

Damian Etone, *The Human Rights Council: The Impact of the Universal Periodic Review in Africa* (Routledge, 2021, xv + 215pp, £36.99) ISBN 9781032175317 (pb).

The United Nations Human Rights Council (HRC), established in 2006, brought with it an innovative mechanism for reviewing states' human rights performance – the Universal Periodic Review (UPR). Operating in four and a half year cycles, the UPR is a state-led peer review mechanism whereby UN member states participate in an interactive dialogue and receive recommendations to improve their human rights standards. It is a wholly cooperative process, and so can be understood as a 'soft' mechanism, the recommendations of which are not legally binding on the state under review. As a non-coercive and non-confrontational platform, the UPR was subject to early criticism for being 'dependent on the goodwill of states' and 'institutionally weak' (p 23). In light of these differing views on the mechanism's potential, research has sought to assess, *inter alia*, the extent that it generates positive human rights changes on the ground, and what factors may contribute to this.

Dr Damian Etone, Lecturer in International Human Rights Law at the University of Stirling, attempts to address some of these issues in his book 'The Human Rights Council: The Impact of the Universal Periodic Review in Africa'. Etone's central argument is that cooperative human rights monitoring mechanisms such as the UPR can be 'at least as, if not more, effective than coercive mechanisms' (p 3). This book seeks to substantiate this hypothesis by providing both theoretical and empirical insights into African states' engagement with the UPR. It is an outstanding contribution to the literature on international human rights monitoring and is essential reading for researchers and advocates engaging with the mechanism.

Chapter One of this book opens by reviewing the establishment and operation of the UPR. Rather than merely outlining the mechanism's background, principles, and modus operandi, Etone throughout reflects on the experiences of African States, thus providing a suitable basis for his case study discussions in chapters four to eight. Reference is also made to some of the key critiques and issues with the UPR including, notably, whether it is an effective human rights mechanism (pp 23-27). For these reasons, Chapter One will be especially useful for those exploring the UPR for the first time. As a relatively new mechanism, the modalities of which have evolved through various HRC resolutions and decisions, this up-to-date, concise explanation of the UPR process, which takes account of these changes, should prove valuable.

Toward the end of this Chapter, Etone rightly notes that there have been few theoretical analyses of the UPR's impact (p 27). Chapter Two thus moves to review five theories of state compliance to determine which may 'appropriately explain the potential impact of state engagement with the UPR' (pp 31-32).¹

¹ An article based on this chapter is also available, see Etone, 'Theoretical Challenges to Understanding the Potential Impact of the Universal Periodic Review Mechanism: Revisiting Theoretical Approaches to State Human Rights Compliance' (2019) 18 *Journal of Human Rights* 36.

These theories are the coercive compliance-centred theory; naming and shaming; the transnational legal process theory; the five-stage ‘spiral model’; and the acculturation theory. Although Etone suggests that his review is ‘not exhaustive’, the theories he chooses draw on decades of interdisciplinary research into state compliance, making this chapter, in any case, very comprehensive. Owing to its potential to contribute to our theoretical understanding of the UPR, this chapter is worth examining in some detail.

Each theory is considered in light of the UPR’s principles and modalities, and Etone presents a thoroughly researched and well-reasoned analysis of each in light of African states’ experiences. He begins by rightly noting the limitations of coercion theory – the notion that compliance occurs when ‘powerful states coerce relatively weak states’ (p 34) – by drawing attention to the research that demonstrates the negative effect that sanctions, and other punitive measures, can have on human rights (pp 36-37). Similarly, in dismissing the role of ‘naming and shaming’ in driving compliance, Etone highlights limited evidence for its effectiveness (p 41). He, too, notes its inappropriateness for assessing the impact of the UPR which is a cooperative mechanism rather than a confrontational one to be used for shaming (ibid). Regarding transnational legal process theory, Etone suggests it ‘does not provide a suitable theoretical framework to understand the impact of the UPR’ (p 43). This is primarily because one of its components, interpretation, is not evident in the UPR process. It does not, Etone explains, ‘provide a forum for the interpretation of the relevant international law’ (ibid). The five-stage spiral model is considered by Etone to be somewhat appropriate for explaining the UPR’s impact, primarily because it recognises the role of domestic and transnational non-governmental actors, all of whom are central to the UPR process (p 44). Nevertheless, as the model incorporates elements of coercion and shaming, both of which are already argued to be ineffective in driving compliance, Etone also dismisses it as unsuitable (p 40).

Though Etone does acknowledge that these various perspectives are not ‘mutually exclusive’ (p 32), he nevertheless considers the theory of acculturation, developed by Ryan Goodman and Derek Jinks,² to be the ‘most suitable theoretical framework’ for understanding the UPR’s influence (p 51). Acculturation, which draws attention to the social environment within which states act, is highlighted for its potential to understand the impact of the UPR in Africa. To illustrate this, Etone discusses sexual orientation, which he notes is a particularly delicate issue across the region and is the most prominent theme of African states’ UPR recommendations (p 48). He suggests that the UPR’s ‘social and cognitive pressures can contribute to transform the belief that same-sex relationships are un-African’ (p 49). Subsequently this may, Etone goes on to explain, enable an “‘African” way for realising LGBT rights’ (ibid). Further evidence for the relevance of acculturation is provided throughout later chapters, such as in the case of Nigeria (Chapter Four). In all, this chapter is a highlight of Etone’s book as it greatly enriches our understanding of how the UPR may come to affect states’ behaviour. His careful analysis

² Goodman and Jinks, *Socializing States* (2013).

of compliance theories should therefore be considered essential reading for scholars researching the mechanism.

Chapter Three moves to set out Etone's approach for evaluating state engagement with the UPR. This is an important step, as not all scholars set out a specific framework or set of indicators for analysing the mechanism. Equally, few take the time to explain the meaning of key terms such as 'implementation' and 'effectiveness' despite these being, as Etone notes, 'subject to multiple interpretations' (p 52). Another novelty of this book is developed here as Etone elaborates a 'four-step approach' for evaluating the effectiveness of engagement with the UPR. This involves observing and analysing the state under review at all stages of the UPR process: 'state commitment to the UPR national consultation process, representativeness during the review, participation during the review sessions and the aggregate percentage of implemented UPR recommendations' (p 55). There is great value in adopting this framework primarily because it acknowledges that *all* stages of the UPR process are of importance. Each offers an opportunity for the state under review to be subject to social and cognitive pressures, and so each may have an impact upon its human rights practice. Etone's approach therefore ties in well with the theory of acculturation, making it a rigorous framework that other scholars can adopt when assessing state engagement.

Chapters Four to Eight turn to utilise this framework for evaluating the UPR in the context of four states – Nigeria (Chapter Four), Kenya (Chapters Five and Six), South Africa (Chapter Seven), and The Gambia (Chapter Eight). Etone does not make clear why these four states were chosen, but they nevertheless prove to be appropriate for evidencing his central argument. Each chapter begins with a useful context to each states' human rights situation before moving on to assess the effectiveness of their engagement with the UPR.

The Nigerian case study in Chapter Four examines the state's three UPRs to date – in 2009, 2013, and 2018. It starts with an assessment of Nigeria's pre-review consultations, which Etone shows have improved across the three reviews, and have promoted debate on 'culturally sensitive human rights issues' such as sexual orientation (p 65). On Nigeria's delegations, Etone equally argues that these have been of 'high quality' and indicate a commitment to the UPR (p 67). This is shown to be in stark contrast with the state's lack of participation with the African Commission and the UN Committee on Migrant Workers (p 65). Similar comparisons between the UPR and human rights mechanisms are made throughout subsequent chapters, and offer a great deal of support for Etone's central argument that the UPR is a positive contribution to the international human rights framework. Furthermore, as discussed in more depth in Chapter Six, these observations further inform the debate on the contentious relationship between the UPR and the UN treaty bodies.

This chapter continues to analyse the UPR recommendations made by Nigeria as a reviewer, and those it received as a state under review. It is revealed how regional politics influenced the recommendations

made by the state. For instance, Etone explains how ‘Nigeria adopts a softer approach in addressing human rights issues within its regional group and a tougher approach outside the African Group’ (p 73). This is something noted in the Kenyan and South African Case studies explored in later chapters and is in line with existing findings that show how ‘states participate more in UPR reviews of their strategic partners but are less severe in their commentary’.³

Etone also considers the extent that Nigeria has implemented its first and second UPR recommendations by utilising UPR Info’s Implementation Recommendation Index (IRI). This involves calculating an average of stakeholders’ responses and is designed to ensure that any disputes between stakeholders on implementation is accounted for.⁴ Nigeria is shown to have fully or partially implemented 43% and 35% of its first and second UPR recommendations respectively (p 84). The majority were unimplemented, but Etone argues that the microprocesses of acculturation could nevertheless lead Nigeria’s human rights situation to improve through continued engagement with the UPR (pp 91-94).

One matter not explored by Etone here, or in later chapters, is whether the improvements identified by stakeholders could be reliably attributed to the UPR process. He does note that drawing ‘a direct causal link between UPR recommendations and the actions of states’ can be difficult (p 82), but it is possible to make inferences. It can be achieved, for instance, through a careful reading of documentation pertaining to states’ policymaking processes to ascertain the rationale behind new policy measures. Or, alternatively, if the timing of these changes can be identified, then the UPR’s impact can be inferred (albeit not proven).⁵ Nevertheless, this was likely a matter outside the scope of Etone’s research, but it is an issue that could be explored in the future: If even a marginal link between the UPR and changes on the ground can be identified, this would be a very strong indicator of the mechanism’s value.

Chapter Five focuses on Kenya’s first two UPRs in 2010 and 2015. Attention is turned initially to evidence the good practice demonstrated through Kenya’s national consultations (pp 101-105). There is a recognition of the impact made by the Kenyan Stakeholder Coalition for the UPR (KSC) comprised of 97 NGOs. Civil society alliances are recognised as extremely important in the context of the UPR,⁶ and Etone’s case study on Kenya is an excellent example of the role these coalitions can play in

³ See, notably, Terman and Voeten, ‘The Relational Politics of Shame: Evidence from the Universal Periodic Review’ (2018) 13 *Review of International Organizations* 1.

⁴ More information on the IRI can be found here: UPR.Info, *Beyond Promises: The Impact of the UPR on the Ground* (2014) at 77–78, available at: <https://www.upr-info.org/en/news/beyond-promises-study-and-side-event-assess-impact-upr> [last accessed 5 January 2021].

⁵ This method has been used to consider whether UPR recommendations to ratify new treaties could be attributed to states’ actions, see Milewicz and Goodin, ‘Deliberative Capacity Building through International Organizations: The Case of the Universal Periodic Review of Human Rights’ (2018) 48 *British Journal of Political Science* 513 at 525–527.

⁶ The myriad ways in which civil society organisations can engage with the UPR are detailed in UPR Info’s Guide: UPR Info, *The Civil Society Compendium: A Comprehensive Guide for Civil Society Organisations Engaging in the Universal Periodic Review* (2017) available at: https://www.upr-info.org/sites/default/files/general-document/pdf/upr_info_cso_compendium_en.pdf [last accessed 5 January 2021].

facilitating engagement with the mechanism. The fact that the UPR had provided an opportunity for dialogue between NGOs and the Kenyan Government on divisive issues such as sexual orientation and the death penalty is clearly illustrative of the mechanism's benefit. This chapter then turns to consider Kenya as a reviewing state. Etone explains how Kenya was very selective in its participation at the UPR, engaging largely in the reviews of peers from Africa and Asia which further illustrates the impact of regional politics on states' engagement with the UPR (pp 107-111). As a state under review, however, Etone shows how Kenya was receptive to UPR recommendations from regional peers on sensitive issues such as the death penalty (p 115). Focus is again turned to the KSC and Etone shows how this alliance proved pivotal for Kenya's reviews, primarily through its organising of an advocacy campaign on the UPR, and by generating media attention. The insights in this chapter underpin the importance and impact of stakeholder engagement with the UPR and may be of particular value for NGOs intending on getting involved with the mechanism.

Chapter Six continues with a focus on Kenya but considers two new questions: is there a correlation between NGO recommendations and those made by states at the UPR; and is there synergy between the UPR and other human rights mechanisms? The former of these issues has not, at least prior to this book, been explored in much depth. But it is nevertheless an important matter, as if there is a connection, then the UPR is potentially an invaluable tool for NGOs to pursue their human rights policy objectives. Etone indeed demonstrates that, for the first two UPR cycles, 'NGO recommendations appeared to largely correlate with state recommendations' though 'there were also some differences' (p 144). Of course, as a case study, it is not possible to say whether the same would be found across all states' UPRs, nor can it be said whether NGO recommendations cause states to raise the same issues at Kenya's review. Nonetheless, Etone's promising insights in this chapter provide opportunities for further research on the link between NGO and state recommendations.

The relationship between the UPR and other mechanisms is already a matter of debate. As Etone sets out, there is a view that the UPR will 'undermine the work of other human rights mechanisms' such as the UN treaty bodies and special procedures (p 146). Some research has already suggested that the inverse may actually be true, and that 'the UPR and treaty bodies could reinforce each other's strengths by working more closely together'.⁷ Equally, good practices developed through the UPR process are helping to inform changes to the treaty body system.⁸ The evidence provided by Etone, reflecting on Kenya's UPRs, similarly confirms that the mechanism's recommendations can amplify the issues raised by other UN monitoring bodies, rather than undermine them. Although these findings only relate to a

⁷ Carraro, 'Promoting Compliance with Human Rights: The Performance of the United Nations' Universal Periodic Review and Treaty Bodies' (2019) 63 *International Studies Quarterly* 1079.

⁸ Kothari, *Research Brief: The Universal Periodic Review Mid-Term Reporting Process: Lessons for the Treaty Bodies*, Geneva Academy of International Humanitarian Law and Human Rights (2019) available at: [https://www.geneva-academy.ch/joomlatools-files/docman-files/The Universal Periodic Review .pdf](https://www.geneva-academy.ch/joomlatools-files/docman-files/The%20Universal%20Periodic%20Review.pdf) [last accessed 5 January 2021].

single state, they are a useful contribution to this ongoing debate, especially amid the treaty body reform process. They, too, further substantiate Etone's central argument that the UPR is a positive addition to the international human rights framework.

Chapter Seven focuses on South Africa's three UPRs that took place in 2008, 2012, and 2017. Etone again engages in comparative analysis, highlighting the differences in South Africa's engagement with the UPR and a similar monitoring system – the African Peer Review Mechanism (APRM). For instance, the state's consultations in advance of its UPR and APRM reviews are contrasted, and it is suggested that there had been much greater engagement with civil society for the latter (p 155). The UPR is nevertheless highlighted by Etone as especially useful. As all African states have 'engaged in the [UPR's] reporting and interactive dialogue process', there is clearly more enthusiasm for this when compared with the APRM. In terms of South Africa's role as a reviewing state, this case also proves useful in furthering Etone's central argument, as the state engaged with the UPR in a largely non-selective manner by participating in the reviews of peers across all regional groups (p 163).

This chapter also provides good insights into South Africa's role as a state under review. Etone demonstrates how its engagement with the UPR had improved over the course of its three reviews (p 171). This provides potential evidence for the role of acculturation in shaping how states' behaviour through repeated interactions with peers. Considering South Africa's implementation progress, Etone focuses on the themes of corporal punishment; violence based on sexual orientation; and racism and xenophobia. The state's activity in these areas is likened to 'rights ritualism'. That is, South Africa participates well in the UPR process but 'with a reluctance about increasing the domestic protection of human rights' (p 171). Etone's findings in this chapter therefore contribute to the ongoing debate concerning the role of rituals and ritualism at the UPR.⁹

The final chapter of this book turns to consider The Gambia's engagement with the UPR at its reviews in 2010 and 2014. This case is especially intriguing as these reviews took place during a period of political instability and human rights regression under ex-President Yahya Jammeh. Certainly, this could be seen in the way that the Government failed to cooperate with numerous international human rights mechanisms (pp 194-5). Nevertheless, Etone explains how there was at least some engagement with the UPR process, with The Gambia submitting its reports, and sending delegations to participate in the interactive dialogue (pp 195-6). This is another good example of how a state that is otherwise hostile to the international human rights framework may nevertheless engage with the UPR. It is shown that no progress was made in implementing recommendations following the first two UPRs, but since the new regime in 2017 Etone suggests there has been 'a renewed sense of engagement with the

⁹ Charlesworth and Larking (eds), *Human Rights and the Universal Periodic Review: Rituals and Ritualism* (2014).

recommendations of the UPR' (p 203). This case study therefore demonstrates how domestic political changes can affect a state's engagement with the international human rights framework.

In sum, Etone's book succeeds in presenting a well-reasoned analysis of the UPR, and his central argument, that it can be an effective monitoring mechanism, is well substantiated. His comparisons between state engagement with the UPR and other monitoring bodies are especially compelling, as these highlight the unique benefits that the mechanism has brought to the international framework. This is, therefore, a valuable contribution to the literature on the UPR, and international human rights students, scholars, and practitioners will all undoubtedly find benefit in this superb monograph.

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