

RACISM, ETHNICITY & TRANSITIONAL JUSTICE

IN BRIEF

In addition to hundreds of protests organized across the United States of America, **AT LEAST 115 ANTI-RACISM SOLIDARITY PROTESTS WERE HELD** in different countries around the world in 2020 after George Floyd's killing.¹

In a recent study conducted by the World Economic Forum, **89% OF ADULTS SURVEYED ACROSS 27 COUNTRIES** say the events of the past year have increased or had no impact on differences in opportunities and access to housing, education, employment and/or social services in their country.²

As of July 2021, **TWENTY OF THE 38 OECD COUNTRIES COLLECT NO DATA ON RACIAL OR ETHNIC IDENTITY.** These include some of the world's wealthiest nations and makes it difficult to monitor progress across racial and ethnic groups or hold institutions accountable for any disparate impact resulting from their policies.³

INTRODUCTION

Renewed attention to the causes and consequences of global systemic racism has revealed the contemporary human rights system's failure to address historical legacies of racism and colonialism, as well as institutions and policies that have perpetuated racial subordination. Transitional justice mechanisms introduced in conflict, post-conflict and authoritarian contexts have similarly relegated racial discrimination to a secondary issue, rather than confront it head-on which has contributed to the recurrence of atrocities in several parts of the world.

¹ Mohammed Haddad, Al-Jazeera, June 7, 2020, Available at: <https://www.aljazeera.com/news/2020/6/7/mapping-anti-racism-solidarity-protests-around-the-world>.

² Gayle Markovitz, "2 in 3 Adults Think Race, Ethnicity or National Origin Affects Job Opportunities", World Economic Forum, February 26, 2021, Available at: <https://www.weforum.org/agenda/2021/02/2-in-3-adults-think-race-ethnicity-or-national-origin-affects-job-opportunities/>.

³ Amanda Shendruk, "Missing Data: Are You Even Trying to Stop Racism if You Don't Collect Data on Race?", Quartz, July 8, 2021, Available at: <https://qz.com/2021/07/08/missing-data-are-you-even-trying-to-stop-racism-if-you-dont-collect-data-on-race/>.

This policy brief gives an overview of the history of international institutional efforts to identify and remedy systemic racism and – drawing on case studies from the Global Initiative for Justice, Truth and Reconciliation’s (GIJTR) programs in Sudan, Sri Lanka and Colombia – explores the potential for grassroots and community led transitional justice processes to complement and improve upon these historic efforts by providing more effective avenues to address systemic racial discrimination through a focus on community-driven and locally led societal transformation, reconciliation, and healing.

SUMMARY AND KEY FINDINGS

In 2020, the death of George Floyd, an unarmed Black man in police custody in the United States, inspired protests against racism and police brutality that reverberated around the world. The global COVID-19 pandemic further exacerbated economic and resource disparities while serving as a pretext for authoritarian rulers to crackdown on the fundamental rights of racial, ethnic, religious, and linguistic minorities in several nations. At this critical juncture, renewed attention to the causes and consequences of global systemic racism and a burgeoning anti-racism movement have inspired deeper analysis. The modern human rights and international justice systems have, from their very inception, continually introduced mechanisms designed to eradicate racial discrimination. Yet, these very institutions and policies have also perpetuated racial subordination due to their failure to genuinely reckon with the legacies of racism and colonialism that underlie the social order.

Contemporary social constructs based upon racial identity can be traced to the Middle Ages where authority was conveyed by lineage and sanctity of the bloodline. Natural laws which emerged during the Enlightenment period reinforced a universal order premised upon white privilege. By the late 1800s, the concept of statehood was tied to the white race’s absolute claims of racial dominance. The League of Nations Mandate system of governance would embrace these ideals, encouraging imperialism and a racially based political hierarchy. When the United Nations was established in 1945, the international campaign against apartheid in South Africa took off almost simultaneously. Lasting nearly five decades, it would raise awareness of the pernicious nature of white supremacist ideology. The world would witness its impact in political, economic and social structures rooted in the discriminatory and differential treatment of racial and ethnic groups and related structural violence in other post-colonial societies.

THE GLOBAL INITIATIVE FOR JUSTICE, TRUTH AND RECONCILIATION

In 2014, the International Coalition of Sites of Conscience (ICSC) launched the Global Initiative for Justice, Truth and Reconciliation (GIJTR), a consortium of nine international organizations focused on offering holistic, integrative and multidisciplinary approaches to issues of truth, justice and reconciliation. GIJTR works primarily with local populations, civil society organizations, survivors and governments to develop transitional justice approaches that are victim-centered, collaborative, and support dignity, respect, inclusion, and transparency in societies emerging from conflict or periods of authoritarian rule. Since its founding, GIJTR has engaged with people from 76 countries, worked with 760 CSOs, and has conducted 463 community-driven projects and more than 7460 human rights violations initiatives.

For more information, please visit gijtr.org.



GIJTR

Global Initiative for Justice
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Cycles of violence and repression — lasting well into the present day in several parts of the world — highlight the dearth of mechanisms available to adequately respond to racially motivated atrocities and a need to identify alternate modes of justice attuned to the needs of affected communities.

In December 1948, the *Universal Declaration of Human Rights* enshrined a body of fundamental rights designed to promote universal peace, equality and self-determination. The desire to create stronger, legally binding obligations for Member States after the Holocaust would also lead to the *Convention on the Prevention and Punishment of the Crime of Genocide* which codified state parties' responsibilities to prevent and punish the crime of genocide — the intentional destruction of a group, in whole or in part, based on its national, ethnic, racial, or religious identity. Despite being evoked in several situations, the Genocide Convention has only been applied in two cases before the International Court of Justice — *Bosnia and Herzegovina v. Serbia and Montenegro* and *The Gambia v. Myanmar*.

By 1961, the C-24 or "Special Committee on Decolonization" was formed within the United Nations to monitor implementation of the *Declaration on the Granting of Independence to Colonial Powers and Peoples*. As states continued to gain independence through decolonization efforts, the General Assembly's desire for a legally binding document that would hold Member States specifically accountable for racial discrimination and xenophobia led to the adoption of the *Declaration on the Elimination of all Forms of Racial Discrimination* and the *International Convention on the Elimination of all Forms of Racial Discrimination*. Pursuant to the Convention, racial discrimination would consist of "any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life." The Convention also established the first human rights treaty body, the *Committee on the Elimination of all Forms of Racial Discrimination* (CERD).

CERD bears responsibility for issuing general recommendations and reviewing Member States' progress in the implementation of the Convention, in addition to fielding early warning and urgent action requests. As of April 2021, 182 countries have ratified the Convention but only 59 states have accepted optional Article 14 for the individual communications procedures. Though domestic human rights organizations or non-governmental organizations (NGOs) are encouraged to participate in the Committee's review of states' compliance, the mechanism has been critiqued as an elite piece of machinery that is slow to act and largely inaccessible to grassroots civil society organizations and their representatives. International NGOs tied to the Global North more easily access the Committee in Geneva, Switzerland which simply replicates the power and racial imbalances in the global system. Further, CERD has historically been staffed by nominated active or retired diplomats which has implied that Member States have treated racism as a foreign policy issue, rather than as a point for genuine introspection. Member States submit their initial or periodic reports with delays which has stymied the Convention's implementation. Moreover, many states have failed to adopt comprehensive national action plans against racial discrimination or other enabling legislation that would give the convention's provisions effect or allow for the institutionalization of appropriate remedies domestically.



Several periods of commemoration have also been introduced to increase civic engagement with anti-discrimination and peacebuilding measures, including the International Day for the Elimination of Racial Discrimination which is observed annually on March 21st (the anniversary of the 1960 Sharpeville massacre in South Africa), the International Year for Action to Combat Racism and Racial Discrimination celebrated in 1971, and *three Decades for Action to Combat Racism and Racial Discrimination*, along with a Programme of Action for each Decade (1973-2003). Despite these efforts, these programs still fell short of accomplishing their main objectives, largely due to gaps in legal frameworks, financial constraints, and an absence of political will by Member States which has manifest in new forms of discrimination and xenophobia.

The General Assembly also decided to take stronger action by criminalizing apartheid through the *International Convention on the Suppression and Punishment of the Crime of Apartheid*. Yet, no special tribunal has been established that would enable States to raise cases under the Convention. Rather, states must adopt legislation that would permit prosecutions under universal jurisdiction. It is worth noting that no one has been prosecuted for the crime of apartheid in South Africa or anywhere else in the world.

In 1977, the United Nations held a *Conference on Discrimination Against Indigenous Populations in the Americas* which led to a regime of related human rights protections specifically for indigenous populations. This would include the Permanent Forum on Indigenous Issues, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and an Expert Mechanism on the Rights of Indigenous Peoples.

COLOMBIA

Racial discrimination and the related pillage of land and other natural resources have featured prominently in Colombia's internal armed conflict between the government of Colombia, far-right paramilitary groups, far-left guerrilla groups such as the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), the Popular Liberation Army (EPL), and criminal networks. While a peace agreement was signed with the FARC in 2016, challenges remain given that during the conflict, *campesinos*, indigenous and Afro-Colombian communities received protection from the FARC and other guerrilla movements who claimed to be fighting for the rights of the poor and offering protection against state-sponsored violence. Even still, some communities were also victimized by these guerilla groups. Today, leaders from these communities remain under threat for demanding social justice and speaking out against criminal circuits that have displaced them from their land with relative impunity.

Working with Colombia's Truth Commission (*La Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición*), GIJTR partners have been addressing structural violence, poverty, land rights and racial identity with affected communities during the transition to peace through a dedicated project. One related, GIJTR-sponsored community project in Buenaventura collected the testimonies



A still from a documentary supported by the GIJTR that follows the lives of two mothers looking for their missing sons. In one case, the son was found dead in a nearby district. GIJTR's local partner, the Mariposas de Alas Nuevas women's network, composed a traditional "alabao" song explaining the stories, as a background for the documentary.

of indigenous and Afro-descendent women affected by ongoing violence and enforced disappearance, inequality, de-territorialization, dispossession, ethnic uprooting, and cultural loss. The project produced a documentary, created from a feminist perspective, that shows not only how violence has particularly affected women leaders, but how sharing their lived experiences can contribute to the social transformation of their neighborhoods into communities of peace. For more information, visit <https://www.sitesofconscience.org/wp-content/uploads/2019/02/Colombia-Toolkit-ENGLISH-final.pdf>

By 1992, international human rights mechanisms would re-double efforts to eradicate discrimination, with greater attention to protecting the rights of minority communities. The *United Nations Declaration on the Rights of Persons Belonging to National or Ethnic Religious and Linguistic Minorities* would recognize the right to enjoy one's own culture, to profess and practice one's own religion and to use one's own language. Other key principles embodied in the Declaration include the right to exist, promote and protect one's identity, as well as the right to effective participation. The following year, the United Nations would also introduce the Special Rapporteur on contemporary forms of racism in the Special Procedures who would conduct country visits, communicate with governments concerning information and complaints received regarding alleged rights violations, and submit reports to the United Nations General Assembly and Human Rights Council. Similarly, an Independent Expert on minority issues would later be created within the Special Procedures with the mandate to promote the implementation of the *Declaration on the Rights of Persons Belonging to National or Ethnic Religious and Linguistic Minorities*. A parallel Forum on Minority Issues would also be created as a platform for promoting dialogue and providing thematic inputs and expertise to the work of the Independent Expert.

SRI LANKA

In 19th-century Sri Lanka, several aspects of identity became central to the formation of ethnic identities — namely religion, language, and regional origin. The country experienced nearly 30 years of ethnic war between majority Sinhalese and minority Tamil communities rooted in the struggle for representation during British colonial rule. Immediately after independence, discriminatory legislation prevented members of the Tamil community from gaining citizenship, speaking in their mother tongue, exercising freedom of religion, or engaging in meaningful economic activity. In response, many Tamil youth revolted, forming militias and embarking on violent campaigns which ultimately culminated in 2009 with the Government's defeat of the Liberation Tigers of Tamil Eelam (LTTE). By the end of the conflict, 100,000 civilians and 50,000 combatants from both sides had been killed, while between 60,000 and 100,000 remained missing since the late 1980s.



While the Sri Lankan government initially committed to implementing a range of transitional justice measures designed to honor survivors' experiences, limited progress has been made. The Secretariat for Coordinating Reconciliation Mechanisms (SCRM), the Reconciliation and Non-Recurrence Commission,

the Office of Missing Persons, and a Special Court have been established. However, the 2019 election of President Gotabaya Rajapaksa has marked a slowdown in activity for these mechanisms, shrinking civic space and renewed ethnic and political violence. Further, the notable regression in the transitional justice process since 2015 has fueled distrust in government by local communities.

GIJTR programs have been directly addressing longstanding ethnic divisions in Sri Lanka in a comprehensive and sustainable way, including by supporting the creation of the Truth and Reconciliation Forum (TRF), a coalition of advocates of diverse religious and ethnic backgrounds, and training them in the fundamental principles of transitional justice and atrocity prevention. Through the TRF, local communities have been engaging with learning modules that integrate a focus on ethnic violence and intercommunal disputes, election riots, the authority of law enforcement, and the promotion of social cohesion and peaceful co-existence. Following these trainings, the TRF members have also been working with youth using art, theater and literature to support and strengthen Village Solidarity Forums (VSFs) as a means of preventing further violence between their communities.

In 1998, to replace the ad hoc tribunals established to pursue international criminal accountability for atrocities committed in Yugoslavia and Rwanda, the General Assembly introduced the *Rome Statute of the International Criminal Court* which also criminalized genocide and the crimes against humanity of apartheid and persecution. Still, the International Criminal Court has been subject to criticism for institutional policies and practices which have been deemed Eurocentric and racially unjust. Crimes are framed prospectively in terms of proximate harm to victims, rather than structural violence or harm to communities and racial groups. Enumerated crimes traditionally focus on mass violence but rarely consider crimes and situations that might implicate Western states. Accountability has also focused on individual perpetrators, rather than the groups and systems that benefit from international crimes.

In 2001, the World Conference Against Racism would produce a comprehensive *Durban Declaration and Programme of Action* ("*Durban Declaration*") for combating racism, racial discrimination, xenophobia and related intolerance. However, by April 2009, when the Durban Review Conference examined global progress made in overcoming racism, it determined that much remained to be achieved and recommitted to the global anti-racism agenda. The International Decade for People of African descent (2015-2024) would build on the *Durban Declaration* by acknowledging that people of African descent were victims of slavery, the slave trade and colonialism, and continue to be victims of the consequences while also promoting justice and development.

Inspired by the situation in Darfur and adopted unanimously and unequivocally in 2005, the *Responsibility to Protect* embodied yet another attempt for states to protect their populations and others from genocide, war crimes, ethnic cleansing, and crimes against humanity. Member States acknowledged their collective responsibility to prevent atrocities using diplomatic and other forms of peaceful engagement and committed to protect communities when national authorities failed to honor their obligations. Decades on, progress has been illusory as governments and civil society organizations initially invested in early warning and prevention systems but have remained idle as the global toll from mass atrocities and related hate crimes has increased with relative impunity, including in Myanmar, Sri Lanka, Yemen, Syria, Iraq, South Sudan, Sudan, Colombia, Burundi, Central African Republic, Democratic Republic of Congo, Venezuela, China, and Ethiopia.

SUDAN

Since Sudan gained independence in 1956, it has experienced waves of insecurity and a series of coups where power has shifted between military and civilian governments. In 2003, conflict in the country's Darfur region involved government forces recruiting local Arab *Janjaweed* militias to lead joint scorched-earth campaigns against Fur, Maasalit and Zaghawa communities they identified as Black and linked to the opposition. Mass atrocities were repeatedly perpetrated with total impunity, involving an estimated 300,000 people killed and 2.5 million persons internally displaced.



The *Juba Peace Agreement* was signed in October 2020, and Darfur is in principle transitioning into a post-conflict setting with its own negotiated track.

Nevertheless, outstanding political grievances, economic decline and competition for strained resources have led to the resurgence of violence between Arab militias and non-Arab Massalit communities since mid-January 2021, days after peacekeepers from the United Nations-African Union Hybrid Operation in Darfur (UNAMID) departed.

As recently as April 2021, there have been reported attacks on civilians in El Geneina, including killings and sexual violence, while thousands have been displaced from their homes and the Kirindig camp, which houses internally displaced ethnic Massalit from previous disputes.

The GIJTR has been working with communities in South Darfur and other regions of the country to prepare for international accountability processes, while directly addressing racial and ethnic divide through a series of small community projects. As a result, local organizations have been engaged in training and dialogue with leaders from the Fallatah and Massalit Native Administrations following deadly clashes between the two communities last year. Participants have been learning to apply key lessons in transitional justice from South Africa, Guatemala and the Maghreb regions while openly discussing violations their communities have committed against each other over land dating back to the mid-1970s. They have collectively identified at least six key recommendations to support transitional justice processes, including the need for ethical journalism when covering ethnic disputes as they are concerned hate speech and disinformation have contributed to fueling conflict in the country.

In 2021, ten of the thirteen situations under investigation within the International Criminal Court are within Africa. Further, the 45 defendants currently before the court are of African or Arab descent which has had the effect of racializing atrocity crimes, their perpetrators, and victims. Other transitional justice processes have similarly treated racial discrimination as a secondary issue, rather than the root cause of conflict which has effectively compromised recognition for the dignity of survivors, dehumanized communities and further entrenched structural violence. Analysis of systems of redress designed to eradicate systemic racism and ethnic divide indicate that they have provided limited gains for those affected, while compounding discrimination and established

political, social and cultural hegemony. These systems have focused on the immediate conflict, as opposed to the historical circumstances that produced conflict dynamics. They have emphasized civil and political rights, rather than economic, social, or cultural rights which would offer more systemic redress. Peace and reconciliation have also been based on state-centric models which, by their very nature, have been forged on white supremacist principles with limited consideration for the values and priorities of affected local communities.

RECOMMENDATIONS

A problem cannot be addressed unless it is first recognized. Transitional justice has great potential to offer more systemic transformation, reconciliation, and healing. However, there still remains a need to dismantle its Western foundations and interrogate the institutional racism that has permeated human rights and international justice systems from their inception. Based on GIJTR experiences working with local communities in different parts of the world, it is recommended to:

1. Reframe systems of redress beyond Western paradigms into models that embrace informal, traditional and indigenous knowledge and concepts of justice.
2. Ensure communities' meaningful participation in the design of targeted activities addressing discrimination against racial, ethnic, religious, linguistic and other minority groups in transitional justice programming.
3. Ensure that project activities recognize the intersections of different identities with race and ethnicity, including gender, age, religion, language, socioeconomic status, and sexuality, etc.
4. From the onset, ensure that peace negotiations contemplate mechanisms and processes that promote economic, social and cultural rights.
5. To promote sustainability, engage a cross-section of stakeholders within a society and focus transitional justice projects that address racial discrimination and atrocity prevention on engagement with a cross-section of community members, rather than engaging solely with individual community leaders.
6. Ensure adequate mental health and psychosocial support is included in project activities that can address generational trauma and ancestral or cultural loss.
7. Identify other context-specific mediums that can be used as a gateway to discuss difficult subjects like violence, historical grievances, and racial discrimination and preserve cultural heritage such as arts-based methodologies, oral history projects, education and memory projects.
8. Ensure that technical assistance to the judiciary, truth commissions, and civil society on the monitoring and documentation of human rights violations and serious crimes include a focus on the constitutive elements of racially motivated atrocity crimes.
9. Ensure national governments provide technical advice, and access to justice for communities in remote and outlying areas.
10. Encourage the adoption of the core human rights conventions that have been introduced to provide protection against racial discrimination and related violence, including the Genocide Convention, the *International Convention on the Elimination of all Forms of Racial Discrimination*, the Apartheid Convention and the Rome Statute.

11. Encourage the adoption of optional Article 14 for the individual communications procedures within the *International Convention on the Elimination of all Forms of Racial Discrimination* as a means of promoting engagement, monitoring and verification of human rights situation within country by local civil society stakeholders.
12. Promote the adoption of national action plans and other enabling legislation with the appropriate levels of funding to address systemic racism and atrocity prevention and ensure institutionalized remedies for affected communities.
13. Support the development of the draft articles on Crimes Against Humanity which further criminalize racially motivated violence and atrocities.

FURTHER READING

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