attack. Yet, the Security Council did invite the head of Colombia’s Truth, Reconciliation and Reparations Commission to brief the Council, as part of the February 2020 Open Debate, providing him with a platform to defend the efforts of the truth commission and the broader principle of the right to truth as an integral element of transitional justice not to be neglected in a single-minded drive for accountability. The impact of this invitation on the ground is said to have deterred, to a certain degree, efforts to undermine this institution.

**Judicial sector reform:** The five cases also highlight Security Council-backed interventions aimed at reform of the judicial sector with the aim of facilitating non-recurrence. This finding sits in contrast to certain assumptions in the literature attesting to the fact that UN development actors may be better placed than the UN’s peace and security arms to push for longer-term types of transitional justice interventions, given their intergenerational focus. Across the five cases, there were a number of clear examples where the Security Council was either the most vocal or the most impactful in pushing to protect or consolidate reform. For example, the Security Council’s support for targeted reforms to the Rwanda criminal justice system was one of the elements that helped nudge Kigali to take on specific reforms over time. These reforms included the drafting and amending of bespoke legislation, removing capital punishment and investing in prison infrastructure. The Rwanda case authors describe how such domestic reforms were enabled, in part, by the existence and operation of the International Criminal Tribunal for Rwanda. In a similar vein, the DRC and South Sudan case authors describe how the Security Council, through its missions, helped support the mobile courts in South Sudan and the mobile gender units in DRC.
also emphasizes the benefits of the Council’s long-term engagement with key stakeholders, which helped build up the Congolese military courts, through the sharing of evidence, security for judicial personnel and assistance with witness protection.61

Criminal accountability measures: The impact of the Council’s direct and indirect support for criminal accountability was illustrated across the five cases. It manifested through active support for national trials in Colombia, plans for a hybrid court in South Sudan, the community-led Gacaca courts and national and international trials relating to Rwanda, and ICC indictments and community trials in DRC. In Afghanistan, the case author argues that the Council’s potential impact on criminal accountability was more limited due to the opposition amongst the permanent members and powerful States outside the Council with a shared interest in protecting their own troops – who had been involved in the conflict in Afghanistan – from potential international or national prosecution. In addition, the case highlights how some government officials, at the time the research was conducted, were opposed to a structured accountability process.62

Reparations: The five cases only showed peripheral Council involvement and impact on material reparations. This is perhaps not surprising as reparations require the concerned State to acknowledge responsibility, in addition to it being a potentially resource-intensive process. Hence, the Council can only encourage countries to undertake an (administrative) reparation programme.63 However, where resources are scarce, Council members may be more likely to forgo including this provision in their resolutions, deeming it as less feasible than other, less costly methods.64

The Council’s Comparative Advantage

To put these initial observations in context, it is important to note that across these cases, the Council was often not the primary actor in terms of a direct link to outcomes. Rather, the Council’s comparative advantage seemed to lie in: 1) creating a diplomatic atmosphere conducive to bolstering domestic justice; 2) offering crucial technical and logistical support; or 3) playing an important role in selective naming and shaming, when other actors’ efforts to do the same had fallen on deaf ears. In the first instance, the Colombia case gives the most apt example in which the unity (or lack of disunity) on the Council, concerted trips by its members to the region, carefully selected language, and the ability to keep the major players onside in the corridors of New York as well as in its mission’s work on the ground, enabled the Council to exert crucial leverage at a pivotal moment in the period immediately following the completion of the peace agreement.

In the second instance, the Council’s contribution to the technical and logistical aspects of national transitional justice endeavours was evident across all cases, but most apparent when it coincided with well-resourced, larger Council missions. In the case of DRC and South Sudan, for example, the Council offered critical technical and logistical support to a range of transitional justice endeavours through its two largest peace operations. In DRC, this support ranged from sharing evidence with Congolese prosecution and defense investigators to providing security for the mobile court judges. Civil society organizations, however, delivered the bulk of the technical and funding support to the courts in an innovative international-domestic partnership.65 In South Sudan, the 2018 peace agreement set the UN mission’s role as support to the relevant regional bodies and national authorities on the transitional justice agenda.66

In the third instance, the Council played an important role in Colombia, speaking out when other voices went unheard.67 Similarly in Rwanda, where individual Member States and the UN more broadly had lost credibility in the aftermath of the genocide, the Council still called for essential reforms of the domestic justice system. This, however, only followed other instances where the Council had critically remained silent, such as in the face of the Government’s refusal to send indicted members of the Rwanda Patriotic Front to Tanzania for questioning by the ICTR.
The Council’s Absence

The five cases also capture the impact of the absence of Council action on the success of particular transitional justice endeavours. In the case of Rwanda, for example, the authors describe the impact of the absence of support for truth-seeking, including via a truth commission. And in Afghanistan, and to some extent South Sudan, the authors point to the impact of an insufficient focus on accountability for the most serious crimes on combined efforts to push the transitional justice agenda forward. The DRC case author also suggests that Council action, when compared to other UN and external actors’ contributions in the region, was most effective when targeted at the international or national levels rather than towards local/communal processes – a finding otherwise at odds with recent calls for the Council to engage more on community-driven processes. This case raises the question of whether it is better for the Council and its missions to be, as the author put it: “a distant enabler” rather than a “direct participant” in community-led processes given what is cited in the DRC case as “pervasive suspicion” of State, army, and international actors at certain levels of Council engagement.68

Conditions Inhibiting Impact Across the Five Cases

The cases also help to highlight four key challenges to ensuring effective Council impact through its support for national actors and its country missions. The first challenge involved the difficulty of timing the Council’s interventions vis-à-vis developments on the ground. Current research suggests that whether a situation is in an active state of conflict (and there is no “transition” to speak of), immediately post-conflict, or in the years following the cessation of hostilities matters for the design and effectiveness of the transitional justice strategy.69 The DRC case, for example, illustrates the challenges of privileging support for criminal accountability when a conflict was still ongoing versus once it has concluded and a peace agreement is signed. The author attributes a poorly timed intervention with the breakdown of the Disarmament, Demobilization and Reintegration (DDR) process. Participants in the DDR process began to doubt the viability and sustainability of the amnesties they had been promised in exchange for laying down their arms.70 The Afghanistan and South Sudan cases show the challenges of timing if the Council waits too long to push for accountability, when conflict victors are all or in part responsible for violations and are therefore more reluctant to acquiesce to such measures. In addition, the case authors explore whether there are instances when it is not appropriate for the Council to try to impact transitional developments on the ground. Questions for further research include: What is the potential for Council impact on transitional justice during situations of active conflict? What is the potential for Council impact while an agreement is being negotiated or once it is in place? And should the Council adjust its approach to transitional justice when a peace agreement it is supporting breaks down and conflict re-emerges?

The second challenge evident across the five cases was the issue of how best to support national efforts to plan transitional justice interventions in a context-specific manner. The literature has long stressed the importance of an integrated and holistic approach. Along these lines, the UN Special Rapporteur argued that “the weakness of each of these measures alone provides a powerful incentive to seek ways in which each can interact with the others in order to make up for their individual limitations.”71 But an “integrated” approach is not necessarily the same as a simultaneous approach. The five cases highlight the importance of thinking through knock-on effects of different types of interventions within a single transitional justice strategy. They describe the unintended consequences of leveraging multiple transitional justice processes simultaneously, without attention to context. The impacts of this “template” rather than “tailored” approach are most evident in the Rwanda and DRC cases, where interventions aimed at promoting justice hurt ongoing efforts to promote truth and guarantees
of non-recurrence. One of the possible inferences from these cases is that “more” in terms of the number of transitional justice interventions pursued, may not necessarily always be better. It is rather a matter of which options from the transitional justice toolkit are most appropriate in a given context, at a given time, and in light of existing needs. In other words, tailored rather than template transitional justice interventions were most likely to be successful.

A third challenge revealed in the cases relates to national ownership. Research has emphasized its importance, particularly at the beginning of a transitional justice process, as “the concept of transitional justice can be perceived as foreign and not relevant in the local context.” Moreover, at early stages in a transitional justice campaign, there is more of a tendency to resort to pre-existing models rather than allowing the space for one to emerge organically. The five case studies illustrate the challenges that arise from insufficiently broad national ownership of the transitional justice agenda. They raise the question: How can the Security Council effectively defend UN values and normative standards and ensure buy-in from the parties? In the case of Afghanistan, the author argues that the Council did not venture far enough. In Rwanda, the case study authors suggest that the Council could have gone further in the second and third phase of its involvement on transitional justice at the international and national levels. By the fourth phase of its intervention, the processes of referring cases to the national courts opened up more extensive dialogues with national actors and struck a better balance between international and local interests and ownership. In the case of the DRC, the author illustrates how the Council may have gone too far in pushing core UN values around amnesties in particular, to the detriment of national ownership and, overtime, national capacity. The result, the author argues, was diminished local capacity and the undermining of perceptions of neutrality of the subnational processes they strove to support. Lastly, in the case of Colombia, the author highlights the tension between those stakeholders that think the Council has not gone far enough in defending the suite of transitional justice institutions created through the peace accord, while others worry the Council would have lost its influence if went any farther.

Fourth and finally, the cases also illustrate how weak or non-existent institutional architecture is a hurdle to take into account when considering the Council's ability to support and positively impact national transitional justice agendas. A comparison of South Sudan and Colombia, or DRC in the 2010s versus the 2020s, demonstrates the challenges of being impactful in the presence of weak or non-existent institutions – institutions critical for sustaining the necessary legal and economic reforms central to ensuring non-recurrence. To be impactful, the cases intimate that Council members must evaluate their prioritization of some institutions over others (e.g. Ministries of Defense versus Justice). They must also query whether the institutions they are helping to build or prop up are sufficiently representative to last and whether these institutions are, in fact, prone to or complicit in ongoing human rights violations. If not, the cases raise the question: what options remain? Is supporting and being part of a flawed or incomplete transitional process better than not?

The five cases offer a number of striking examples, such as the AIHRC in Afghanistan or the DDR programme with amnesties in DRC, to suggest that the Security Council, through its actions, has answered in the affirmative. Further research is needed, however, to examine how these dynamics play out in other cases, and whether the results of its endorsements of flawed processes in any given case are more important to bolstering a struggling transitional justice process than the Council's silence.

Conditions Enabling Impact Across the Five Cases

Beyond highlighting challenges, the five cases also begin to hint at some of the conditions that enable impact. These conditions might help explain why the Council was more effective
1. Council unity, is of course, important for spurring action. But even more important, in these cases, was the absence of direct Permanent Five or Elected Ten involvement in the human rights violations in question. Comparing Council interests, for example, in Afghanistan versus Colombia, paints this picture quite starkly, as well as Council involvement on Rwanda. Conversely, this observation raises the question: what impact, if any, can the Security Council have when perpetrators or facilitators of the human rights violations in question sit on the Council? What options are available in these circumstances? What recourse do other Council members or parts of the UN have?

2. In addition, broad enabling language is useful and, most often, a precondition for impact. But how it is used matters more. While similarly broad language existed in the Colombian and Afghan cases, the Security Council leveraged the existing language in Colombia to greater effect. In contrast, the language employed in the case of Afghanistan remained aspirational, in many respects, when compared to what the Security Council was willing to seek to enforce. 

3. It is also helpful for both the Council and its missions to embrace a holistic, needs-based, victim-centred approach to transitional justice early. It only gets harder with time. Colombia and South Sudan both present cases where this was done well – in Colombia due to the strength of pre-existing national transitional justice efforts, which the Council could help reinforce, and in South Sudan, due to the attention, expertise, and advocacy of the mission leadership to this issue. DRC presents a harder case, in which external actors, including the Council, attempted to impose a victim-centred approach midway through a UN mission strategy weighted towards a State-centred approach. The result, according to the case author, was a confusion of incentives and the breaking down of the existing DDR measures that, while imperfect, had been harnessing important benefits in terms of demobilization and disarmament of armed groups.

4. Knowing and using the Council’s comparative advantage on an issue both internally (within the UN family) and externally (versus regional organizations or influential Member States) is key to increasing the Council’s impact. This condition includes knowing when not to act in order to safeguard the space for those who might be most influential vis-à-vis a government or stakeholders in a given situation. For example, in the case of South Sudan, the Council and its mission were charged with supporting regional and national endeavours. As a result, according to the case author, the UN mission has not always best placed to push for national reforms when compared to major regional players. In DRC, the author suggests that even when the Council did not hold a comparative advantage, its insistence on pushing a particular approach to the transitional justice agenda curtailed parallel local and national efforts and curtailed its own efficacy on the broader transitional justice file.

5. The Council is most impactful when it strikes the appropriate balance between international standard-setting and context-sensitive approaches. The study of Council impact in DRC demonstrates a case in which, the author argues the Council failed to strike this balance effectively, pushing too hard for the imposition of contested standards (around the ICC) to the detriment of other non-judicial transitional justice goals. The analysis of Council impact in Rwanda, in contrast, presents a case where the...
Council could have pushed harder for the incorporation of certain international standards into the domestic practice from an earlier stage.

6. The Council's ability to impact justice reform may depend on the duration and size/capacity of the mission and on how the transitional justice efforts around justice sector reform under “non-recurrence” are linked to broader rule of law reform support. In the current environment in which lighter touch, limited duration missions are the model preferred by host governments, the Council may be less well placed to effectively support justice reforms than other actors in the UN system. These reforms often need longer-term relationships with key stakeholders and an intergenerational planning vision. In spite of this, the Council can offer critical, time-sensitive support to institutions under threat, while recognizing that transitional justice actors relying on such support would not be sustainable in the mid- to longer-term.

7. The Council's influence can also be complemented by actors with a comparative advantage, e.g. those with local expertise, local legitimacy, or those operating outside the political limitations experienced by the Council. According to one national champion of transitional justice featured in the Colombia case: “The more modest the Council is in its ambitions, the more effective it can be in the results.” In other words, the Council should neither rush in nor, after careful reflection, should it fear strategic and limited action on transitional justice because it brings unique qualities to the fore that others lack.

8. Lastly, the cases highlight a common condition related to Security Council mandated mission structures: integration makes the Council’s ability to impact transitional justice endeavours easier. But they may be less necessary if the mission leadership is sensitized to the issues and coordinates well with OHCHR and other UN counterparts working on transitional justice.

In summary, the five case studies provide an excellent jumping off point for an initial analysis of Security Council impact on transitional justice efforts on the ground. This analysis does not pretend that the five cases capture all key issues. Rather, the above elements are meant to start a discussion, and not limit it.

Overall, these cases show that there is a need for a comprehensive analysis of the conditions under which the Council can be most impactful. Ideally, this assessment should be conducted in a country prior to the moment when a case lands on the Council’s agenda. Currently, no such process exists, especially as regards an assessment of institutional strengths and weaknesses. The Security Council, in turn, could call upon the Secretariat, its missions on the ground and its thematic and country envoys to provide such an analysis through mandated briefings or reports.
To conclude, the findings from the case studies coalesce around a number of takeaways for the Security Council, the UN Secretariat, and transitional justice advocates at the local, national and international level. The recommendations are meant to provide a point of departure for further policy research and consultations. Going forward, key stakeholders may choose to flesh out and hone these proposals for general application or to adapt and apply them in particular cases.

For UN Security Council Members:

1. Remember the unique role the Council can play, on a normative level, in upholding international standards and calling for accountability and compliance with existing transitional justice endeavours. On a more operational level, Council members might add the most value by encouraging national ownership and preserving the local nature of community-based initiatives. This often comes in the form of technical expertise or logistical support.

2. Recognize that by simply staying the course and going for an incremental strategy, consistent attention from the Council can give stability to the immediate post-conflict stage. National authorities and conflict parties, particularly in the Colombia case, attest to how the Council has become an important factor in the weight given to the peace process, including the transitional justice elements.

3. Consider that adequate and context-sensitive mandate language may be all that is needed as long as the Council-mandated mission leadership is ready to take the transitional justice agenda
forward. According to two former multi-mandate Special Representatives to the Secretary-General (SRSGs) interviewed for this volume: “just enough to work with should be sufficient.”

4. Draft transitional justice mandates in broad, enabling language, as too detailed and prescriptive wording may obstruct effective and adaptive transitional justice action on the ground. That said, endowing UN missions with clear and strong mandates for monitoring and reporting holds tremendous value. In addition, language encouraging missions to integrate an analysis of transitional justice into their transition planning, where it is not currently present, will help consolidate and protect gains following the mission’s departure.

5. Remember that modest and incremental support to national authorities is often better than a “fire hose” approach, due to the intimate and interconnected relationship between transitional justice initiatives. In other words, the Council’s support for one type of transitional justice mechanism will affect both that mechanism and the others employed, even if the Council is not involved with these other endeavours. Thus, there is a need to think holistically and to monitor parallel efforts to ensure they work in complimentary rather than conflictual ways.

6. Consider that the impact of the Council’s actions will also depend on the dynamic relationship between the Council and the affected State. Transitional justice is most effective when parties feel they are able to engage around transitional justice with the UN. Thus advice and setting expectations will be needed as relationships fluctuate throughout the course of the Council’s engagement.

7. Work with the national authorities to embed support for transitional justice in the overall transition – not as a separate piece. The Council does not need a transitional justice strategy per se – at least by this formal name. But it should ensure that the elements in a transition that will assist with non-recurrence are adequately supported – looking for where the objectives of peace and transitional justice dovetail in positive ways. The Secretariat can play an essential role in helping Council members achieve this.

8. Continue to include expert transitional justice briefers in existing open and closed Security Council briefings.

For the UN Secretariat:

1. Recognize that transitional justice is a political issue and not simply a technical exercise. As such, engagement often requires finding willing stakeholders at the national and community levels. But this recognition needs to be built upon and guided by a rights-based approach as articulated by the Special Rapporteur, which puts victims’ rights and States’ obligations at the centre of the approach taken.

2. Ensure that victims are engaged early in the process and that a diversity of stakeholders are engaged. Base early engagements on conflict and stakeholder analyses conducted promptly and jointly by the relevant UN entities and agencies.

3. Look to raise awareness, present necessary facts, and guide the Council in its understanding of the: 1) country’s own transitional justice strategy; 2) places where the Council will have a comparative advantage; 3) places where it is perhaps best for the Council to defer to other actors in and outside the UN system; and 4) provide early warning to the Council when crucial elements of a transitional justice endeavours are under threat.

4. Advocate for the principles behind transitional justice in a strategic and targeted way. Important endeavours have included the call for considering a
5. Carefully select appropriate SRSGs who will know how to interpret and use the broad enabling language of the resolutions to open up the possibilities that are in the mandate rather than be restricted by them.

6. Strive for a needs-based and context-specific approach vis-à-vis the national authorities. Frequent engagement and, where feasible, the co-designing of mandates and missions with national authorities has proved beneficial in the cases examined.

7. Refrain from automatically calling on the Council to “do more” in any given case. This can, as the cases have shown, lead to unhelpful micromanagement from New York and introduce (more) partiality into different stages of the transitional justice process on the ground. Instead, the Secretariat could support Council efforts to provide broad support for actors on the ground to do what is needed to push their strategy forward, within the margins of UN standards.

8. Integrate human rights, rule of law, and development focus when coordinating UN support to a national transitional justice process, understanding that transitional justice interventions are not temporary, but take time and require a longer-term focus.

9. Weigh the advantages and limits of advocating for an explicit reference to transitional justice in a mandate, a Secretary-General report, or a Council statement. In some instances using the term can increase the impression of foreign imposition and decrease the impression of local ownership, especially where there is not a longstanding tradition of transitional justice, by that name.

10. Continue to raise awareness in the Council on these issues, encourage briefings by the High Commissioner for Human Rights, country-specific Special Rapporteurs, Special Advisors on Children and Armed Conflict and Sexual Violence in Conflict.

11. Consider seconding OHCHR colleagues with transitional justice expertise to relevant parts of the system to help build in-house capacity on this file, as was done in the case of the Peacebuilding Support Office.

12. Consider developing a flexible coordination mechanism, to increase coherence and joint approaches across the system.

For Transitional Justice Advocates at the Local, National and International Levels:

1. Decide if and when it is advantageous to engage the Council on these issues. When it comes to Council mandates on transitional justice, more is not necessarily better. Rather it can be important to preserve space for flexibility and creativity on the ground. Council involvement brings a number of potential benefits in the best scenarios, including international attention and pressure, an amplification of local or even marginalized voices, as well as resources, and technical and logistical support. But Council involvement also has the potential to further politicize issues that could, at times, be more easily confronted out of the international spotlight. The Council will also necessarily introduce certain political considerations from the national interests of its fifteen members into its decision-making. Moreover, the Council will have to manage its relationship with the host government and often its neighbours, which may as often frustrate transitional justice endeavours as it facilitates them.
2. Accept that the Security Council’s own engagement will be limited and put pressure on the Secretariat to do the briefings and detailed analysis. It asks a lot of the Council to understand the history and context of each situation for which it is seized. That said, much of the information it receives is mediated through the Secretariat’s reports and expectations. Thus, it is important to focus on the understanding and commitment of Secretariat actors including the mission leadership, national and expert briefers to the Council, and the verbatim transcripts from the Council’s briefings and debates.

3. Consider whether involving the Security Council – versus another actor within the UN system – is best when a national strategy is lacking or fractured. While the Council’s members can emphasize international standards and encourage compliance in a given case, the body is less suited to supporting the creation of a country-specific transitional justice strategy.

4. Continue to insist that any intervention in a given country is needs-based. Help the broader UN system and Council members to understand these needs and work with them even if the result looks quite different from transitional justice processes that have existed previously. Conversely, bring a situation to the Council’s attention when uneven national or local needs are driving the process and leading to selective justice for only one set of perpetrators or justice/reparations for one category of victims.

5. Consider establishing a “Group of Friends” on transitional justice, composed of Like-minded Member States. This group could then help coordinate and pressure action on files within the Security Council or lead the way in funding or tracking the implementation of measures called for by the Council in the transitional justice sphere. Inspiration could be drawn from the current “Group of Friends on Mediation” co-chaired by Finland and Turkey.86
References


2. United Nations Security Council, "The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General, United Nations, 23 August 2004, S/2004/616: para 8. In a similar vein, ICTJ defines the term as "a set of approaches and mechanisms designed to address the situation of massive violations of human rights in the wake of repressive rule or conflict. The scale and impact of such violations requires solutions that not only provide a meaningful measure of justice for very large numbers of victims but also which help reconstruct the basic elements of trust between citizens and the government institutions that are necessary for the rule of law to function effectively," International Centre for Transitional Justice, "Transitional Justice in the United Nations Human Rights Council," ICTJ Briefing (2011).


8. See the South Sudan case study in this volume for more information on the hybrid court.

9. "Category I" genocide cases were tried through both Rwanda's national court and through the UN-backed ICTR. In its last two years, the Gacaca courts also dealt with Category I cases.


11. For a further discussion on the role of the ICC in this volume, see the DRC and the Colombia case.


13. This is not the only misperception. The first report of the Special Rapporteur also directly countered prevalent “misconceptions” around transitional justice including that it is equivalent to a “soft form of justice” and that it is “a means of pursuing the aim of reconciliation bypassing the implementation of the four measures under the mandate” Human Rights Council, "Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff," United Nations, 9 August 2012, A/HRC/21/4/Sec. C : para. 19.

14. Closed workshops with transitional justice and Security Council practitioners and experts, June – August, 2020, whether these institutions are in fact prone to or complicit in ongoing human rights violations.


19. See the case study on South Sudan in this volume.


On compensation paid to survivors of the Holocaust, see, as one example, Michael Wise, “Reparations,” The Atlantic Monthly 272, 4 (1993): p. 32-35. “Before the 1952 [West German] agreements [on reparations and indemnification] there was no precedent in international law for a nation-state to assume responsibility for crimes it committed against a minority within its jurisdiction, and no precedent for collective claims of this kind. Even if nothing can call the dead back to life or obliterate the crimes, Nahum Goldmann [the chief negotiator for Israel at the claims conference] wrote in his memoirs, “this agreement is one of the few great victories for moral principles in modern times.” Wise quotes the Executive Director of the Conference managing the dispersal of claims, which resulted from these agreements, as stating: “For this [Claims Conference] the bottom line is...the principle of accountability. Germany, by accepting responsibility for its predecessor government, has taken a step that has overriding moral significance for the international community.”


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26 See, for example Nicola Palmer, Courts in Conflict: Interpreting the Layers of Justice in Post-Genocide Rwanda (Oxford: OUP, 2019); or Phil Clark, Distant Justice: The Impact of the International Criminal Court on African Politics (Cambridge: CUP, 2018) on the shortcomings of the holistic transitional justice push, which, they each argue, does not account sufficiently for the tensions among the different transitional justice approaches when applied in tandem. Both authors argue that not all of these different models work easily together. For example, while some leaders in Rwanda pushed for a Truth and Reconciliation Commission, with some form of amnesty, they did not elaborate on how this would have operated effectively alongside the punitive judicial component that – for some suspects – they believed were also necessary.

27 Tailoring may require going beyond the mechanisms briefly highlighted in this volume or the transitional justice toolbox as it is currently conceived in the 2010 UN Guidelines.

28 Tailoring may require going beyond the mechanisms briefly highlighted in this volume or the transitional justice toolbox as it is currently conceived in the 2010 UN Guidelines.

29 The interconnectivity of the approach is elaborated in the first report of the Special Rapporteur, a mandate established in 2011: Human Rights Council, “Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff,” United Nations General Assembly, 9 August 2012, A/HRC/21/46/ Sec. D: para. 22 states: “International experience, as well as research, suggests that the comprehensive implementation of the four components of the mandate provides stronger reasons for various stakeholders, foremost amongst them, the victims, to understand the measures as efforts to achieve justice in the aftermath of violations than their disconnected or disaggregated implementation.”


31 See case study on Rwanda in this volume.


33 Ibid.


39 Closed UN workshops on transitional justice practitioners and senior UN experts, NY, Summer 2020.

40 The term “victim-centred” appears most frequently in the UN documentation although “survivor-centred” is now preferred by many. In order to accurately reflect the original language of these reports, this volume will generally use “victim-centred.”


42 Most recently, at the initiative of the UK, the Council held an Open Debate to discuss the role of reconciliation in maintaining international peace and security.

43 While this role may be increasing, it is also important to highlight that transitional justice and the rule of law represent broad substantive areas that have been the focus of attention by the United Nations for decades. The matter has been on the agenda of the General Assembly since 1993 under the agenda item ‘Strengthening the rule of law’. On 24 September 2003, the Security Council met at the ministerial level to discuss the United Nations role in establishing justice and the rule of law in post-conflict societies.

References
This is referring to 'rule of law' and 'transitional justice' as separate phrases.


For more on the evolution of Security Council language and strategies vis-à-vis transitional justice, see forthcoming work by Security Council Report (a partner in the overarching project under which this report was conducted). According to this research, four broad elements are in play when the Security Council incorporates transitional justice measures or references: a) how well do members understand these issues; b) temporary and sequencing factors (when they are interested and when they are not); c) broad political push and pull factors; and d) reporting and narrative factors that can be persuasive on the Council. In addition, the research highlights that despite the fact that the Council often seeks to send a strong message about accountability, in practice it is much less persistent in demanding to know how this is being operationalized on the ground.

This case broadly aligns with a recent assessment conducted by PBSO which concludes that: [PBSO report says engagement was on all 4 pillars but it was thin. But to have been focused and to sequence interventions and they must be “needs based” and “locally owned” approach rather than a “one size fits all” approach]. UN Peacebuilding Fund, Secretary-General’s Peacebuilding Fund: Thematic Review - PBF-supported projects on Transitional Justice (New York: PBF, 2020).


The Council was divided rather than unanimous in its support for the resolution that approved of the Truth and Reconciliation Commission.

Interviews with Council members and senior diplomatic officials, April - May 2020. See also Colombia case in this volume.


Justice reform measures are considered transitional justice measures to the extent that they fit into the broader concept of “guarantees of non-recurrence.” In order to fall under this understanding, justice reform measures need to aim at non-recurrence of the type of human rights violations that have been prevalent and the legacy of which national actors are seeking to address.


See Rwanda case study in this volume.

This case broadly aligns with a recent assessment conducted by PBSO which concludes that engagement was broad (on all 4 pillars) but thin. In a similar vein, the PBSO brief concludes that to have been focused and to sequence interventions and the UN must adopt a “needs-based” and “locally-owned” approach rather than a “one size fits all” approach.

See case on Afghanistan in this volume.

To be contrasted with reparations arising as a consequence of a judicial process.

The South Sudan case discusses some of the potential pitfalls of the Council support, in building broader expectations that the international community will financially support reparations. In Colombia, in contrast, support for the reparation provisions in the peace deal have come both from the Council’s special political mission in Colombia, as well as other parts of the UN system. For example, the UN Peace Building Fund has supported a few projects related to strengthening this mechanism (See, UN Peacebuilding Fund, Secretary-General’s Peacebuilding Fund: Thematic Review - PBF-supported projects on Transitional Justice (New York: PBF, 2020).

The CSOs included: the American Bar Association/Rule of Law Initiative (ABA/ROLI), the Open Society Justice Initiative (OSJI) and the Open Society Initiative for Southern Africa (OSISA). See DRC case in this volume for further information.

UKMISS’s transitional justice strategy also included offering support to the Ministry of Justice to establish a coordinating transitional justice technical committee, developing effective victim/witness programs, and expanding outreach and sensitization programs to build a common understanding of transitional justice measures. See South Sudan case in this volume for further information.

See Colombia case study in this volume.

See DRC case study in this volume.


See DRC case study in this volume.


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Closed UN workshops on transitional justice with practitioners and senior UN experts, NY, Summer 2020.

See Colombia case study in this volume.

It should be noted, however, there is a large difference between a post-peace-agreement context (Colombia) and a no-peace-agreement context (Afghanistan during the period of the case study).

The Council did not express its shift in strategy as “victim-centred,” but some interviewees argued that it was implicit in the Council’s shift to viewing prosecutions (v. amnesties) as necessary for high-ranking atrocity suspects.

Comparing UNMIN or the UN Mission in Colombia, for example, to MONUSCO.

Interview, Senior Government official with experience leading national transitional justice strategy, with Security Council backing, via Zoom, 7 July 2020.

See case study on Colombia in this volume.

The author would like to thank the individuals who participated in the 7 July 2020 expert closed workshop for their reflections on these issues. The author has sought to incorporate their recommendations into this section.

Interviews, via Zoom, 4 and 7 July 2020.

As described by a discussant in an expert workshop, Summer 2020.

See Rwanda case study in this volume.

