INDICATORS AND ASSESSMENT TOOL (IAT) ON RACISM AND ATROCITY CRIMES

ABOUT THE INTERNATIONAL COALITION OF SITES OF CONSCIENCE

The International Coalition of Sites of Conscience (ICSC or the Coalition) is a global network of museums, historic sites, and grassroots initiatives dedicated to building a more just and peaceful future through engaging communities in remembering specific struggles for human rights and addressing their modern repercussions. Founded in 1999, the Coalition now includes more than 370 Sites of Conscience members in 80 countries. The Coalition supports these members through seven regional networks that encourage collaboration and international exchange of knowledge and best practices. The Global Initiative for Justice, Truth & Reconciliation (GIJTR) is a flagship program of the Coalition.

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ABOUT GIJTR

Around the world, an increasing call exists for justice, truth, and reconciliation in countries where legacies of gross human rights violations cast a shadow on transitions from repressive regimes to participatory and democratic forms of governance. To meet this need, the Coalition launched GIJTR in August 2014. GIJTR seeks to address new challenges in countries in conflict or transition that are struggling with legacies of or ongoing gross human rights abuses. The Coalition leads GIJTR, which includes eight other organizational partners: American Bar Association Rule of Law Initiative (ABA ROLI), United States; AJAR, Indonesia; CSVR, South Africa; Documentation Center of Cambodia (DC-Cam), Cambodia; Due Process of Law Foundation (DPLF), United States; Fundación de Antropología Forense de Guatemala (FAFG), Guatemala; Humanitarian Law Center (HLC), Serbia; and Public International Law & Policy Group (PILPG), United States. In addition to leveraging the expertise of GIJTR members, the Coalition taps into the knowledge and longstanding community connections of its 370-plus members in 80 countries to strengthen and broaden GIJTR's work. GIJTR partners, along with members of the Coalition, develop and implement a range of rapid-response and high-impact program activities, using both restorative and retributive approaches to justice and accountability for gross human rights violations.

The expertise of the organizations under GIJTR includes the following:

- Truth-telling, reconciliation, memorialization, and other forms of historical memory

- Documenting human rights abuses for transitional justice purposes

- Forensic analysis and other efforts related to missing and disappeared persons

- Victims' advocacy such as improving access to justice, psychosocial support, and trauma mitigation activities

- Providing technical assistance to and building the capacity of civil society activists and organizations to promote and engage in transitional justice processes

- Reparative justice initiatives

- Ensuring gender justice in all these processes

To date, GIJTR has led civil society actors in multiple countries in the development and implementation of documentation and truth-telling projects; undertaken assessments of the memorialization, documentation, and psychosocial support capacities of local organizations; and provided survivors in the Asia, Africa, and the Middle East and North Africa region with training, support, and opportunities to participate in the design and implementation of community-driven transitional justice approaches. Given the diversity of experience and skills among GIJTR partners and Coalition network members, the program offers post-conflict countries and countries emerging from repressive regimes a unique opportunity to address transitional justice needs in a timely manner, while promoting local participation and building the capacity of community partners.

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INTRODUCTION TO THE IAT

Racism is linked to human rights violations globally and can be understood as a widespread cause and consequence of local and state conflict, authoritarian rule, and histories of colonialism. Racism includes intentional inequities and discrimination based on a racial classification and has been defined as: "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...". Such injustice perpetrates violation and abuses that may amount to atrocity crimes, including genocide, war crimes, crimes against humanity, and ethnic cleansing. Racism is often cited as the main cause of mass atrocities, such as in the Rwandan and Namibian genocides, and a basis for colonialism and the transatlantic slave trade. While these cases highlight racism as a root cause, racism as a global phenomenon is more insidious in nature, permeating all levels of society and affecting policy and practice in social, cultural, and economic spheres. The conditions of inequality and structural violence that this creates has the potential to culminate in first generation rights violations as well as social, economic, and cultural rights violations.

International bodies such as the UN General Assembly have emphasized that any doctrine purporting racial superiority is socially unjust and dangerous. In 2021, the General Assembly adopted a resolution to establish the UN Permanent Forum of People of African Descent (PFPAD). The body is a "consultative mechanism for people of African descent and other relevant stakeholders as a platform

for improving the safety and quality of life and livelihoods of people of African descent, as well as an advisory body to the Human Rights Council, in line with the program of activities for the implementation of the International Decade for People of African Descent and in close coordination with existing mechanisms."

While there is an increased recognition of the widespread nature of racism and its threat to peace and stability—particularly since the summer of 2020, when a police officer in the United States killed George Floyd, an unarmed Black man—there is still a need to address racism in a more deliberate and targeted way. Floyd's indiscriminate killing called attention to the centuries of racism prevalent in the United States and highlighted the structural prejudices that were born from the transatlantic slave trade and colonialism. It also became a watershed moment worldwide as global protests brought to the forefront questions related to the intersections of identity and discrimination, highlighting the plights of specific vulnerable groups within the broader people of color population, including women, LGBTQI+, people of African descent, and immigrants.

Racial equity requires deliberate attempts to eliminate policies, practices, attitudes, and cultural messages that reinforce unjust treatment based on race and can only be achieved through proactive and preventive measures. Racial justice requires an understanding of the historical roots of racism, the ways in which these have manifested historically and in the present day, and tools to address past harms. It also requires working with affected communities and accountable actors for collective change. Given that the roots of racism are related to the fallacy of superiority based on whiteness, the origins of racism are similar in most contexts. However, how it unfolds may differ, as will the tools used to address and prevent its prevalence.

This toolkit seeks to assess the ways in which racism, if not addressed, could lead to atrocity crimes. Racism against particular racial and ethnic groups has resulted in structural and institutional dynamics as well as the policies, practices, and laws that have subjected individuals and groups to crimes for centuries that have shocked the conscience of humanity. This toolkit will help assess how racism could contribute to the risk of atrocity crimes. To help demonstrate how to utilize the toolkit as an assessment tool, included herein are case studies of five countries (Brazil, Colombia, Namibia, South Africa, and Sri Lanka) that highlight how racism increased the risk of atrocities perpetrated against particular communities.

METHODOLOGY

This toolkit draws upon the *UN Framework of Analysis for Atrocity Crimes* as a source document for discussing broad risk factors and indicators for atrocity crimes.[1] The *UN Framework* was developed by the Office of the UN Special Advisers on Genocide Prevention and the Responsibility to Protect. It was designed as an integrated analysis and risk assessment tool specifically for addressing atrocity crimes. The *Framework* lists fourteen risk factors for atrocity crimes. Risk factors include behaviors, circumstances, or other elements that create an environment conducive to the commission of mass atrocity crimes. Risk factors include both structural issues—such as weakness of state institutions—as well as more dynamic issues such as triggering events. Among those risk factors are ones considered "common" to all four mass atrocity crimes, such as situations of armed conflict or record of serious violations of international humanitarian and human rights law. In addition, the *Framework* describes several risk factors that are specific to only one of the crimes—for example "signs of an intent to destroy in whole or in part a protected group" is unique to the crime of genocide.

Rather than highlighting all risk factors for atrocity crimes, this toolkit focuses on those indicators for which racism, racist policies and practices, and histories of racism may exacerbate the risk, as well as conditions under which particular racial or ethnic groups may be the direct target of atrocities. The list here resulted in 13 risk factors. While the toolkit is focused on risks based on race and ethnic identity, analysts using this assessment tool should utilize an intersectional approach. Specifically, analysts should consider how ethnic and racial targeting, the methodology utilized by perpetrators, and the experience of the population, may vary—including on the basis of gender, age, sexual orientation, and religion.

Risk factors included in the toolkit were determined based upon threats observed while researching countries that have experienced atrocity crimes, or heightened risks of atrocity crimes, over the past 30 years. The authors also conducted desk research of legal analysis, structural policies, and practices that are rooted in racism and create enabling environments for the commission of atrocity crimes. In addition, they studied structures created in certain countries, regions, and multilateral spaces to confront such practices. In addition, the IAT received feedback through an inclusive and consultative process, including feedback from individuals based throughout Latin America, Africa, and Asia. The toolkit was presented for comments and additions at a conference with a globally representative audience held in Rio de Janeiro, Brazil, December 5-7, 2023.

HOW TO USE THE ASSESSMENT TOOL

To use the toolkit, analysts and monitors should collect reliable information on the situation and use it to inform whether any of the risk factors and respective indicators are present and whether the potential impact of their presence is likely to result in the commission of atrocity crimes. They should be particularly attentive to changes in indicators over time that may contribute to an increase or decrease in the likelihood of crimes occurring.

An assessment must situate atrocity risk factors within a broader political, historical, and cultural context. Moreover, bear in mind that this toolkit is focused on risk factors for atrocities perpetrated on the basis of race or ethnic identity or rooted in racism, specifically. However, an understanding of the broader context in which these factors appear and how they combine with other threats identified in the *UN Framework* is essential. For example, the *UN Framework* includes indicators on acquisition and movement of "large quantities of arms and ammunition or of other objects that could be used to inflict harm." This indicator is not specific to risk factors associated with racism and therefore not included in this toolkit. However, when combined with factors in this toolkit the presence of large quantities of arms would likely increase the possibility of the commission of atrocities.

While not all risk factors need to be present for there to be a significant risk of atrocity crimes occurring, evidence of warning signs across multiple risk factors may result in a higher likelihood of violations and abuses being perpetrated on a scale that amounts to such crimes. In contrast, if a society has various factors that help mitigate the risks of atrocities or a lack of potential triggers, then there could be several risk factors present and yet a low probability of crimes occurring.

GLOSSARY OF TERMS

Atrocity Crimes[2]

Atrocity crimes are considered to be the most serious against humankind. The status of atrocity crimes as international crimes is based on the belief that the acts associated with them affect the core dignity of human beings. The UN and international law focus on four mass atrocity crimes: genocide, war crimes, crimes against humanity, and ethnic cleansing.

Crimes Against Humanity

Crimes against humanity are committed as part of a widespread or systematic attack directed against a civilian population. Widespread means large-scale violence in terms of the number of victims or its extensive reach across a broad geographic area. Systematic means part of a wider policy or plan: this excludes random, accidental, or isolated acts of violence. Crimes against humanity are not yet codified in a separate treaty; however, they are clearly defined in the Rome Statute of the International Criminal Court.

This includes acts such as:

- Murder
- Extermination
- Torture
- Enslavement
- Forcible transfers of populations
- Rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, or any other form of sexual violence of comparable gravity
- Persecution
- Apartheid
- Other inhumane acts of a similar character intentionally causing great suffering, or serious injury, to mental or physical health

Ethnic Cleansing

While there is no formal legal definition of ethnic cleansing, it involves the systematic forced removal of distinct minority groups from a given territory, often with the intent of an ethnically homogeneous result. This includes acts such as forced migration (deportation, population transfer), intimidation, and mass murder.

"Ethnic cleansing" has not been recognized as an independent crime under international law and is therefore considered a subset of crimes against humanity. The term emerged in the context of the conflict in the Former Yugoslavia in the 1990s and has been used in UN Security Council resolutions and in the UN General Assembly. It was also acknowledged in judgments and indictments of the International Criminal Tribunal for the Former Yugoslavia, but it did not constitute one of the counts for prosecution. The UN Commission of Experts, established to examine and analyze the situation in the Former Yugoslavia, defined ethnic cleansing as "rendering an area ethnically homogenous by using force or intimidation to remove persons/groups." Coercive practices include murder, torture, arbitrary arrests and detention, extrajudicial executions, rape and sexual assault, and deportation.

Genocide

To constitute genocide, there must be a proven intent on the part of perpetrators to physically destroy, in whole or in part, a group based on nationality, ethnicity, race, or religion. Victims of genocide are not randomly targeted: they are deliberately chosen, based on their real or perceived membership to one of the four groups.

This includes acts such as:

- Killing members of the group
- Causing serious bodily or mental harm to members of the group
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part
- Imposing measures intended to prevent births within the group

The crime of genocide is codified in the 1948 Convention on the Prevention

and Punishment of the Crime of Genocide (the Genocide Convention). The Convention has been ratified by 149 States (as of January 2018). When speaking about potential victims of genocide, the *Framework* refers to them as "protected groups".

International Humanitarian Law

International humanitarian law[3] is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. International humanitarian law is also known as the law of war or the law of armed conflict. International humanitarian law is part of international law, which is the body of rules governing relations between States. International law is contained in agreements between States—including treaties or conventions. In customary rules, they are treated in practice by each State as legally binding, as well as being considered as general principles of expected codes of conduct. International humanitarian law applies to armed conflicts, but importantly, it does not regulate whether a State may use force; this is governed by an important, but distinct, part of international law set out in the United Nations Charter.

International Human Rights Law

Human rights law[4] is a set of international rules, established by treaty or custom, on the basis of which individuals and groups can expect and/or claim certain rights that must be respected and protected by their State. The body of international human rights standards also contains numerous non-treaty-based principles and guidelines ("soft law").

Racism

Racism includes 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.[5]

War Crimes

There is no single international legal document that codifies all war crimes. However, the Geneva Conventions and their additional protocols are among the most significant of those that do. War crimes include acts that constitute grave breaches of the laws and customs of armed conflict, particularly those of the Geneva Conventions. War crimes can only be committed in the context of an armed conflict or protracted armed violence. The character of the war dictates what constitutes a war crime: in particular whether it is an international or non-international armed conflict. Both combatants and non-combatants can be victims of war crimes.

This includes acts such as:

- Intentionally directing attacks against the civilian population generally or against individual civilians not taking direct part in hostilities

- Attacking or bombarding towns, villages, dwellings, or other buildings which are undefended and are not military objectives

- Employing poison or poisoned weapons

RISK FACTORS

Discussion of each risk factor includes an explanation of how it contributes to the risk of atrocities/specific crimes in the context of racism. In addition, indicators of what this may look like in practice have been provided.

Record of Human Rights Abuses Targeting Particular Racial Groups

Indicators:

1. Past acts of genocide: for example, eradication of indigenous populations.

2. Past acts of crimes against humanity, including, apartheid, slavery and slave trade, eviction of original inhabitants from native and indigenous lands, and biological experimentation on individuals from a particular racial group or racial identity.

3. History of institutional structures that perpetuate racism, marginalization, and abuses against individuals of particular racial groups, including apartheid and colonialism.

4. Past or present serious restrictions to or violations of international human rights and humanitarian law. In particular, when targeting specific racial or ethnic groups , populations or individuals.

5. Past acts of war crimes against individuals from a particular racial group or racial identity.

6. Recent history of civil war or history of inter-racial and inter-communal conflict between different racial or ethnic identity groups.

7. History of abusive, indiscriminate and/or disproportionate counter-insurgency measures on the basis of race.

8. History of racial violence perpetrated by state and non-state actors such as militias and supremacist groups.

Explanation:

A legacy of human rights abuses and atrocities can contribute to current risks. This is particularly true in places that have not systematically dealt with the past or reconciled grievances that lead to such violations and abuses. Before considering whether such a history increases the risk of atrocities today, analysts should determine the degree to which history of abuse or violence may contribute to ongoing abuses, grievances, or cultures of institutional and societal behavior. Or, is such history a fact of the past that may not be a salient variable today. For example, an important step is to examine whether policies that enabled or permitted past abuses have been reformed (see, for example, indicators under Risk Factor 2: Policies and Legislation, Risk Factor 3: Structural Racism, and Risk Factor 6: Security and Racism). Analysts should also examine whether the historical concept of racial superiority was central to the creation of state structures, which may or may not have been reformed and continue to affect the present. One should also bear in mind that the duration of time since atrocities and human rights abuses took place relative to today, may have more bearing on identity-based tensions. In other words, the more recent the original atrocities and abuses, the more risk of current or future race-based atrocities.

Policies and Practices That Directly Limit the Rights of, or Target a Particular Group and/or Exhibit a Lack of Protections for a Particular Group

Indicators:

1. Lack of policies, legislation, and constitutional guarantees that protect the rights of particular racial groups, ethnic groups, or minority populations.

2. Legacy of discrimination, segregation, restrictive or exclusionary

practices, policies or legislation, against particular racial or ethnic groups .

3. Policies and practices aimed at or that may result in cultural erasure. For example, restrictions on use of language, religion, or other cultural practices. Or, destruction of cultural heritage of particular racial or ethnic groups.

4. Policies aimed at erasing or minimizing the contribution of different racial groups in historical events that shaped the country's national identity.

5. Policies and practices, including quotas and segregation, that limit where particular racial or ethnic groups can live, buy property, work, or receive an education.

6. Policies that directly restrict births or marriage within a particular group

7. Policies and practices that restrict social or cultural gatherings of particular racial or ethnic groups.

8. Policies and practices that limit participation of particular racial or ethnic groups within governance structures or leadership roles.

9. Policies and practices that limit voting rights or voting access for particular racial or ethnic groups.

Explanation:

Analysts should be aware that some of these policies (for example, restrictions on births) may be a risk factor or constitute evidence of atrocities. Other policies may enable or permit an environment facilitating atrocities. Implementation of these types of policies may also create restrictions or exclusion of particular groups, Erasure of a group from national historical narratives and identities can lead to social and political questioning of a group's right to citizenship.

Even when reforms have reduced the prevalence of the policies listed above, it is important to understand and highlight how the legacy of such policies created governmental and societal structures that continue to reproduce and perpetuate current racist policies and practices (see, for example, Risk Factor 3: Structural Racism).

For both this risk factor and Risk Factor 3, while certain policies and practices can increase the risk of atrocities committed against the targeted identity group, they may also deepen grievances within the oppressed group. This could trigger social uprisings, demands for racial justice, and/or radicalization among members of the group who could then be mobilized to perpetrate crimes against their actual or perceived oppressors.

Risk Factor 3

Presence of Structural Racism and Policies or Practices That Privilege One Race Over Others

Indicators:

1. Systems, laws, and (written or unwritten) policies and practices that perpetuate patterns of discrimination against particular racial or ethnic groups, or provide unfair advantages for one group over others.

2. Inequitable access to (or policies and practices that deliberately limit) political power or entry into political office for particular racial groups. Or, the presence of legislation or constitutional provisions that privilege the dominant racial or ethnic group, in positions of power.

3. Inequitable access to (or policies and practices that deliberately limit) quality education on the basis of race or ethnicity.

4. Inequitable access to (or policies and practices that deliberately limit) economic opportunities and goods and services, including employment, entrepreneurship, and property ownership on the basis of race or ethnicity.

5. Continued social practices or narratives that have racial undertones (explicit or implicit), including those justified as "tradition".

6. Forced cultural assimilation of particular racial or ethnic groups, as well as indigenous populations, by those in power.

7. Inequitable access to (or policies and practices that deliberately limit) social and cultural access to political and economic opportunities on the basis of race or ethnicity.

8. Inequitable access to justice and fair treatment within legal structures on the basis of race or ethnicity.

9. Judicial policies and practices that disproportionately punish individuals of a particular race or ethnicity.

10. Judicial restraint and refusal to strike down policies and legislation that perpetuate patterns of discrimination or abuses against particular racial groups.

11. Perpetuation of narratives that the economic, social, cultural, and political well-being of racial or ethnic groups traditionally disenfranchised or marginalized will adversely affect the well-being of the other racial groups within a society.

12. Legislation and constitutional provisions that enable or perpetuate the disproportionate distribution of resources to racial and ethnic groups favored by those in power.

13. Infrastructure development policies and practices that target resources—including land, water, and mineral rights—of racially disenfranchised populations leading to their displacement or the destruction of their environment and livelihoods.

Explanation:

Governmental and societal structures created from the ideology of racial superiority produce racist policies that privilege one group over another. It systematically continues to deny particular racial and ethnic groups of privileges and rights enjoyed by the rest of society and continues to deny those populations equal opportunity. This creates conditions for ongoing exploitation and abuse.

Structural or systemic risk factors include policies and practices that are institutionalized within the larger framework of a government and society, including financial and academic institutions. When such practices are ingrained within the entire institution of governance, it can result in abuses systemic and deeply embedded, such that significant institutional reform may be necessary to mitigate risks. When assessing the threat of these policies and practices resulting in rights violations versus the risk of escalating to atrocities, analysts must assess the level of exclusion and abuse caused by these factors.

Where structural and systemic racism is entrenched, the continuation of these structures (or resistance to reform) is often accompanied by narratives of racial superiority. The risk of atrocities can increase in these countries when triggering factors (see Risk Factor 11: Political or Economic Instability) force the examination of these structures. Such examination may seem threatening to groups that have structural advantage.

Where political and economic power is disproportionately concentrated within one racial or ethnic group, or where governance structures allow leaders to privilege their own group, atrocity risks may increase during periods of political transition where fears of "winner take all" are escalated.

Impunity for Crimes Perpetrated Against Particular Groups

Indicators:

1. Absence of processes for racial justice, truth-telling, and reparations.

2. Absence of transitional justice and accountability processes following atrocity crimes.

3. Politicization or absence of reconciliation or transitional justice processes following conflict.

4. Lack of follow through on implementation of recommendations from transitional justice and reconciliation processes.

5. Absence of psycho-social support to victims and survivors of atrocities, including families and communities confronted by generational trauma.

6. Weakness or absence of legal systems for holding accountable perpetrators of abuses targeting individuals of particular races.

7. Judiciary that lacks independence from other government structures.

8. Lack of recognition of systematic targeting of particular racial or ethnic groups by the security sector.

9. Impunity for behavior by supremacist groups.

10. Social trauma caused by past incidents of violence not adequately addressed and that produced feelings of loss, displacement, injustice, and a possible desire for revenge.

Explanation:

Processes for transitional justice, holding perpetrators accountable, and publicly acknowledging past abuses are important to restoring relationships between different identity groups. In the absence of accountability and reconciliation processes, past grievances may remain open and result in a recurrence of identity-based violence. Moreover, impunity for past abuses sends a signal to previous and potential perpetrators that such crimes will go unpunished. Outside of legal accountability, some of the structural indicators in Risk Factor 3: Structural Racism also create an enabling environment for impunity, as some government policies and practices allow and perpetuate abuses that constitute rights violations.

Risk Factor 5

Denial and Resistance to Acknowledgement of History of Racism

Indicators:

1. Propagation of narratives that deny past atrocities, including genocide-denial, or dismissal of evidence of racism.

2. Resistance to inclusion of history of racism and marginalization in the public sphere or education curriculum. Or, altering education curriculum to erase histories of racism and marginalization.

3. Absence of sites that recognize and memorialize past atrocities, or "historical" preservation or protection of locations or buildings associated with atrocities.

4. Resistance to holidays or events commemorating past atrocities, civil rights activists, and significant legislation protecting or empowering particular racial and ethnic groups.

5. Banning fiction and non-fiction books addressing history of racial oppression and violence.

6. Propagation of narratives like "saving the uncivilized" or "separate-development".

7. Absence of processes related to inter-racial dialogue or reconciliation.

8. Commemoration events of past crimes or of traumatic or historical episodes that can exacerbate tensions between groups. This includes the glorification of perpetrators of atrocities.

9. Revocation or reversal of laws, policies and practices that acknowledge or correct for past harm.

Explanation:

The indicators listed here in and of themselves may not lead to the commission of atrocities but can create an enabling and permissive environment to target particular groups. They can also normalize or provide justification to perpetrators to commit atrocities and contribute to erasure of the affected population. These narratives may also be used to consolidate intra-groups loyalty or prove loyalty via targeting of other racial and ethnic groups. In many cases the act of banning books or changing curriculums may not in and of itself be the immediate risk. Rather, divisive political and societal divisive discourse on the motivation behind the action could trigger tensions between groups while the policy itself will have longer-term implications.

Risk Factor 6

Colonial and Repressive Security Sector Practices and Personnel

Indicators:

1. Continuation of practices and policies within policing that repress and control particular racial and ethnic groups rather than provide protection to them, including the lack of or limited reform of security apparatus used by previous authoritarian or colonial regimes.

2. Use of violent and disproportionate use of force in crowd control measures.

3. Imposition of emergency laws or extraordinary security measures that erode fundamental rights

4. Disproportionate numbers of individuals from particular racial and ethnic groups are targeted for arrest during protests and social unrest.

5. Disproportionate numbers of individuals from particular racial and ethnic groups experience custodial abuse, torture, or death.

6. Lack of racial and ethnic diversity within the security sector and its leadership.

7. Lack of vetting of security force personnel regarding participation in past abuses against particular groups, or membership in groups that hold supremacist ideologies.

8. Legislation or government policies that strengthen the security apparatus, through reorganization or mobilization of additional resources, including frequent militarization of the police, against protected groups, populations or individuals.

9. Cultural racism and a permissive environment for racial profiling and race-based abuse.

10. Discriminatory security procedures and disproportionate punishments targeting particular racial or ethnic groups.

11. Use of the security sector by the government to target perceived opposition, particularly when determination of opposition is based on race or ethnicity.

12. Minimization of violence committed against certain racial groups. Lacking or inadequate mechanisms of oversight and accountability, including those where victims can seek recourse.

13. Culture of impunity for security sector actors for crimes committed by them against a particular racial or ethnic group.

14. Use of the military and military tactics to control geographical areas predominantly populated by particular racial or ethnic groups.

15. Use of facial recognition and surveillance technology targeting populations based on race or ethnicity, as well as technologies and algorithms that are biased against particular racial and ethnic groups.

16. Racial profiling in policing, including through border and custom checks, immigration decisions, home searches, targeting for surveillance, or law and order operations.

17. Unequal (reduced) use of law enforcement resources on the disappearance of, and violence committed against, women, girls and children, LGBTQI+ persons, and other marginal groups of a particular race.

Explanation:

Many of the indicators listed above are ways in which structural racism manifests within the security sector and enables an environment for abuses on the basis of race. It expands opportunities for individuals of certain races to be targeted by police, military, or other security forces and can often result in abuse or commission of crimes. Lack of judicial independence enables impunity for abuses perpetrated by the government and security forces, which leads to widespread mistrust between the state institutions and the targeted group. Triggering events (see Risk Factor 11: Political or Economic Instability) may increase the risk of atrocities as lack of trust and legacy of abuses may impede de-escalation tactics employed by security forces.

Ideologies Based on the Supremacy of a Certain Race or on Extremist Versions of Identity

Indicators:

1. Prevalence of belief and sentiment within a society that view particular racial and ethnic groups as "less than" or "the other"

2. Existence and spread of extremist groups based on supremacist ideologies.

3. Members of supremacist groups hold public office and/or have influence over policy makers.

4. Legislation and government policies are informed by supremacist ideologies.

5. Narratives that seek to expand negative stereotyping and perceptions of another group as dangerous.

6. Prosperity of a particular racial or ethnic group is perceived as a zero-sum threat against the interests of the group traditionally in power or of one group "stealing" opportunities from another.

7. Acknowledgement of past atrocities against a particular racial or ethnic group is perceived as "disloyal" or "destructive" to national identity and character.

8. Prevalence of anti-black narratives or discrimination against people of African descent.

9. Creation of societal hierarchies on the basis of race, ethnicity, religion, and gender.

Explanation:

As with Risk Factor 5: Denial of Racism, the indicators listed here in and by themselves may not lead to the commission of atrocities but can create an enabling and permissive environment to target particular racial and ethnic groups. They can also normalize violence or provide justification to perpetrators to commit atrocities and contribute to elimination of the affected population. These narratives may also be used to consolidate intra-groups loyalty or prove loyalty via targeting of other racial and ethnic groups.

Supremacist ideologies may also create an enabling environment for government policies and practices that limit the rights of particular races, especially when such ideologies are so widespread that elected officials believe they will be popular among the public.
Risks are heightened when those in power themselves hold supremacist views, but risks are not limited to such instances. Growing support for supremacist ideologies may also create momentum and enabling environment for indicators under Risk Factor 8: Hate Speech and vice versa.

Risk Factor 8

Spread of Hate Speech, Xenophobia, and Racist Sentiments

Indicators:

1. Use of hate speech with impunity by politicians, religious leaders and other thought leaders or celebrity figures against a particular racial and ethnic group.

2. Incitement of violence against particular racial and ethnic groups by politicians and other public figures.

3. Absence of legislation and policies to mitigate and address hate speech, misinformation and disinformation

4. Traditional media outlets including radio, televisions and newspapers propagate supremacist narratives, fear mongering and hate speech against particular groups.

5. Prolific use of social media platforms by politicians, leaders and members of the public to spread hate and fear against a particular racial and ethnic group.

6. Spread of misinformation or disinformation against particular racial groups, including negative stereotyping.

7. Use of methods or practices that dehumanize a particular racial or ethnic group, or that reveal an intention to cause humiliation, fear or terror to fragment the group.

8. Spread of xenophobia against particular racial groups, casting them as "foreigners" to the national territory or identity.

9. Prevalence of supremacist ideologies and tropes in public discourse, including narratives that are anti-Black, anti-Semitic, anti-Asian, anti-Muslim, anti-Indigenous, anti-LGBTQI+, etc.

10. Politicization of past grievances between different racial or ethnic groups in public discourse.

11. Promotion of culture wars in social spaces, politics, and media.

Explanation

When looking at hate speech indicators, analysts must observe fluctuations in dangerous or inflammatory speech, in particular significant shifts from what may be considered baseline. The presence of hate speech in and by itself may not increase risk of atrocities, particularly if it is shared amongst a vocal minority, but big spikes may be a significant early warning sign of possible commission of atrocity crimes. Examining the way in which such language is articulated and shared, for example if it is by prominent public figures or disseminated in mainstream media, may also provide insight. For example, analysts should consider into whether hate speech creates general public divisiveness and animosity or is serving as a potential trigger to mobilize or incite identity-based violence and abuses. Also consider when rhetoric against particular racial and ethnic groups is correlated with an increased risk of targeted violence.

Normalization of supremacist ideologies via hate speech expands threats to all populations. Supremacist ideologies are borne out of misogynistic hyper masculine narratives and in addition to propagating racial supremacy also propagate cis heteronormative ideas of gender and sexuality. Propagation of these narratives may increase the risk of abuse and atrocities committed against LGBTQI+ populations and against those individuals who may not conform to traditional ideas of gender.

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Risk Factor 9

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Patterns of Racial Targeting and Violence

Indicators:

1. Episodes of violence perpetrated against particular racial and ethnic groups, including killings, sexual and gender-based violence, torture, and other forms of violence and abuses, especially when widespread or part of a systematic plan.

2. Targeting property, including businesses and homes owned by particular racial and ethnic groups.

3. Episodes of violence during holidays of significance to certain racial and ethnic groups.

4. Public lynchings or beatings perpetrated on the basis of race for perceived or actual transgressions.

5. Violence against particular racial or ethnic groups in response to passage of laws and policies that expand protection and rights of these groups.

6. Mob and communal level violence in response to inter-racial or inter-ethnic marriage or pregnancies.

7. Violence and clashes between particular racial and ethnic groups outside of a situation of armed conflict.

8. Attempts to physically intimidate members of a particular racial or ethnic group through hostile presence, threats of physical force, or violent rhetoric in public spaces.

9. Inaction of government authorities and security sector in response to any of the above listed episodes of violence.

Explanation:

Many of these indicators may themselves constitute atrocity crimes when perpetrated in a pattern or on a widespread basis. They also may be warning signs of potential escalation. Presence of these indicators also implies that an enabling and a permissive environment exists for the commission of atrocity crimes. It may also imply that state institutions are complicit in the impunity for violence committed against particular racial and ethnic groups.

Risk Factor 10

Situation of Armed Conflict or Civil War

Indicators:

1. Armed conflict driven by identity, where opposing sides each identify with a different racial group.

2. Real or perceived membership of, or support for, armed opposition groups, by individuals from certain racial groups.

3. Prevalence of identity-based armed groups.

4. Lack of training for armed forces on international humanitarian law and human rights law in conflict settings.

5. Imposition of emergency security measures during conflict that disproportionately target particular racial or ethnic groups or areas inhabited by such groups.

6. Targeting or collective punishment of members of a racial or ethnic group in response to terrorist or insurgency activities perpetrated by a small subset of the group.

7. Resort to means of violence that are particularly harmful or prohibited under international law, including use of prohibited weapons, against a particular racial or ethnic group.

Explanation:

Conflict and civil war inherently increase the risk of atrocities for all populations within the impacted territory. These risks are further elevated for certain populations when the opposing sides identify with one racial group or another. The extent of abuses may be determined by the ability of a group to acquire the means to perpetrate abuses, including the recruitment of personnel and access to arms and ammunition.

Risk Factor 11

Political, Economic, Social, and Environmental Instability

Indicators:

1. Rise of an autocratic regime. This includes consolidation of power in the hands of individuals who favor a particular racial group or who have previously been implicated in atrocities and rights abuses. It also includes military coup by forces implicated in abuses against particular groups, or imposition of laws and practices that target particular groups.

2. Democratic backsliding including crackdowns on political and civil dissent from particular racial groups, attacks on independent media, imposition of military rule in certain parts of the country, restrictions of access to voting rights, and co-option of judicial bodies and human rights institutions.

3. Adoption of laws, policies, and practices by the government that limit civic space and the ability of civil society to function, including targeting human rights defenders and civil society actors from a particular racial or ethnic community.

4. Economic recessions and periods of excessive inflation or unemployment.

5. Rising number of protest movements and increased social discontent triggered either by deteriorating economic conditions, democratic backsliding, structural racism and inequality, and/or deliberate targeting of particular racial and ethnic groups.

6. Humanitarian crisis or emergency created by natural disasters and epidemics.

7. Inequitable consequences of climate change and resource competition.

Explanation:

Political and economic instability and inequality often have disproportionate effects across races. In many cases this is a result of structural racism and patterns and abuses throughout history that have determined where certain populations live and work.

For example, poverty in and of itself does not lead to atrocities, but it can create conditions where certain populations can be manipulated and taken advantage of and where disputes over resources and inequality can result in violence. Extreme poverty generates a lack of opportunities, competition for resources, and gross inequalities. This can exacerbate inter-group grievances and create motives and opportunities for atrocity crimes.

Several economic, political, and social factors listed above can provide governments and certain groups with the means to perpetrate crimes. Consolidation of power and democratic backsliding create space for abuses to be perpetrated unchecked and often result in

greater impunity for the actions of leaders and those implementing their policies. Moreover, restrictions on civil society, human rights defenders, and the media may limit the sharing of information on potential abuses against the population.

Risk Factor 12

Triggering Factors

Indicators:

1. Elections, especially those characterized by increasing hate speech, culture wars, and rhetoric promoting nationalist narratives that render certain racial and ethnic groups as foreign or "other."

2. Mass protests resulting from deteriorating economic conditions, democratic backsliding, structural racism and inequality, and/or deliberately target particular racial and ethnic groups.

3. Resistance movements initiated by Indigenous or minority groups in response to government policies designed to confiscate their land or threaten their population

4. Watershed moments, including attacks against the life or physical integrity. This can also include attacks on the liberty or security of leaders, prominent individuals, or members of opposing groups. Other examples include killing a cultural or religious icon or an individual in a manner that has the ability to shock the general populace.

5. Abrupt or irregular regime changes, transfers of power, or changes in political power of groups.

6. Targeting of religious or ethnic events, or real or perceived acts of religious intolerance or disrespect.

7. Discovery of natural resources or launching of exploitation projects that have a serious impact on the livelihoods and sustainability of particular ethnic or racial groups.

8. Commemoration events of past crimes or traumatic or historical episodes that can exacerbate tensions between groups, including the glorification of perpetrators of atrocities.

9. Acts related to accountability processes, particularly when perceived as unfair.

Explanation:

Triggering factors include events or circumstances that, even if seemingly unrelated to atrocity crimes, may seriously exacerbate existing conditions or spark their onset. Many of the indicators above may seem unrelated to racism, However, when combined with other risk factors and societal conditions, including structural racism, they may result in atrocities based on racial or ethnic identity. In other instances, such as protests, resistance movements, and watershed moments that are related to figures within particular racial movements, race and ethnicity may be at the central trigger and further exacerbate risks to specific populations.

Risk Factor 13

Signs of an Intent to Destroy in Whole or in Part a Protected Group on the Basis of Race or Ethnicity

Indicators:

1. Presence of official documents, political manifests, media records, or any other documentation through which a direct intent, or incitement, to target a particular racial or ethnic group is revealed.

2. Targeted physical elimination, rapid or gradual, of members of a particular racial or ethnic group.

3. Widespread or systematic discriminatory or targeted practices or violence against the lives, freedom, or physical and moral integrity of a particular racial or ethnic group.

4. Development of policies or measures that seriously affect the reproductive rights of women, or that contemplate the separation or forcible transfer of children belonging to particular racial or ethnic groups.

5. Public enthusiasm of control over a particular racial or ethnic group and its existence.

6. Attacks against or destruction of homes, farms, businesses, or other livelihoods of a racial or ethnic group and/or of their cultural or religious symbols and property.

Explanation:

This section was adapted from the *UN Framework of Analysis for Atrocity Crimes*, which highlights signs of an intent to destroy in whole or in part a protected group as a specific risk factor for genocide. According to the *Framework*: "The intent to destroy in whole or in part a national, ethnical, racial, or religious group is both one of the most fundamental and one of the most difficult elements of the crime of genocide to prove. ... However, there are some early indicators that can serve as a warning sign."

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on the Basis of Race or Ethnicity

CASE STUDIES

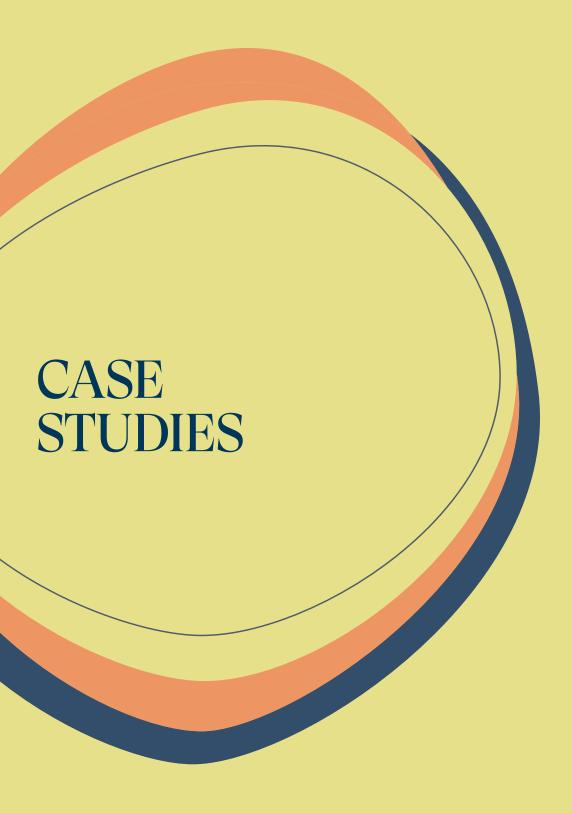# RACISM AS A RISK FACTOR FOR ATROCITY CRIMES:

A Case Study on Brazil[1]

Author: Instituto Lima Barreto para a Mobilidade Social

1 Historical Context: Colonialism and the Slave Trade in Brazil

Beginning in the 15th century, European nations, specifically the Iberian monarchies, had ambitious plans to profit from resources throughout the world: the spice trade in Asia, gold from Africa, and agricultural commodities like sugarcane and coffee in the Americas. The latter required colonization of lands across the Atlantic which led to the trafficking in and enslavement of men and women from Africa, in order to meet the labor demands of large-scale production managed by local elites.

Though Europeans arrived in the Americas in the late 15th century, the Portuguese colonial efforts in Brazilian territory would not begin until three decades later, in the early 16th century. Exploration of the region and the influx of enslaved Africans happened simultaneously. Sugarcane plantations emerged as the first significant agricultural activity during the exploitation of this new land in the Portuguese colony. The proliferation of mills occurred in parallel with

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1   The following case study has been written by an independent consultant on behalf of the Global Initaitve for Justice, Truth and Reconciliation (GIJTR). This case study is informed by a combination of desktop research, document analysis and interviews. It therefore reflects these perspectives and findings, as compiled and written by the consulting author(s). Interviewees have been anonymized to ensure their safety and privacy but GIJTR extends its gratitude for the time and participation of all interviewees.

the growth of the slave trade. Abdias do Nascimento, an activist for the civil and human rights of Black populations in Brazil, claimed that "workforce" Africans were brought in chains and started performing their roles around 1530. By 1535, the slave trade to Brazil was firmly established and organized and would rapidly increase by enormous proportions (Nascimento 1978, 48).

The Atlantic slave trade abducted millions of Africans to be enslaved in the Americas, and Brazil played a significant role. Slavery supported multiple Brazilian economic cycles including sugarcane, gold, and coffee. The latter brought a new level to the trade of enslaved Africans, intensifying in the late 18th century and throughout the 19th century. This was in stark contrast to other slaveholding countries during this period where discussions about abolition were already taking place. Sociologist Maria Jorge dos Santos Leite stated that "around 40% of Africans victimized by modern slavery were presumably forcibly brought to our country" highlighting the pervasive nature of this phenomenon in Brazilian territory and its profound impact on society.[2] Even into the 19th century, slavery remained essential to the Brazilian Empire.

But despite slavery becoming common practice in Brazilian territory from the early days of Portuguese colonization, resistance movements existed alongside the institution of slavery. These movements sometimes occurred on the African continent itself, where individuals were captured and awaiting Atlantic crossing. In Brazil, enslaved individuals practiced resistance mainly through two strategies: escaping and forming "quilombos."[3]

The road to Brazil's independence, which occurred in 1822, was not enough to end slavery in the country, despite external pressures to do so, most notably from England. However, the social abolitionist movement, the critical voices of Brazilian anti-slavery advocates, and the legislation that promoted the gradual emancipation of enslaved people paved the way for the abolition of slavery in 1888. Abolition signified the end of the institutionalization of slavery but placed formerly enslaved individuals at the forefront of a new struggle against racial prejudice.

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2   Leite 2017, 65.

3   The quilombos emerged as refuges for Black people who escaped repression during the entire period of slavery in Brazil, from the 16th to the 19th century. As the function was a hiding place, quilombos with the most difficult access were successful. For the same reason, it was necessary to create community ties and promote autonomy. Residents of these communities are called Quilombolas. After the abolition, most Quilombolas preferred to remain in the villages they formed. With the 1988 Brazilian Constitution, the quilombos gained the right to own and use the land they were located on.

2 Current Status of Racial Relations

Brazil's Myth of Racial Democracy

The official abolition of slavery in 1888, did not resolve the tense ethnic and racial relations of the country. Black slavery in Brazil for more than three hundred years not only relied upon, but also spread through, various forms of legal, medical, philosophical, and religious discourse. After abolition, Brazil's social construct still retained these discourses. Formerly enslaved individuals were still seen as servants or manual laborers, and their role in Brazilian society remained unchanged.

It is worth highlighting that, similar to enslaved Africans, the Indigenous population, native to the land, also underwent a process of stigmatization from the outset of colonization. Before the arrival of Europeans, the Indigenous population, which was comprised at the time of 2000 tribes and nations, was estimated to have been as many as ten million people. Over centuries of colonization, an estimated 90% of the population was lost, many to disease, slavery, and European-instigated violence. Indigenous Brazilians were perceived as "savages" in relation to Europeans and face challenges that persist to this day, including threats to their traditions and culture, as well as territorial loss.

Over the course of centuries as a slaveholding society, Brazil endured a violent process of miscegenation. The society eventually emerged as the blend of three ethnic groups: Europeans, African Blacks, and Indigenous people. By the end of the 19th century, the population of Brazil was characterized as mixed race, and a myth developed in the 20th century to combat the prevalence of racism and the relics of slavery. The belief was that the Brazilian population, despite its slaveholding systems, exhibited relatively non-aggressive expressions of racial and social animosity and strife, owing to its Mestizo makeup. The development

of a mixed-race society and the construct of the "benevolent master"[4] image fostered an outwardly tolerant society in terms of ethnic-racial coexistence. As a representation of miscegenation, the Mulatto figure was embraced positively by this "inclusive" society. The sociologist Gilberto Freyre popularized this concept which became known as the "myth of racial democracy." This concept was based on the erroneous theory that discriminatory conflicts and ethnic-racial violence would not strain social relations in Brazil. This theory, however, failed to consider the historical, cultural, and economic aspects of the country, and how those aspects uphold a racist system within a society that often does not overtly acknowledge racist attitudes.

To grasp the state of racism in Brazil, it's critical to understand how the idea of racial democracy has persisted in the national consciousness throughout the 20th and 21st centuries. There are causes for concern regarding immigrant marginalization from neighboring Andean countries, such as Bolivia and Peru, as well as Central America and the African continent. But marginalization in Brazil primarily stems from color and ethnicity, leading to a disproportionate effect on Black and Indigenous populations. There are behavioral biases that support structural and institutional racism, which lead to perpetually marginalizing specific groups. A journalist noted that:

> *We live in a country where over half of the population is of African descent, and ethnic problems affect all interactions and events in Brazil. It's impossible to go a day without having an interaction or noticing a situation where ethnic and racial problems are significant. From smaller interactions like your relationship with the doorman or the waitress at the restaurant where you have lunch, to macroeconomic debates—everything is affected by these racial and ethnic issues. So, a journalism team appropriately trained in these matters enables individuals to see things through the racial perspective and lens.*

Ethnicity in Brazil: The Ongoing Issue of Underrepresentation

According to the Brazilian Institute of Geography and Statistics (IBGE), Brazil's population is classified into three major racial categories—White, Black, or Brown (Pardos)—and people are free to self-declare their affiliation with a particular group. The 2022 Continuous National Household Sample Survey, released by the IBGE,[5] revealed that a plurality of Brazil's population identified as Brown, comprising 45.3%, followed by White individuals at 42.5% and Black individuals[6] at 10.6%. The self-declared Black and Brown individuals form a combined group known as the "Black population" in Brazil, which accounts for 55.9% of the population.

Although Black and Brown people are a majority of the population, they are underrepresented as decision makers in the labor force, and underpaid relative to their White peers. According to the study titled "Social Inequalities Due to Color or Race in Brazil,"[7] the average monthly income for Black or Brown individuals was R$1,608 (US$303),[8] which is R$1,188 (US$224) less than the average monthly income of White individuals which was R$2,796 (US$527). Additionally, despite being the majority of the resident population and the labor force, Black or Brown individuals held less than 30% of managerial positions.[9]

Black and Brown Brazilians are also underrepresented in the political system. To improve representation, Constitutional Amendment 111 encouraged candidacies of Black individuals and women, leading to a total of 134 Black individuals occupying seats in the Federal Chamber in 2022.[10] This represents an 8.94% increase in the proportion of seats compared to the previous election in 2018.

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5   The Brazilian census, which is conducted by the Brazilian Institute of Geography and Statistics (IBGE), was scheduled to take place in 2020, but was postponed due to the COVID-19 pandemic, and then again in 2021 due to lack of funding from the federal government, then led by President Jair Bolsonaro. The census was taken in 2022 and provided interesting data on the ethnic changes in the Brazilian population since the last census in 2010.

6   Saboia, João, João Hallak Neto e Victor Nobre Villacorta. "Índice de miséria ampliado e desagregado por cor ou raça e sexo." Instituto de Economia UFRJ, fevereiro de 2023. https://www.ie.ufrj.br/publicacoes-j/textos-para-discussao. html.

7   IBGE. "Social Inequalities Due to Color or Race in Brazil," 2022b. https://biblioteca.ibge.gov.br/index.php/biblioteca-catalogo?view=detalhes&id=2101972

8   Approximate average exchange rate: R$5.3/US$1, in the second half of 2022.

9   IBGE. "Desigualdades Sociais por Cor ou Raça no Brasil." 41 (2019): 1-12. https://biblioteca.ibge.gov.br/visualizacao/livros/liv101681_informativo.pdf.

10 Souza, Murilo. "Número de deputados pretos e pardos aumenta 8,94%, mas é menor que o esperado." Câmara dos Deputados, 3 de outubro de 2022. https://www.camara.leg.br/noticias/911743-numero-de-deputados-pretos-e-pardos-aumenta-894-mas-e-menor-que-o-esperado/.

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4   Abdias do Nascimento argued that the "Myth of the Benevolent Master" was a concept that suggested slave owners were seen as compassionate proprietors who treated their slaves well and provided them with minimally acceptable living conditions. Nascimento contested this myth by pointing out that this message sometimes hides the various types of violence, exploitation, and dehumanization that Black enslaved people faced.

Despite this increase, they still only represent 26% of the 513 seats in Congress. In the Senate, which has 81 seats, Black individuals occupy a quarter of those seats.[11]

In other words, despite a slow but steady increase in political representation of Black individuals in Brazil, there persists an inequality in job market and gross income when compared to their White counterparts.

The debate on ethnic-racial quotas for admission to higher education in Brazil intensified in the late 1990s. In an interview, a civil society leader who was one of the pioneers advocating for ethnic-racial affirmative action in universities, shared the process of discussing quotas in the late 1990s and early 2000s. He commented on resistance, including from Black individuals:

> *I presented a proposal for quotas to support Black people. However, over 90% of the leaders from MNU [Unified Black Movement] and other Black groups strongly opposed the proposal. When I asked why, some openly said "We don't want handouts; we are already humiliated in society." They feared that depending on such support would lead to more humiliation by White people.[12]*

Michael França, an economics theory doctor and researcher at Insper, also commented on ethnic-racial conflicts, once again highlighting the importance of quotas and the change in attitude by the early 21st century:

> *In the 1980s and 1990s, Black Brazilians aimed to adopt more Caucasian characteristics. Whiteness was prized in Brazil to the extent that numerous individuals would self-identify as White. To possess traits that were more typical Caucasians, many individuals would straighten or cut their hair. This was widespread in Brazil until the 1990s.*
>
> *In the mid-2000s, when quotas were implemented, the first major discussion on racial issues arose in Brazil. Even a country that touted itself as a racial democracy began discussing race in all places due to the provision of quotas for Black individuals. Therefore, the first significant national debate on the issue of*

race took place. Since then, Black individuals have been reading more literature about racial issues, leading to a better comprehension of this discourse, and igniting a strong admiration for their Black identity. This resulted in a change in how the racial question was perceived in Brazil.

The strong political polarization that occurred in Brazil throughout the 2010s, which motivated ultraconservative citizens to engage politically against progressive movements, is a result of a broader historical context. Jair Bolsonaro's 2018 election and four-year presidency (2019–22) are manifestations of this political shift.

Brazilian Legislation and Racism

Brazilian law does not permit any form of discrimination based on color or race. The 1988 Federal Constitution's 5th article, section XLII, criminalizes racism as follows: "Racism is an unremovable and non-bailable crime punishable by law with imprisonment." Section XLI establishes that the law must punish any form of discrimination that violates fundamental rights and freedoms. This article upholds the principle of equality, wherein "everyone is equal before the law, without any distinction of any kind." It is vital to acknowledge the context of the century from the abolition of slavery until the constitution's promulgation in 1988, a period when the myth of racial democracy solidified in the nation, masking certain forms of discrimination that predominantly affected the Black population. Although the mythological discourse dominated the national imagination, the Black movement also was active throughout the century spanning the abolition of slavery to the 1988 Federal Constitution.

Not all racism was direct, but instead a result of laws with a disproportionate impact on the Black population. For example, illiterate persons had been deprived of their political rights since the country's debut republican constitution in 1891, a continuation of law passed before independence, which allowed only the literate population to vote. During the imperial period, more than 80% of the Brazilian population was illiterate. Thus, the right to vote was accorded to only a minority of the population, who were mostly White and members of the aristocracy. And the disproportionate impact of this law on the Black and Brown population was never cured. In recent years, data collected by the IBGE show that the illiteracy rates among Black and Brown individuals

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11 Queiroz, Vitória. "22% dos senadores eleitos são negros." Poder360, 3 de outubro de 2022. https://www.poder360.com.br/congresso/22-dos-senadores-eleitos-sao-negros/.

12 Interview with education and racial equity activist, 2023.

continue to be higher: the national average among those individuals is 7.4%, more than twice the rate found among White individuals, at 3.4%. Thus the majority of the illiterate population, both historically and presently, is Black.[13] As a result, Black Brazilians were disproportionately impacted. The recent Federal Constitution, which criminalized the practice of racism, also extended voting rights to illiterate individuals.

Other veiled efforts similarly impacted the Black population. After slavery was abolished, the Black population faced increasing institutionalized persecution. The Brazilian Penal Code of 1890 classified the crime of vagrancy as a misdemeanor in Article 399. Vagrancy was defined as not exercising a profession, trade, or any means of livelihood, lacking proper means of subsistence and a fixed place of residence, or providing subsistence through an occupation prohibited by law or considered offensive to morality and good customs. Unfortunately, this legal instrument was frequently used by the police to target the newly freed Black population because Blacks at that time were more likely to lack a fixed abode, occupation, or even proper means of subsistence, and as a result, were considered vagrants.

The Black population continued to face various forms of marginalization during the post-abolition era, but more progressive sectors of society and the Black movement fought against them, gaining momentum in the second half of the 20th century. In 1951, Brazil enacted the Afonso Arinos Law, its first anti-racist legislation, which aimed to penalize and curb racist behaviors. The law was passed after Katherine Dunham, an American dancer who was touring the country in 1950, publicly denounced the manager of the Hotel Esplanada, a luxury accommodation in São Paulo. Dunham stated that the manager had refused to host her upon discovering that she was a woman of color. Her high-profile denunciation captured the attention of the Brazilian press, leading to the introduction of a bill in the Chamber of Deputies by federal deputy Afonso Arinos. The bill aimed to prohibit racial discrimination in the country. Although the bill generated controversies and tensions,[14] it progressed among legislators and was unanimously approved. The law thus classified racism as a criminal offense and became the country's first anti-racism law.

The Federal Constitution of 1988 initiated intense debate around ethnic-racial inequalities in Brazilian society, coinciding with the centenary of abolition. In Article 3, Clause IV, the constitution establishes as fundamental objectives of Brazil to: "promote the common good, without prejudice to origin, race, sex, color, age, and any other form of discrimination." While the law defines racism as a crime and prioritizes the common good over racial prejudice, it does not guarantee the elimination of racism. Subsequent presidents who governed under this constitution, such as President Fernando Henrique Cardoso (1995-2002), would need to address the issue of ongoing racial discrimination. One of our interviewees, who currently serves as the executive director of a racial equity organization, suggests that Fernando Henrique Cardoso received Black Movement leaders during The March against Racism, for Equality, and Life, the well-known 1995 march in Brasília.[15][16] (The march was led by Edson Cardoso, a current member of our council.) During the same event, Edson Cardoso and other leaders appealed to Fernando Henrique Cardoso to recognize the existence of racism in Brazil. The Brazilian Penal Code introduced the crime of racial insult in 1997; the goal of this change was to elevate racial insults to racial defamation, a more severe crime than general defamation. The classification of racial insults as a criminal offense is another important legislative measure in the fight against racism because it penalizes acts of discrimination based on color, race, or origin. In 2021, the courts redefined racial slurs once again, elevating it

14   Despite being recognized as Brazil's first anti-racist law, some deputies suggested prohibiting "Black fronts" or any political association based on color during the Afonso Arinos Law drafting debates. However, despite some deputies' advocacy for this idea, it did not proceed, as the project aimed to tackle the punishment of racist actions. To discover more about the discussions surrounding the endorsement of the law, refer to: https://www12.senado.leg.br/noticias/especiais/arquivo-s/brasil-criou-1a-lei-antirracismo-apos-hotel-em-sp-negar-hospedagem-a-dancarina-negra-americana .

15   Interview with racial equity activist, 2023.

16   The March against Racism, for Equality, and Life was held in the federal capital in the tricentennial year of the death of Zumbi dos Palmares, a former enslaved person who is now honored on National Black Consciousness Day (November 20), bringing together various leaders of the Black Movement. Fernando Henrique Cardoso signed a decree to establish an interministerial working group, responsible for discussing public policies aimed at valuing the Black population, on the same day that marked the tricentennial of Zumbi's death. According to the former president, Brazil "carries the heavy legacy of slavery and a culture that disguises discrimination through certain forms of apparent cordiality." Please see: https://www1.folha.uol.com.br/fsp/1995/11/21/cotidiano/29.html .

13   Before the 1891 Federal Constitution and its subsequent versions which deprived the illiterate of voting rights, the Saraiva Law, prohibited the same group from voting. That law was passed during the monarchy era in 1881. Refer to: https://oglobo.globo.com/brasil/educacao/noticia/2023/06/ibge-analfabetismo-cai-em-2022-mas-taxa-continua-mais-alta-entre-negros-idosos-e-nordestinos.ghtml# .

from racial defamation to racial crime, an even more serious offense.[17] Clearly, racism inherited from the myth of racial democracy and current ethnic-racial tensions present in Brazilian society continue to be fundamental issues for Brazilian presidencies.

3 How Does Racism Contribute to Atrocity Risks?

Police Racial Violence: The Targeting of Black Youth

The interviews conducted for this case study reveal that current racism in Brazil is directly linked to the risk of atrocity crimes. It is crucial to reflect on the relationship between the actions of the state's armed forces and the criminal justice system in relation to racism. The 2023 Brazilian Public Security Yearbook reports that the percentage of incarcerated Black individuals has been increasing over the past few years.[18] In 2011, 60.3% of the incarcerated population was Black and 36.6% was White. By 2022, the proportion had increased to 68% for Black inmates and decreased to 30.4% for White inmates. During an interview, a human rights activist delved into the structure of the police in Brazil and highlighted the following:

> We currently have two police forces operating in cities: the military police and the civil police. The civil police hold the authority to carry out investigations. Therefore, all investigations must be conducted by them. In contrast, the military police is responsible for visible policing. When people are being arrested, it's noteworthy that the police force that lacks authority to carry out investigations is almost always the one that makes arrests while the crime is still in progress. In simpler terms, the state does not imprison people after an investigation that determines who requires state intervention to correct their behavior. On the contrary, what happens in Brazil is a statewide security

> policy that is implemented through police operations carried out in specific and marginalized regions, mainly predominating in Black areas such as the favelas. As a result, when an individual is caught in the act of a crime, they are immediately arrested and taken to a police station, then sent to the Public Prosecutor's Office and, afterward, to the judiciary system. Brazil has a justice system that severely legitimizes the police's racial behavior, from the beginning to the end of the judicial process.[19]

A professor based in Rio de Janeiro observes that the state's security forces and police constantly repress the Black population today in ways similar to days of slavery. He emphasizes that:

> Black people went from being hunted by slave catchers and Portuguese military forces during the colonial era when they left the plantations, to becoming the targets of paramilitary groups, police forces, and the army in modern times. In simpler terms, the role of Black individuals in society has changed from being wealth producers under enslavement until 1888, to being subjected to a different form of enslavement known as "modern enslavement," which involves earning meager wages that do not allow financial freedom. This has forced the Black community to live in impoverished areas and marginalized neighborhoods.[20]

It is critical to investigate Black genocide,[21] particularly among Brazilian youths, to better understand how profoundly racism by state security forces represses Black individuals. Reports indicate that each month young Black individuals are killed during police operations, especially in slums. Highly violent police activity tends to be concentrated in areas like slums and economically disenfranchised zones of the cities. In Rio de Janeiro, for example, there is a large number of cases that demonstrate police violence against the Black population. And in São Paulo, in 2021, a 24-year-old pregnant woman named Kathlen Romeu was killed during a police operation in the Lins community. As per the "Atlas da Violência"

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17   Thiago de Souza Amparo and Amanda Pimentel, "Equating racial slurs with racism: advances and recognition in antiracism legislation," https://portal.fgv.br/en/artigos/equating-racial-slurs-racism-advances-and-recognition-antiracism-legislation

18   Anuário Brasileiro de Segurança Pública 2023. São Paulo: FBSP, 2023. https://forumseguranca.org.br/wp-content/uploads/2023/07/anuario-2023.pdf .

19   Interview with human rights activist, 2023.

20   Interview with political science professor, 2023.

21   Abdias do Nascimento, a former politician, writer, and activist for the rights of the Black population in Brazil, coined and popularized the phrase "Black Genocide." For further details, please refer to the following source: Nascimento, Abdias. O Genocídio do Negro no Brasil: Processo de um Racismo Mascarado. Rio de Janeiro: Paz e Terra, 1978.

(Atlas of Violence),[22] in 2019, of all homicide victims, 77% were Black, a rate of 29.2 cases per 100,000 residents. Meanwhile, individuals who are not Black, including Asian, White, and Indigenous people, had a lower rate of 11.2 cases per 100,000 residents. In other words, the lethal violence rate against Black people was 162% higher than against non-Black people.[23]

Racism and the Limits of Justice and Reparations

Police-based violence is not the only lethal racist risk that Black Brazilians face. Private actors also contribute to the tragedy of racist violent deaths. The French supermarket chain Carrefour has had multiple instances of racism in their Brazilian stores. In 2020, João Alberto Silveira Freitas, a 40-year-old Black man, was killed in the parking lot of a store in Porto Alegre, Rio Grande do Sul. Following the incident, the largest settlement to date for a hate crime was issued, with the company being compelled to pay R$115 million, or roughly USD$23 million, to the Public Prosecutor's Office in June 2021 as part of a Conduct Adjustment Term. A portion of the sum was awarded to João Alberto's relatives.

A Brazilian lawyer claims that this penalty imposed on Carrefour provides a crucial signal to companies and society generally that racism will not be overlooked.[24] Nevertheless, compensation and reparation for the relatives of young people who are slain due to racism in Brazil remain incredibly limited. According to a researcher on the families of victims of police killings within the justice system, the opportunity to receive reimbursement and restitution in Brazil is influenced by the case's degree of publicity and the victim's personal history, with the media playing an essential role in this process:

Instances where individuals begin distributing videos of police actions and families begin sharing the victim's moral history hold great importance. Regrettably, the victim's past plays a crucial role in how the case is perceived within the justice system. It has an effect on how stakeholders within the justice system react and how reparations are administered. Hence, there exists a link

between the victim's background and the dispensation of reparations. The media platform provides the space for the debate on the narrative around the tragedy.[25]

The researcher provided additional commentary, stating that Brazil needs to increase their sensitivity to the process—and the timelines—to compensate victims' families. As of the date of this case study, cases from 2006 where the state recognized a right to compensation, had not paid out those sums. According to the researcher, compensation hold meanings beyond financial context for the families of the victims:

The compensation amount may be useful for practical purposes, as losing a loved one often renders the family more vulnerable. However, some families view compensation as a means for the State to take responsibility for its mistake since a third party—the judiciary—is acknowledging the State's action. Thus, receiving compensation is often a way of asserting that their loved one was not at fault, particularly for families with victims of police violence who are frequently blamed. In other instances, families choose not to accept compensation for ethical reasons, such as feeling as if they are receiving money in exchange for their child's life, particularly because the compensation amounts are usually inadequate and thus perceived as another form of violence.[26]

The Media's Role in Brazilian Ethnic-racial Issues

The media in Brazil has made progress addressing ethnic and racial issues in recent years, as was highlighted by many interviewees. This includes newspapers, television, social media, and other forms of media. Over the last 15 years, media outlets have undergone a transformation. The hiring of Black individuals has increased and there is now a more comprehensive journalistic approach to topics related to ethnicity and race, as well as religion and gender. A consultant on evaluation and ethnic-racial equity argues that even though the media has progressed, it still tends to depict Black people through the "absence stereotype," which highlights the social vulnerability of the Afro-Brazilian population. Yet she

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22   Cerqueira, Daniel. Atlas da Violência 2021. São Paulo: Fórum Brasileiro de Segurança Pública, 2021.

23   Cerqueira 2021, 49.

24   Interview with lawyer, 2023.

25   Interview with legal research specialist, 2023.

26   Ibid.

acknowledges there have been improvements, especially in television media, where more programs now have Black hosts, and more Black individuals are on editorial teams.[27] These steps have led to the production of more diverse content.

The increased Black representation in media is more than just moral—it makes good business sense as well. A journalist notes that changes in the approach to racial issues are the result of changing "market demand," which necessitates new consumption methods and figures. He contends that anti-racist and diversity agendas can help companies generate visibility and increase their market share.

Black people are gaining purchasing power, and there is a large consumer base pushing for this change. You can see that some people within the business world are adopting this viewpoint strategically. This is not a passing trend but a mainstay. Therefore, integrating anti-racism and justice into your image serves as a marketing strategy. To understand whether this shift is authentic, we need to track Black individuals within institutions and determine if there are salary disparities between them and their White colleagues in the same occupation. Does the company enforce internal programs to endorse racial and gender diversity and inclusion?[28]

Lessons Learned: Ethnic and Racial Issues in the Educational Curriculum

Given the long and impactful history of slavery and racism, Brazil has introduced legally mandated education about Blacks and Indigenous populations as an important step in recognizing the tragedy these groups have faced, and the challenges that continue to besiege them. During President Luís Inácio Lula da Silva's first term in 2003, Law No. 10.639 was enacted. This law changed Law No. 9.394, commonly referred to as the Law of Guidelines and Bases of National Education, which was passed in 1996. Per Law No. 10.639, it became compulsory to educate about Afro-Brazilian history and culture in both government-funded and privately funded elementary and secondary schools in Brazil.

In 2008, Law No. 11.645 was passed introducing an update. Surprisingly, this new law made it obligatory to study the history and culture of Indigenous and Afro-Brazilian peoples in elementary and secondary educational institutions, but higher education institutions that offer teacher training programs were exempt from this requirement.

Based on statements from interviewees, practical implementation of these mandatory laws presents several challenges, primarily due to budget constraints. A professor at the Federal University of Rio de Janeiro emphasizes that serious policy change cannot occur without budget allocation. In addition, he points out that the enactment of these laws generated controversial reactions from the "bancada evangélica" (evangelical caucus[29]) in the National Congress and civil society. The professor notes that neo-Pentecostals and Pentecostals treated the law as religious, although it addresses history and culture, not religion.[30] This reaction sparked a clash of narratives around the law, and the controversy escalated with the amendment of Law No. 11.645 in 2008.

A civil society leader and activist contributed to the discussion in his interview on the intricacies of implementing Law No. 10.639. He comments that currently, even 20 years after the law's passage, fewer than 10% of the public and private institutions that were required to implement the law, currently comply. He highlights that there was a need to fight and demand penalties to enforce compliance with the law.[31] This emphasizes that there are still hindrances to incorporating Indigenous and Afro-Brazilian history and culture into the curricula of elementary and high school education. Moreover, it is essential to include these themes in higher education.[32]

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27 Interview with race and gender equity consultant, 2023.
28 Interview with journalist, 2023.

29 The media and political scientists use the term "bancada evangélica" to refer to lawmakers who identify as evangelical and support the issues advocated by evangelical leaders. This includes members of the National Congress of Brazil, as well as state and municipal legislatures.
30 Interview with history professor, 2023.
31 Interview with education and racial equity activist, 2023.
32 In her interview, a psychoanalyst identified another obstacle, which is the embedment of Western, White, and imperialistic values in the standard academic syllabus, making it challenging to integrate other perspectives and wider-ranging forms of knowledge.

4 How Communities Have Resisted and Confronted Racism

Black Social Movements in Brazil

Brazil has several active Black movements.[33] Noteworthy Black organizations in Brazil include Unified Black Movement (Movimento Negro Unificado—MNU), the Black Coalition for Rights (Coalizão Negra por Direitos), Educafro, Crioula, the Permanent Forum for Racial Equality (Fórum Permanente para Igualdade Racial), the Agbara Fund, the Baobá Fund for Racial Equity (Fundo Baobá para Equidade Racial), and Think Olga. These organizations advocate for public policies that promote racial equality, representation, and an appreciation of Black culture. Although not specifically aimed at Black movements, the Justa Platform has played a role in advocating for the Black population, particularly regarding their treatment within the justice system. Additionally, several independent media outlets and communication collectives, such as Geledés—Black Women's Institute, *AzMina* magazine, and the Alma Preta website, focus on promoting visibility and representation for the Black population.

Quilombos are a part of various movements against racism and serve as a form of resistance within the Afro-Brazilian population. These communities emerged as spaces of empowerment and cultural preservation, inspired by historical roots of struggle and freedom. Quilombos reaffirm Black identity, promoting the value of ancestral traditions such as the concept of collective land, and resisting racist structures through the occupation of territories, which sometimes face threats from the social elite. The 2022 Census states that Brazil's quilombola population totals 1.3 million people, of which 204,000 live in demarcated quilombola territories. However, only about one-third of these territories have undergone proper legalization.[34]

In Brazil, significant anti-racist demonstrations have taken place, especially from the 2000s onward. One example of such a movement is the Black Lives Matter movement, which gained traction after the media highlighted specific cases of racial violence, around the world. However, as discussed below, local racial violence in Brazil has failed to unify and mobilize the population on a national scale in the same way.

5 Successes and Challenges in Confronting Racism

Recognizing and Combating Racism in Brazil

The majority of interviewees indicated that there hasn't been a singular moment or event that has mobilized the country uniformly at the national level to recognize and combat existing racism. The lingering effects of the "myth of racial democracy" and the recent political polarization that began in the 2010s, has kept the country divided over concepts of human rights and debates about ethnic-racial issues and diversity in terms of gender, religion, and politics. A consultant in racial assessment and equity, responded to the question of whether there has been any event that could be considered crucial for the recognition of racist structures in Brazil:

> *I'm not optimistic, I'm quite pessimistic. I think that despite many initiatives—even those related to fatal and lethal incidents involving the police—police violence remains pervasive. This issue is particularly absurd given that Black children are being killed every day. We've seen many incidents, including one during the pandemic where a pregnant Black woman was involved. One might think that a pregnant woman being involved would provoke a nationwide reaction. However, it seems that even such an event is not enough to generate such a response. Therefore, I find it difficult to believe that such an event has occurred.*

This consultant mentions specific cases of violence that are considered more isolated and have undergone trivialization due to their frequent occurrence in daily life and the news. However, he highlights how an international event, the George Floyd death in the United States, that did resonate in Brazil, led to street protests, and sparked public debate:

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33 To check out the social movements fighting for the rights of the Black population in Brazil, see: https://observatorio3setor.org.br/noticias/lista-conheca-6-ongs-que-lutam-pela-equidade-racial-no-brasil/ .

34 The 2022 Brazilian Demographic Census provided unpublished data on the quilombola population in the country, see: https://www.gov.br/pt-br/noticias/assistencia-social/2023/07/populacao-quilombola-e-de-1-3-milhao-indica-recorte-inedito-do-censo#:~:text=De%20acordo%20com%20dados%20do,espalhado%20por%201.696%20munic%C3%ADpios%20brasileiros .

... That's why I believe there's a problem. Although I haven't thoroughly examined it, some people are trying to understand why George Floyd has become such a symbol worldwide, especially in Brazil. However, I attribute it mainly to the concept of the "outsider." For instance, there's the following survey, "Do you consider yourself racist?" The answer is "no." But do you know someone who is racist? Yes. That is the other. George Floyd is someone else from another country, but this incident happened in the United States. This incident caused a commotion due to the video footage and events that followed. Brazil also has many images of dreadful things happening, but it's like dealing with otherness.

Other interviewees also cited the impact of the Floyd case, despite several similar incidents already taking place in Brazil. A journalist echoed the above critical view on how the external inclusion of a tragic event uncovered the racism and marginalization Black communities face in Brazil yet failed to address the harsh reality of ethnic-racial conflicts present in the county.

An incident similar to that of George Floyd occurs at least once a month in Brazil. There are at least one, but often more, occurrences similar to that of George Floyd per month, and unfortunately, it does not surprise anyone. Social media is filled with these kinds of images. Someone shared something on my feed yesterday, and it made me sad, so I do not usually look for news on racism.

Yesterday, two police officers were seen in a video taking a young Black man. From the video description, and without confirmation from me, the man seemed to be homeless. One officer held his leg, while the other held his shirt, similarly to the person who died after being struck with tear gas cans and gas balloons by federal police officers. We have at least one situation like George Floyd's in Brazil, which hasn't sparked outrage. Children going through what George Floyd experienced in Brazil does not provoke outrage. However, the case of George Floyd sparked outrage and made many people in Brazil realize that racism exists here too. When it comes to this, or any similar issue, it is intriguing to read the book "Brazilian Racism" by Ynaê Lopes dos Santos. In her book, Professor Ynaê Lopes dos Santos talks about what inspired her to write it—the extensive uproar among people who only recently, in 2020, due to a case in the United States, became aware of the existence of racism. Up to this day, people appear to be more concerned with cases of racism that occur

outside of Brazil, due to the convenience of ignoring the existence of racism within the country. This preserves the status quo, ensuring power structures remain unchanged, and individuals hold onto their privileges, unwilling to relinquish them. However, this may be a moment of partial realization. Nonetheless, we are still far from an authentic moment of awakening.[35]

It is evident here how the interviewees' analyses converge. It seems easier for Brazilian society to observe and object to the discriminatory processes of foreign nations rather than deal with cases of discrimination that are prevalent in their own country.

Despite this, there have been cases in Brazil where Black individuals encountered police brutality and racism and gained significant media coverage as well as some public sympathy. One of these cases is the aforementioned matter of João Alfredo Silveira Freitas', a 42-year-old Black man who was murdered by private security guards in the parking lot of a Carrefour supermarket branch in Porto Alegre on November 20, 2020. His murder was captured on the cellphones of several onlookers. This tragic incident took place several months after the George Floyd case, which had contributed to movements for ethnic-racial justice.

On May 21, 2023, Brazilian football player Vinícius Jr. was the subject of criminal chants from opposing Valencia Club de Fútbol fans during a match against Real Madrid Club de Fútbol in Spain. Vinícius is a standout player for the Brazilian national men's football team and is currently considered one of the leading Brazilians players abroad. The fans directed insults, animalistic comparisons, and death threats toward the athlete during the chants. There have been other racist instances prior to this event targeting Vinícius.[36]

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35   Interview with journalist, 2023.

36   After this incident, the athlete, who has publicly criticized the racist attacks he encountered abroad, was appointed as a representative for Brazil's international anti-racism campaign. Moreover, Vinicius Jr. was selected to head FIFA's anti-racism committee, which oversees a larger number of countries than the United Nations (UN). It aims to combat the instances of racial discrimination that occur in the sports world, reflecting the prevalent discrimination in society.

Recognizing Racism: Practices for Identifying and Combating Racism in Brazil

The Durban Conference (III World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance of the United Nations) held in 2001 was one of the initiatives aimed at acknowledging and combating racism in Brazil. Diplomats Tadeu Valadares and Gilberto Saboia stated that the conference brought together several factors that produced significant advancements in human rights in Brazil, with a special emphasis on vulnerable groups such as women, the LGBTQIAP+ community, and Black and Indigenous populations. The Quota Law, (officially, Law No. 12,711/2012), reserved 50% of the total spots in federal universities and institutes for public school students, with 50% of those spots exclusively reserved for Indigenous, Black, and Brown students. According to almost all scholars and leaders interviewed, this new law played a fundamental role in the inclusion process, as it improved representation, expanded opportunities, and enabled students from economically disadvantaged families to attain social mobility through education.

6 Recommendations for Public and Private Institutions

Recommendations for the State

In an interview, the founder of a consulting group that focuses on diversty and sustainability recommended temporary legislation to the government.[37] These laws would enforce quotas for underrepresented groups (including Blacks, women, Indigenous people, low-income individuals, and people with disabilities) in universities, state-owned companies, and other spaces of political and social engagement. To implement this recommendation, the collection of census data must be expedited regarding the race and color of public employees, primarily those in leadership positions. The goal of this data collection is to monitor compliance with inclusion and diversity goals that were established by Decree 11,443 in March 2023.

To supervise and ensure compliance with these ethnic-racial, gender, and class quotas, new legislation is recommended. This would help prevent future amnesties for political parties that fail to abide by electoral rules for ethnic-racial and gender representation equity. For example, in 2023, PEC 9/2023, known as the Amnesty PEC, proposed a constitutional amendment forgiving debts of parties that violated the mandatory fulfillment of ethnic-racial and gender quotas, as well as irregularities in the use of the party fund. There is also a recommendation to establish budgetary mechanisms that incentivize different levels of government (and all branches of power) to set inclusion and representation goals. These goals should include bonuses for those that achieve Black representation among their employees, especially in leadership roles, ahead of schedule.

To address the issue of police violence against Black individuals, it is recommended to revise training programs for both military and civilian police officers to sensitize them to human rights and structural racism in Brazilian society. In addition, it is suggested to standardize the interpretation of the quantity of drugs carried by an individual that determines whether they should be classified as a user or a trafficker. The current interpretive freedom tends to criminalize Black people and marginalized communities as traffickers while White and non-marginalized individuals with equal or larger quantities are categorized as mere users and therefore not subject to criminalization. In addition, advancing the decriminalization of certain recreational drugs such as marijuana can reduce incarceration that disproportionately affects Black and poor populations.

Recommendations for Civil Society Organizations and Agencies

Civil society organizations should prioritize maintaining a focus on racial equality and combating racism, regardless of political affiliations. Regularly accessing and disseminating new indicator data such as the Racial Balance Index (IER),[38] and the Racial Balance Sheet Index (IFER),[39] is vital. The IER is designed to monitor regional, long-term racial equality within the job market, while the IFER measures the disparity in opportunity between Black and White

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37   Interview with diversity and sustainability consultant, 2023.

38   https://www.insper.edu.br/wp-content/uploads/2020/12/IER_Firpo_Franca_Cavalcanti-.pdf

39   https://arte.folha.uol.com.br/cotidiano/ifer-indice-folha-de-equilibrio-racial/

individuals. Supporting campaigns to motivate companies to voluntarily provide data for these research efforts is also recommended. This will help promote accountability and transparency in racial disparities.

Recommendations regarding international agencies apply to the United Nations system and the World Bank Group. The United Nations needs a strong counterbalance given the threat posed by regressive governments. To achieve this, councils composed of retired experts and diplomats actively engaged in international negotiations against racism, accompanied by leaders from social organizations, must be created, with local observers. Such action would ensure monitoring of objectives and regular reporting independent of the existing government. Moreover, inclusion criteria must be used by UN organizations when hiring consultants and service providers. Inclusion statistics should be a determining factor in the evaluation process, even when appointing individuals for leadership positions.

The World Bank Group, specifically in the context of financing public investments and private sector projects, should prioritize programs that value social inclusion and promote mobility for Black and Indigenous groups. The Bank can recommend inclusion criteria when tendering for private suppliers by considering ratios and other indicators of Black representation in leadership roles. It may also be beneficial to establish selection criteria for projects funded by the International Finance Corporation that prioritize partnership with firms committed to inclusion and career development of the historically underrepresented Black population.

Incorporating these measures can allow multilateral agencies to solidify their commitment to social justice and the inclusion of the Black population in Brazil, irrespective of political or government changes.

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RACISM AS A RISK FACTOR FOR ATROCITY CRIMES:

A Case Study on Colombia[1]

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Colombia is a country located in the northwestern corner of South America. Its varied landscape, rich history, and broad blending of cultures make the country a truly diverse place. Colombia's variety of peoples is valued and celebrated, with more than 100 officially recognized ethnic groups, each with their own traditions, languages, and customs. These groups include Indigenous peoples, Black, Afro-Colombian, Raizal, and Palenquero communities, the Roma or Gypsy peoples, as well as the White-Mestizo population. The country's economy is based on the wealth of its natural resources, agriculture, manufacturing, tourism, and services. This economic diversity has fueled its growth and placed it as one of the strongest economies in Latin America. However, the country's economic standing is due in part to its colonial past, including a history of slavery. Racism and accumulation by dispossession have a deep connection with the

current capitalist system that upholds structures of systematic impoverishment, marginalization, and violence in the country's ethnic populations. As a result, one must examine the influence of colonial political legacies on Colombia's current state institutions.

1 A Brief Overview of Colombia's Colonial Past

Beginning in the 15th century and until the 19th century—a period that includes the systematic invasion, murder, and colonization of racialized peoples by persons from what is now modern-day Spain until the enforcement of the Manumission Law of May 21, 1851—an economic system was developed that was highly influenced by race.[2] This first system of wealth accumulation was based on the transatlantic slave trade, a centuries long systematic kidnapping of Africans who were purchased and sold by Europeans. With Africans converted into commodities, Europeans and their descendants were guaranteed a significant economic stream in both the initial sale of Africans as well as the subsequent sale of the descendants of those Africans. In other words, their profits were not restricted to the initial group of kidnapped people, since, like the Africans brought to the American continent as slaves, their descendants were also seen as merchandise. This multigenerational "commodity" meant the sale of kidnapped Africans, their children, and their grandchildren ensured a multiplier of capital for slaveholders and, therefore, an even greater amassing of wealth.[3]

1   The following case study has been written by an independent consultant on behalf of the Global Initaitve for Justice, Truth and Reconciliation (GIJTR). This case study is informed by a combination of desktop research, document analysis and interviews. It therefore reflects these perspectives and findings, as compiled and written by the consulting author(s). Interviewees have been anonymized to ensure their safety and privacy but GIJTR extends its gratitude for the time and participation of all interviewees.

2   The term was coined by Europeans to support the invasion, colonization, evangelization and supposed "civilization" of subjugated societies, using physical attributes as an excuse to classify people.

3   Amanda Hurtado, "Plan Nacional de Desarrollo NARP desde la perspectiva de sus derechos" (National NARP Development Plan from the perspective of their rights) (course, Escuela Superior de Administración Pública, November 13, 2022.

Colonialism systematically relegated and erased any trace of African heritage. It wasn't just that the bodies of Africans were property, slavers also stripped Africans and their descendants of their language, culture, and knowledge. As a result, the enslaved population was denied access to the basic resources needed to lead a decent life. Slavery and servitude were legal because they were justified through the creation of a social pyramid, a hierarchical structure based on the classification of people by their phenotypical features: "in this pigmentocracy, skin color had virtue and evil; the White and European was considered superior, and the others did not even have a soul (…). They used these grounds as weapons to justify their racial ideologies: language, religion, and philosophy."[4]

A second system of wealth accumulation was the exploitation of uncompensated labor of enslaved people. The unpaid work performed in haciendas, on cotton and sugar cane plantations, in the mines, and even within slavers' homes was appropriation of productivity of the enslaved population without any economic remuneration. Thus, for five centuries, slaveholders amassed enormous wealth that allowed their descendants to maintain their systems of rule. They maintained their status quo and exerted power to increase their wealth. These historical systems of wealth accumulation through dispossession and appropriation—though the systems present differently today—laid the foundations for underdevelopment of generations of racialized communities trapped in structural impoverishment.[5]

As this exploitation was unfolding, the enslaved population did participate in various forms of resistance and some emancipation occurred. The main goal of the "cimarronaje" process was the development of alternative societies to colonial domination: spaces in which autonomy, freedom, cultural protection, the defense of equality, and protection of rights would be safeguarded. Alongside the escape and settlement of enslaved people in peripheral territories protected by the thick jungle (*palenques*), there were efforts by organized movements of the freed Black population within urban environments. For example, Afro-descendant political and religious leaders[6] backed by the Catholic church wished to be integrated into urban society and sought recognition of their rights and other basic issues within the

Spanish colonial system. However, it was the fight for the country's independence that led to the abolition of slavery in Gran Granada—what is now Colombia.

Independence and Bolívar's Broken Promise: Racism in the New Republic

The involvement of African communities and their descendants in the independence process that began in 1810 was based on specific expectations. Motivated by Simón Bolívar's promise to abolish slavery and his ideals of a society with equal rights for all, he led many of the Maroons to support the army in the liberation campaign. However, as one artist and researcher notes, Bolívar never intended to build a truly democratic republic, and in fact assured potential backers of the war that he did not:[7]

> *It was always part of Simón Bolívar's plans to uphold the colonialist system once independence was won. He went to Jamaica to find sponsors to back the wars of independence. However, he specifically targeted the part of Jamaica under British rule. The British authorities rejected his request for support. Bolívar, in response, sent multiple letters to both the British authorities and to what is now Colombia, promising the British side that the freed territories would not become a second Haiti, i.e., they would not become territories occupied by free Black people. Despite his efforts, the British authorities rejected his request for support. That same year, he went to Haiti in search of funding, securing two sponsored expeditions with ships, weapons, and money.*

The only condition of Alexandre Petion, the president of Haiti at the time, was that in exchange for his help, Bolívar would declare the abolition of slavery in the territories that were being freed. However, he did not comply; as the war escalated, he threatened by decree to re-enslave the Blacks or *pardos* (free persons of African descent) older than fourteen years of age who did not join the liberating army.[8]

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4   Interview with human rights activist, May 2023.

5   Hurtado, "Plan Nacional de Desarrollo NARP desde la perspectiva de sus derechos."

6   For the purposes of this text, Afro-descendants are understood to be people belonging to the Afro-Colombian, Black, Raizal, and Palenquero communities.

7   Interview with artist and researcher, June 2023.

8   "Esclavos y negros en la independencia". Mauricio J. Chávez Bustos, accessed May 30, 2023, https://www.banrepcultural.org/biblioteca-virtual/credencial-historia/numero-247/esclavos-y-negros-en-la-independencia"

Initially, their real aim was to build a government and a territory free of slavery. It was only afterward, due to the fear of creating a "pardocracy", that is, a government led by people of African descent, that he embraced this view. Within his army and organization, he had two outstanding Afro-descendant generals, José Prudencio Padilla, responsible for liberating the northern region of the country, and Manuel Carlos Piar Gómez, who freed practically all of Guyana and contributed significantly to Colombia's fight for independence. Meanwhile, Simón Bolívar focused on liberating Bogotá and the central part of the territory. Both were shot once the war was won due to the Creole elite's fear of losing power.[9]

The new era of recent independence and a country under the leadership of Simón Bolívar led to slow and unwilling attempts to fulfill the promises made to the Black population who served in the patriot army, both those that were already free, and to the enslaved (whose owners were compensated for their enlistment). For Bolívar's new republic and the Creole elite, freedom was to be granted first to those who participated in the war and their families. This liberated a great number of people, which led to the widespread belief that Bolívar advocated the abolition of slavery. However, it is important to note how wrong this understanding is since the freedoms granted to the enslaved did not become a fact until three decades after gaining independence. Although Bolívar passed laws that required hacienda owners to free slaves, his true purpose was not the abolition of slavery. This is clearly evidenced in the letters he wrote and sent to his government team stating he feared that granting freedom would be a threat to the system and the government,[10] as a lawyer and member of a women's activist group notes:[11]

The system did not change, it simply changed ownership, because it continued exactly as it always had been, and with the same ideals. Since they intended to follow the European style to design the planning and development of the land, they began to question the process of internal

slavery, as the transatlantic slave trade began to be banned on the European continent. That's when they realize it's not right, because they weren't following first-world models. So, from there, the freedom processes are finally made easier.

Once the abolition of slavery went into effect on January 1, 1852, slave owners tried to argue that certain Black people should not be included in the abolition. As a result, the government had to enact an additional law on April 17, 1852, to clarify that abolition covered all Black persons in the territory. However, some slavers went to neighboring countries to purchase more slaves and find loopholes to warrant their new acquisitions. Moreover, in terms of reparations, the republic solely repaid the former owners for each manumission endorsement granted, and the value of the payment was gradually acknowledged by the state. By contrast, the former slaves were not compensated for their unpaid labor.

Since no action was taken to provide reparations for the general Afro-descendant population, many were left in a dire situation, especially those who were elderly, in poor health, or lacked capital. They had no choice but to continue working for the same families under similar conditions of servitude as before in order to survive.[12] The separatist racism in the Spanish colonial system gradually became structural racism in the budding republic; in fact, the rise of liberalism in the 19th century overlapped with growing scientific racism. Thus, the transition from an economic system rooted in slave capital production to one shaped by the legal abolition of slavery made little significant impact in the lives of people of African descent.

Although these people were formally considered free, in truth they were subject to a racial division of labor. This led to a belief that still exists today—certain jobs were meant exclusively for people of African descent, while other workplaces were mainly for the White population. Thus, the distribution of the state's productivity and financial resources remained unequal, thus maintaining White privilege and hindering the production of, redistribution to, and accumulation of capital to the Black population.

9   Interview with artist and researcher, June 2023.

10   Oscar Vargas, La abolición de la esclavitud en Colombia y Panamá (1851), Lotería Magazine, 2007, PDF, https://tribunaldecuentas.gob.pa/wp-content/uploads/2013/05/La-abolici%C3%B3n-de-la-esclavitud-en-Colombia-y-Panam%C3%A1-1851.-Mgdo.-Oscar-Vargas-Velarde.-Tribunal-de-Cuentas-.pdf"

11   Interview with lawyer and women's activist group member, June 2023.

12   Colectivo de Mujeres Wiwas (Wiwas Women's Collective) Instagram page, accessed June 13, 2023, https://www.instagram.com/colectivowiwas/?hl=es

It is important to remember that racism did not die with independence, it only changed how it worked in society. During the new republic, scientific racism was used as a tool to justify and maintain the racial discrimination that was already very prevalent in the country. These theories provided an apparent scientific basis for the belief in the superiority of the so-called "White race" established in colonial times (…) Using measurements of physical features, alleged intellectual differences and biological claims to support the idea that certain racial groups were inherently inferior and therefore deserved unequal treatment in society. These racist ideas influenced policy planning, affecting not only the racial division of labor, but also issues such as land ownership, access to education, or political participation.[13]

The Myth of "Racial Democracy": Structural Racism and Ethnic Social Movements

By the nineteen century, racial division in society was clear, with marked differences and inequalities between people of different racial groups. However, the state embraced a strategy called "racial democracy" that sought to mask divisions by promoting an image of racial equality and harmony. This allowed the government to say that there were no racial conflicts and to advocate for social inclusion of all people. These narratives of racial democracy fostered by the political and social elites of the time created false narratives that linked national identity to racial harmony and equality. The government and social elites were able to display a picture at the national and international level that the country's various racial groups coexisted peacefully because the society was the result of centuries of miscegenation. It was a rhetoric based on appearances that masked a strategy to conceal and deny the racial discrimination of the early republican period. Based on this,

[T]here was no reason to talk about racism or inequality because everyone was allegedly in harmony. This narrative of superficial equality led to the removal of the caste system in censuses, where people were classified

according to their racial ancestry (Pardo, Mestizo, Mulatto, among others). And, although this could be considered an improvement on the surface, it also had negative consequences: While it eliminated the notion of human races, it also limited the ability to gather accurate data to provide differential rights and address racial inequalities.[14]

During much of the colonial and post-colonial period in Colombia, an ideology of miscegenation and whitening of society prevailed, promoting the idea of a homogeneous society and denying or minimizing racial differences. This ideology was supported by the state and was reflected in the assimilation policies of the time. The myth of racial democracy was in stark contrast to the reality of the country, which made the experiences of Afro-descendant and Indigenous communities and other ethnic groups invisible. This resulted in a lack of recognition of their rights and unique needs, as well as a lack of public policies to address the historical and structural inequalities these groups faced.

"Black and Indigenous social movements expressed themselves in various ways in the wake of the development of racial democracy. Their efforts sought to highlight the discrimination that remained despite the rhetoric of equality fostered by the dominant elites."[15] By means of community organization, political mobilization, and the celebration of culture and identity, these movements aimed to reclaim the dignity and rights of Afro-descendant and Indigenous populations. They demanded real inclusion and participation in the country's political, social, and economic processes, as well as recognition of their territorial and cultural rights. During this process, the leadership of the Indigenous communities and the organizational efforts of the Black communities that had already been underway since the 1970s were strengthened, leading to a movement of vindication of ethnic identity. Some movements came from an ethnic-territorial basis, made up of farmers, the Maroon movement, and those from an ecclesiastical background. Other groups with a smaller demographic presence also joined the struggle, such as certain immigrant groups and Roma (Gypsy) communities, who kept a rich cultural and linguistic heritage.

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13   Interview with museum curator and researcher, May 2023.

14   Interview with lawyer and women's activist group member, June 2023.

15   Interview with human rights activist, May 2023.

2 Increased Racial Awareness and the 1991 Constitution

As the 20th century unfolded, a greater awareness began to grow regarding the importance of acknowledging and addressing racial and ethnic differences.
This led to the participation of communities by the end of the century, as reflected in the development of the 1991 constitution in Colombia. "During the drafting of the constitution, leaders and representatives of ethnic movements played an active role and participated in the discussions and negotiations to include provisions that would protect the rights of their communities."[16] As a result, the 1991 constitution recognized Colombia's ethnic and cultural diversity and provided specific rights for ethnic groups, for example, prior consultation in decisions affecting their territories and recognition of their cultural autonomy. They were able to place their demands on the political agenda and contribute to the construction of a legal framework that was more inclusive and respectful of the country's ethnic and cultural diversity.

Despite this progress in terms of rights, the Afro-descendant communities did not realize their hope for a constitutional recognition of their identity as a differential ethnic group, in part, because they lacked representation: "in the absence of Afro-descendant constituents, priority was given to the participation of the Indigenous populations, which were represented. They undertook to represent the ethnic groups, but pointed out that they were not Afro-descendants, but Indigenous people. And it was all because the different Black movements did not agree on their candidate."[17] As a result, a unit was established in the National Constituent Assembly called "ethnic affairs" instead of a specific bureau for Black communities. Thus, the focus was primarily on Indigenous peoples, who had the opportunity to gain control over the natural resource-rich territories in which they lived. In addition, it strengthened these communities' historical knowledge of these resources, providing a new path to empowerment. It also led to national legislation regarding Indigenous intellectual and cultural property rights and environmental protections. In short, the Indigenous population was recognized as a distinct ethnic group and much less attention was paid to other groups, such as migrants, Roma peoples, and Afro-descendants.[18] Another challenge for the Black community was that some felt they were not culturally distinct enough to merit their own status:

The problem with the Black communities is that they have not been seen as an ethnic group because sociologists such as Fals Borda, Indigenous representatives, and many of the members of the M-19 (urban guerrilla) said "gee, but they have no language, they have no tradition, they act like the rest of the Colombian community." So the problem with the constitution from 1991 is that we are not included there, and it has to do with a matter of power and politics. We were not reflected in the constitution because, first, we did not have representation. Second, the representation was through outsiders, and third, because those who had the power of science did not accept us as an ethnic group. Therefore, there was no reason for us to have differentiated rights, since to them we were just like any other Colombian. And to top it all off, the biggest problem the Black communities have ever had is the holy discourse of multiculturalism.[19]

The constitution states that Colombia is a multicultural and pluri-ethnic country, where it is the obligation of the state to protect and guarantee diversity, as well as the cultural and natural wealth of the nation.[20] This view is part of a process that was embedded within the neoliberal multiculturalist wave of the 1990s. The purpose of multiculturalism is to ensure that migrants and ethnic groups that make up a territory are a functional part of the system, apparatus, and hegemonic culture, and even when it is "accepted" that they maintain distinctive cultural traits, multiculturalism serves as a tool to mask social inequalities.

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16   Interview with member of gender equality organization, May 2023.

17   Interview with lawyer and researcher, May 2023.

18   Cristina Torres Parodi, "Evolución del concepto etnia/raza y su impacto en la formulación de políticas para la equidad", Revista Panamericana de Salud Pública 22, n.º 6 (2007): 405- 416.

19   Interview with lawyer and researcher, May 2023.

20   Judicial Branch, "Constitución Política de Colombia 1991. Bogotá", Enrique Low Murtra Library (2010).

Multiculturalism is stressed in the 1991 constitution, and with the precedent of racial democracy and miscegenation, the discourse of equality was fostered. "What are we going to make anti-discrimination laws for? What are we going to make ethnic quotas for? There is no reason to make special policies if everyone here is part Black, part Indigenous and part White." Erasing all the unique features of the Black communities, these are the risks of the discourse of multiculturalism. At the end of this process, we did not stay with the text from 1991 and we were given the emerging Law 70.[21]

The purpose of Law 70 of 1993, also known as the Black Communities Law, is to ensure the recognition and due protection of the territorial, cultural, and political rights of the Afro-descendant communities in Colombia, while accepting their role and contribution to the country's cultural and social diversity. This law introduced the right to collective ownership of their territories in the rural riparian areas of the Pacific Basin. It also seeks to preserve their cultural expressions, traditions and ways of life, while providing mechanisms for political participation to guarantee their representation at the local, regional and national levels.

This law for the Black communities promoted the protection and fostering of the Afro-Colombian intangible cultural heritage, and seeks to ensure the enforcement of their social, economic, and cultural rights. However, the fulfillment of Law 70 in Colombia has been hindered by issues related to the neoliberal economic model within the Afro-descendant territories. These challenges include inter-ethnic boundary disputes, political, administrative, and financial constraints, forced displacement, and the role of the agriculture industry, among others.[22] In this context, it is important to point out the systemic pattern in which structural racism, validated through the actions of state institutions, assumes a large part of the responsibility for the ineffectiveness of the full implementation of this law. As a result, the state fails to address the historical debt that the nation has to the Afro-descendant communities, and which is their only defense against the structural legacy of colonialism.

3 Deprivation by Extractivism: Economy, Resources, and Race

Colombia has one of the largest Afro-descendant populations in Latin America. In 2018, according to the National Administrative Department of Statistics (DANE), the country was home to 1,905,617 people who self-identified as Indigenous and 2,649 identifying as Roma. In the case of Black, Afro-descendant, Palenquero, and Raizal (NARP) people, 2,982,224 people self-identified as part of that community.[23] It should be noted that this census, the most recent at the time of publication, has been highly questioned by government entities and Afro-descendant organizational processes in Colombia because it shows numbers that allegedly suggest a decrease in the NARP population compared to the 2005 census. Although DANE admitted that there were errors in the ethnic self-identity question in November 2019, the consequences for this community are alarming, and discussed below. It is worth noting how the communities are distributed geographically:

Afro-descendants are present in different departments of the country. In Chocó (74%) and San Andrés (57%) over 20% of the population self-identifies as such. Most of the ethnic population is found on the Atlantic and Pacific coasts, with departments where there is a significant overlap between the Indigenous and Afro-descendant populations (particularly La Guajira, Cauca, Chocó, and Nariño). In contrast, in Boyacá, Cundinamarca, and Norte de Santander, less than 1% of the population identifies itself as Afro or Indigenous.[24]

Due to the strong presence of Afro-descendants, the Pacific coast is one of the

21   Interview with member of gender equality organization, May 2023.
22   Interview with national community leader, August 2023.

23   "Ethnic groups", National Administrative Department of Statistics (DANE), accessed June 17, 2023, https://www.dane.gov.co/index.php/estadisticas-por-tema/demografia-y-poblacion/grupos-etnicos/informacion-tecnica.
24   "Condiciones de vida y pobreza multidimensional de poblaciones indígenas y afrodescendientes en Colombia a partir del CNPV 2018," DANE - UNFPA Colombia, accessed June 17, 2023, https://colombia.unfpa.org/es/publications/condiciones-de-vida-y-pobreza-multidimensional-poblaciones-indigenas-y-afro."

regions that has preserved the rich cultural heritage, music, dances, medical practices, and other customs of the community. However, that is also where underdevelopment persists as the region has the highest levels of poverty and inequality compared to the rest of Colombia. These territories face the same challenges as in past centuries—lack of guaranteed full access to essential state goods and services for the Black population. In many cases, economic and territorial interests may override the rights of communities supported by legislation. " The exploitation of natural resources, the expansion of farming and livestock projects, and the lack of acknowledgement and titling of ancestral lands are examples of this (…) governments in pursuit of totalitarian sovereignty and their alliances with the private sector have turned the habitat of Black people into conflict areas."[25] One of the main reasons for systematic violation is lack of legal title to collective territories, and the Black communities face several challenges in this regard. Issues range from bureaucracy and lack of institutional resources to economic interests that conflict with territorial rights granted by law.

> *Law 70 is only half-regulated and, more importantly, there are no economic resources for its proper administration by the Afro community councils. We are supposed to have the right to the land in these areas, but the use of natural resources in the subsoil was left out of our ownership, and this is a very delicate political debate because it has to do with the profits from oil, gold, platinum, and other minerals in the subsoil, which until now has been at the state's disposal. If a third party claims mining rights, the voice of the communities cannot stop it.*[26]

To understand this point, it is crucial to explain the economic basis of the country. As previously mentioned, the production model brings together national public and private capital, as well as foreign investment. Colombia, as a neoliberal state with an extractivist economy, has carried out a series of reforms that have promoted trade liberalization, the privatization of public enterprises and the attraction of foreign investment. Its extractivist economy relies heavily on the exploitation of natural resources, such as oil, gas, coal, gold, and other minerals, where the oil and mining industries have been key pillars for producing tax

revenue. However, the revenue that comes from these resources rarely benefit the local communities that live there. "This neoliberal development model has been justified as a way to encourage the entry of foreign capital into the country and boost economic growth, but growth for whom? If most private and transnational companies such as Rugby Mining, AngloGold, or Atico Mining work specifically in territories historically inhabited by ethnic communities, this should mean a greater improvement in the quality of life of this population, but what we see are the same conditions of poverty and, in addition to this, parastatal extractivism."[27]

Conflict in Colombia and the Violent Impact on Race

The internal armed conflict in Colombia, which has been raging across the country for more than 60 years and whose victims primarily have been the Black communities, brings with it war, the lack of land management plans, and the absence of state protections. All of this has had a devastating impact on local communities and hindered their socioeconomic development since the conflicts between various parties—including guerrillas, paramilitaries, military forces, and criminal gangs—are due to explicit interests in extractivism in these ancestral territories.

These parties have used various strategies against ethnic communities—such as forced displacement, massacres, and targeted killings—to dominate the natural resources and gain strategic trafficking routes. "The illegal economies in these territories assert their presence by using violence to maintain their control over mining areas, illegal logging, and coca crops, in addition to fishing without respecting environmental regulations."[28] Their ancestral collective territories are coveted not only for the wealth of their natural resources, but also as strategic areas since, due to their proximity to the sea, it is easier to ship illegal merchandise internationally.

Of the tactics mentioned above, forced displacement is one of the most devastating consequences. Ethnic communities are forced to abandon their traditional lands due to violence and pressure from illegal armed groups and

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25   Interview with members of nonprofit artists organization, May 2023.

26   Interview with consultant based in Antioquia, June 2023.

27   Interview with consultant based in Antioquia, June 2023.

28   Interview with museum curator and researcher, May 2023.

military forces. They face extremely poor conditions typical of this type of exodus, including shortages of food, housing, and medical care. Even if they are not displaced, their movement is forcibly restrained. Restricted areas and roadblocks make it difficult for ethnic populations to access basic public services, further isolating these communities and limiting opportunities.

There has been widespread violence and abuse against ethnic communities during the armed conflict. Killings, massacres, kidnappings, and sexual violence, leaving behind a trail of trauma and suffering. In addition, the conflict has directly impacted cultural preservation by destroying conservation mechanisms. Moreover, ethnic communities have often been accused of working with one side or the other in the conflict, which has led to stigmatization and threats against their leaders and members. As leaders and authorities face violence and intimidation, this in turn weakens their own governance systems.

Therefore, not only have the state and the private economic sector participated in the structural impoverishment of these communities, but illegal armed groups have been perpetrating violence against the territories with the largest Afro-descendant population:

> *We are one of the main regions where there has been the greatest displacement, and this violence is specifically aggravated by the racial factor. Although this armed occupation has taken place in other territories of the Nation, it is particularly in the territories where the Afro-descendant population is located that these dynamics of control, extortion and dispossession are much crueler, and the consequences are much more devastating, with a strong element of dehumanization of their bodies. Women and girls of African descent, because of their gender and age, are seen as spoils of war by these groups, as if they were easily available, as if they did not have to ask for permission, as if they were still objects—goods of the colonists, of the former slavers, of the former kidnappers.[29]*

Today, Colombia is among those countries with the highest number of internally displaced people. Among all ethnic groups in the country, the Palenquera

population was the most affected by this phenomenon due to the extractivist economy in the territory forcing its inhabitants to move. This migration usually moves groups toward the country's urban centers. It also tends to occur due to the lack of basic services, such as education, health, infrastructure, and security. This lack of investment in human development has created a significant gap compared to other areas of the country. "Multidimensional poverty rates are very high in ethnically configured municipalities versus majority White territories where these rates are lower. From this angle, we speak of a racialized multidimensional development."[30] The concentration of political and economic power in the central government and in the country's main cities has focused development primarily in urban areas, thus failing to prioritize resources to invest in the development of the country's peripheral areas, perpetuating development gaps. An example as basic as sewage systems illustrates this point:

> *There is the issue of public sewage in the city of Quibdó, which, being the capital of the department of Chocó, still does not have a sewage system. This is unacceptable. The Quibdó community has been asking for this since the sixties and seventies. They have held civic strikes asking for water and sewage and today, in 2023, this has not been accomplished. This is yet more proof of institutional racism. The institutional practices of governments allow this analysis, which is very different from what happens in other parts of the world where there are norms that effectively segregate groups based on their racial condition. But what we see in Colombia is hidden racism.[31]*

It is important to highlight that social leaders and human rights defenders remain critical to the defense of rights of the communities they represent. They serve as spokespersons for the collective interests that demand an improvement in the quality of life in their territories. Ethnic authorities and leaders have fought racism by uniting to maintain control over their collective ancestral territories and protect them from the interference of both commercial and armed forces that sustain neoliberal development models in these regions. At the same time these leaders must resist being profiled as guerrillas due to their activist role. They ensure

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29   Interview with multiple activists.

30   Hurtado, "Plan Nacional de Desarrollo NARP desde la perspectiva de sus derechos".

31   Interview with civil servant based in Tadó-Chocó, June 2023.

differential, timely, and quality access to essential state services. The leaders accept these roles, aware of the danger this invites into their lives and those of their loved ones. No one who defends human rights in Colombia—especially those who defend their territory—seems to be safe. In fact, social leaders and human rights defenders are killed in Colombia more than anywhere else in the world;[32] a humanitarian crisis known as reorganizing genocide. This is a process that tries to break and restructure the social links between the inhabitants of coveted territories through murder, terror, and violence, systematically "eliminating" their centers of resistance and imposing a specific political, economic, and social development model that promotes extractivist and plantation projects.[33,34]

The genocide in Colombia is a reorganization project that had three stages. It began with the enforcement of the economic model, for which the genocide of the Patriotic Union (leftist political party) was used. It continued with the removal of the chance of social reorganization through the social atomization caused by democratic security, treating opponents of the economic model as "terrorists," thus perpetuating the symbolic genocide. Finally, it uses the murder of social leaders to expand the reorganization project in places that are still resisting the desired hegemonic financial model.[35]

Since the signing of the peace agreements on September 26, 2016, as of July 30, 2023, 1512 leaders and human rights defenders have been killed; 424 massacres have been committed, and 380 signatories to the peace agreement have been murdered.[36] According to the annual report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) presented in 2022 regarding human rights in Colombia, there has been an increase in public order difficulties,

restriction of mobility, and setbacks in the protection of the rights of Indigenous and Afro-descendant populations in municipalities such as Antioquia, Cauca, Chocó, Nariño, and Valle del Cauca. The report verified the murder of 116 human rights defenders out of 256 reported, of which 15 were Afro-descendants and 26 were Indigenous people.[37] However, "it is striking that the number of Indigenous and/or Afro-descendant victims only represents 35.4% of the total [verified], despite the fact that most of the crimes against human rights defenders were recorded in departments with a predominantly ethnic population. In this regard, we believe this may be a sign of the underreporting of violence or human rights violations against leaders and Black/Afro human rights defenders."[38]

This underreporting indicates a statistical invisibility because official research tools do not account for people's ethnic-racial affiliation; a bias that may compromise the reliability and accuracy of the results. This not only undermines confidence in the conclusions of this type of study, but also denies the existence of a racial factor, which contributes to the risk of committing atrocity crimes, since the collective territories of ethnic communities are the focus of the state's development plans and the profits of illicit groups. This was evidenced by the declarations of Salvatore Mancuso, drug trafficker and former paramilitary chief of the United Self-Defense Forces of Colombia. At the Single Hearing for Contribution to the Truth held on May 11, 2023, by the Special Jurisdiction for Peace (JEP), Mancuso exposed how many of the mainly ethnic villages were surrounded and censused by these paramilitary groups in complicity with the national army, in order to regulate the delivery of food to their inhabitants and restrict free access to these regions. Moreover, Mancuso reported that they acted "militarily" against any person who was pointed out as an "internal enemy"[39]—any person supposedly belonging to or supporting the guerrilla subversion ranks. This favored the argument that more combat casualties were necessary for the national army and the access of extractive industries to the collective territories. "In fact, there were so many victims that Commander Carlos Castaño asked us to be careful because we were attracting a lot of

32   Noticias Uno Colombia, "Crudo informe de HRW sobre asesinatos de líderes sociales en Colombia". YouTube video, Published on January 17, 2022. https://www.youtube.com/watch?v=0JYNr0AR60I&list=WL&index=106.

33   Evangelina Máspoli, "Daniel Feierstein, El genocidio como práctica social. Entre el nazismo y la experiencia argentina. Bs. As, Fondo de Cultura Económica, 2007, 405 pages". Trabajos y Comunicaciones 34 (2008): 265-270.

34   Official Channel Movimiento Ríos Vivos, "El genocidio como práctica social de invisibilización y silenciamiento", YouTube video. Posted June 3, 2020, https://www.youtube.com/watch?v=3-oK5WKNb0c

35   Juan Castañeda, "El genocidio reorganizador en Colombia: el asesinato de líderes sociales y defensores de derechos humanos como genocidio contra un grupo nacional", Revista Latinoamericana de Derechos Humanos 32 (2021): 1-23.

36   "Consolidado desde la firma de los acuerdos de paz hasta el 2023", Indepaz, accesed August 7, 2023 https://indepaz.org.co/

37   "Annual Report of the UN High Commissioner for Human Rights on the Situation of Human Rights in Colombia during 2022," OHCHR, accessed August 8, 2023, https://www.hchr.org.co/informes_anuales/"

38   "Informe de ONU DD.HH advierte que 15 líderes afros fueron asesinados en Colombia durante 2022; la cifra podría ser más devastadora", ILEX, accessed August 8, 2023, https://ilexaccionjuridica.org/informe-de-onu-dd-hh-advierte-que-15-lideres-afros-fueron-asesinados-en-colombia-durante-2022-la-cifra-podria-ser-mas-devastadora/"

39   It was a doctrine that established a stigma against government opponents, under the argument that they could increase instability and endanger progress of the country.

attention from national and international human rights organizations (...) we were meeting and collaborating with the cattle ranchers, farmers, and coal companies in the area (...) in our war we swept away the population, who was forced to move because of the terror we were inflicting."[40]

The murder of social leaders and human rights defenders, as well as the massacres committed, seek to impose, without opposition, their social, political, and economic logic in the country's ethnic territories. This is done to complete the implementation of their extractivist development model and thus intensify the accumulation of wealth and power for a few at the expense of the impoverishment of the rest of the population.[41] For more than 28 years, Afro-descendant communities in various areas have been claiming from state institutions more than 3,278,980 hectares of land from which they were displaced. However, as displacement increases, the communities face restrictions in accessing the deeds to their territories, leading to a stagnation in the enforcement of their ethnic-territorial rights.[42]

4 Progress Toward a Nation of Inalienable Rights: Contemporary Struggles and Resistance

The progress in the organization of Black communities and their social movements in various rural and urban spaces throughout the country has allowed them to improve their ethnic self-recognition and their realities, which in turn has made it possible to continue in a more targeted manner in the fight against anti-Black racism. This resistance has required the state and its institutions to provide better safeguards for the fulfillment of the collective rights of Black communities and created an obligation to guarantee opportunities for

communities to participate in political scenarios. This has achieved the transversality of the ethnic differential approach, which is recognition of the importance of integrating the ethnic perspective in all government policies, programs, and actions. This is accomplished through regulations, guidelines, decrees, and directives that require the ethnic dimension be considered in planning, execution, and evaluation of policies and programs, as well as resource allocation. State and local institutions have adopted the ethnic approach, including the National Land Agency, the Unit for Victims, the Ministry of the Interior, the Ministry of Health and Social Protection, as well as various public policies. Some even look at the mainstreaming of the ethnic approach from the perspective of intersectionality, recognizing that there are multiple forms of discrimination and inequality that affect racialized people.[43]

The inclusion of the ethnic chapter in the Peace Agreement was successful. Its purpose was to ensure the rights of Black, Afro-descendant, Raizal, Palenquero, and Indigenous peoples in the implementation stage of the agreement. This created a method for institutional adjustment to meet the requirements under an intersectional approach. This chapter highlights the extent of the damage inflicted by the armed conflict on its main victims, a large part of the ethnic communities. It is acknowledged that this conflict still exists in the collective ethnic territories. Furthermore, ethnic communities continue to have a right to prior consultation, a process that enables them to participate in decisions that may impact their lands and ways of life.

However, these achievements are met with challenges and resistance. The indifference and deliberate negligence shown by the state in its execution of these policies reveals the discrimination and racial prejudice ingrained in Colombian society. The prevalence of political and economic interests of certain sectors and elites in the country hinders the efficient execution of public policies for ethnic communities. This is because those groups take over strategy and

40 JEP Colombia, "Audiencia Única de Aporte a la Verdad Salvatore Mancuso | Sesión 2 | 20230511", YouTube video, 3:28:42, published July 19, 2023, https://www.youtube.com/watch?v=C9v-vpYIGxM&list=WL&index=105.

41 Castañeda, "El genocidio reorganizador en Colombia: el asesinato de líderes sociales y defensores de derechos humanos como genocidio contra un grupo nacional".

42 Truth Commission, "Resistir no es aguantar". Accessed on August 8, 2023, https://www.comisiondelaverdad.co/resistir-no-es-aguantar.

43 Interviews with multiple activists.

management of resources that are vital to the proper operation of the agencies and institutions that protect the rights of racialized communities.

Such is the case of DANE, when it decreased the NARP population in its 2018 census. That reduced the royalties earned[44] through use of non-renewable resources in their territories, since, as one interviewee stated: "the value of the royalties is also in accordance with the amount of Black population in the territory. That is why we say that we need a real assessment."[45] In the case of Chocó, development plans are not carried out in the territory, decontextualizing their real needs.

As a result, those of us who are the real beneficiaries do not participate much in planning. Usually, national entities develop a project and we are merely notified that they are beneficiaries of this process. The worst part is that they only get to know the territory when they come to execute the project. It is then up to us to adapt to a series of situations that do not fit our real needs. For example, for farming, we use specific features to carry out our production, but the Rural Development Agency comes with a project and its own staff to impose another model.[46]

In addition, many spaces of power gained by the Black communities are currently managed by contractors or public officials with no ethnic affiliation or sensitization. For example, in the Afro-Colombian Integration House in the municipality of Bello (Antioquia) most of the management staff is White-Mestizo, including its director. A local civil servant commented that "those who control the mayor's office are not interested in respecting ethnic quotas; what is happening with the Afro House is proof of this. They do not even bother to educate their officials (...) There are several testimonies where they re-victimize the Black population that uses these spaces for claiming their rights. The irony."[47] However, an official in that office responded that "as a social worker, but also as a woman who, because of my experience, I am respectful of all types of people. I am very

respectful of the different ethnicities, so I can justify my role in this institution."[48]

Ethno-education initiatives are another ongoing challenge for Afro-descendant communities who wish to expand the understanding of their historical contributions. The course on Afro-Colombian studies, created by Law 70 for public and private educational institutions, has also been affected by negligence and lack of political will, because, although it is regulated by Decree 1122, few institutions teach it. An educator comments that:

There is no real interest in training teachers in ethno-education, and they do not even want to teach it because they say that it takes time away from teaching students subjects required by the ICFES [Colombian Institute for the Evaluation of Education] or in the Saber tests.[49] The Ministry of Education does not act to ensure compliance, because the Ministry could easily say to the schools: "if the school does not comply with this, I will not certify it." They have the power, but they do nothing. No one in government lobbies for the subject.[50]

While Afro-descendant communities are protected by an anti-discrimination law, Law 1482 of 201, it does not fully address cases of racism. Although there is case law on ethnic issues, it has shortcomings and has not been a true solution to the issue of racial justice in the country. As explained by a civil servant in Medellín, "there is legislation for non-discrimination, which classifies racism, but the lack of awareness of this issue within other agencies in the inter-institutional complaint process causes the victim to be re-victimized."[51] This is why the state bodies responsible for providing justice are not concerned with adopting an ethnic approach that would allow them to understand the impact of racism on the complaint process. The delays in assistance and access to justice for the Afro-descendant population are ethnic-related barriers, in addition to the general lack of awareness, which is yet another obstacle. When the state, the justice system, and Colombian governments do not acknowledge that there is structural racism that appears in these types of dynamics, it causes a revictimization of the population.

44 Royalties are the payments made by oil and mining companies to the Colombian state for exploiting deposits of a non-renewable natural resource. Oil companies provide between 8% and 25% of the value of crude oil production to the state. The revenue is used to satisfy the basic unmet needs of departments and municipalities, such as basic education, health, drinking water and sewage, among others, as well as to fund large projects that will benefit the region.

45 Interview with consultant based in Antioquia, June 2023.

46 Interview with civil servant based in Chocó, June 2023.

47 Interview with civil servant and environmental advocate, May 2023.

48 Interview with local civil servant based in Bello, May 2023.

49 The Saber tests are external standardized assessments used by the (ICFES), which measure students' performance.

50 Interview with ethno-educator, May 2023.

51 Interview with civil servant in Medellín, May 2023.

5 Final Thoughts and Recommendations

The state and predominately White-Mestizo civil society actively create and sustain racist practices that directly affect Afro-descendant communities in Colombia. Although there has been significant progress in the recognition and fulfillment of the rights obtained by ethnic communities, the combination of several systems of oppression (economic, political, cultural) continues to hinder the goal of ensuring that the majority of Black people have access to public goods and services. In Colombia, structural and institutional racism are deeply rooted in its colonial past and leave its ethnic groups constantly vulnerable to heinous crimes. From this perspective, there are several recommendations to help eradicate racism in Colombia.

Recommendations for Civil Society

Civil society organizations and groups are key to fighting racism and discrimination and building more tolerant societies. They play an important role in raising awareness, remaining vigilant, and reporting racist acts. It is vital that the ethnic organizational processes and Afro-descendant communities consolidate approaches. They must categorically reject all acts of racism and urge society as a whole (including state institutions) to put an end to such practices. It is crucial that Afro-descendant organizations and social movements promote and drive anti-racist initiatives through accessible and ongoing education for all of civil society. This will help mitigate racist behaviors in family, community, and local relations from the outset. At the heart of this approach there must be an unwavering commitment to eradicate racism in all its forms.

Recommendations for the State

Given the lack of precision around the number of Afro-descendant leaders who have been victims of violence in Colombia, we recommend drafting regulations at the national level that require phases and times to collect data on the infringement of the rights of Afro-descendant leaders and human rights defenders. Related, all official monitoring tools related to human rights violations should include an ethnic-racial variable to avoid underreporting on racialized populations.

As for the right to ancestral collective territories, we recommend more effective regulation of all articles contemplated in Law 70 of 1993, which are currently inactive due to bureaucracy and a lack of will on the part of the government. Finally, we recommend improving fiscal responsibility regarding projects focused on Afro-descendant communities. This requires strengthening budget allocations for the implementation of the differential ethnic approach in public policies and operational plans in order to ensure long-term sustainability, transparency, and accountability. This is particularly true for projects such as the National Development Plan for Afro-Colombian communities, which is in its seventh version and has a very high rate of non-compliance.

Recommendations for International Agencies

Resolutions and declarations issued by entities such as the United Nations are not binding, in legal terms, on the actions of member states regarding the commitment to eradicate all forms of racism and discrimination. Bearing this in mind, it is important that these international entities focus on providing long-term support for Afro-descendant organizational processes. This includes both providing more flexibility and significantly broadening their financing, allowing them to boost the various anti-racist initiatives in the country. By increasing the financial resources available to ethnic organizations, international agencies could effectively contribute to the development of stronger programs, awareness campaigns, and empowerment projects that comprehensively address the deep-rooted intersectional inequalities in Afro-Colombian communities.

While no one solution or institution can eradicate the centuries of structural, institutional, and social racism that has been embedded in Colombia since its colonial days, these recommendations are intended to reflect a multi-party approach. Empowerment of ethnic communities, public enforcement of laws and policies by the state, and support from the international humans rights community are key toward a racially equitable path forward.

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RACISM AS A RISK FACTOR FOR ATROCITY CRIMES:

A Case Study on Namibia[1]

Author: Steven Bernardus Harageib

"Racism is not just about color, it is about a way of being seen in domination, enforcing patriarchy, normalizing this idea of supremacy amongst people... So, racism and these things are rooted not just in domination, dehumanization, and humiliation. When you see violence, dehumanization, humiliation, those are all tenants of racism."[2]

1 Entwined Atrocities of Genocide and Apartheid: Namibia and the Historical Context of Racism

German Occupation and Genocide

To understand the current challenges of racism in Namibia, it is important to understand the history of genocide and apartheid that laid the foundation for today's environment. Namibia's colonial history began in 1884 with German occupation. Conflicts led to war in 1903 with the resistance by the Ovaherero (commonly referred to as Herero) people, escalating to an "extermination order"

by the German general Lothar von Trotha in 1904. It is estimated that, between 1904 and 1908, 65,000 people (80 percent) of the Herero population and 10,000 (50 percent) of the Namba population were killed, starved to death, or died in concentration camps.[3] This mass execution marked the first genocide of the 20th century, and set a precedent that laid the foundation for the Holocaust. The similarities in the use of concentration camps, mass killings, and racial ideologies connect these two horrific events, shedding light on how colonial atrocities were a precursor to later global tragedies. Germany's radicalization of counterinsurgency, extermination decrees (including von Trotha's brutal extermination order), and the subsequent empowerment and reward of von Trotha reflected a deliberate era of European colonialism. The Germans met the criteria of genocide which includes act and intent, against the Herero and Nama.[4] This horrific event also impacted many Damara and San communities. These groups were subjected to a wide range of brutalities, including being shot, hanged, burned, and starved. They were also subject to experimentation, enslavement, and forced labor that led to death, abuse, and rape. These communities were dispossessed not only of their tangible assets such as land, property, and livestock, but also of their intrinsic rights, dignity, and way of life.[5] These acts can be classified as atrocity crimes, as the indigenous people were forcibly driven to German concentration camps, and their skulls were shipped to Germany for research. Further, they were governed by a separate set of racially biased laws, resembling an apartheid system, that granted them limited rights as subjects and not citizens.[6]

South African Rule and the Impact of Apartheid

In 1915, Namibia fell under the control of colonial South Africa and was administered as a League of Nations mandated territory from 1921 onward.[7] Throughout this period, Namibia functioned as a fifth province of South Africa,

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1   The following case study has been written by an independent consultant on behalf of the Global Initaitve for Justice, Truth and Reconciliation (GIJTR). This case study is informed by a combination of desktop research, document analysis and interviews. It therefore reflects these perspectives and findings, as compiled and written by the consulting author(s). Interviewees have been anonymized to ensure their safety and privacy but GIJTR extends its gratitude for the time and participation of all interviewees.

2   Interview with public policy expert, 2023.

3   Talmon, Stephan "Reconciliation Without Reparation: The German-Namibian Joint Declaration on Our Colonial Past", German Practice in International Law, 2023.

4   Rivera, Amy M. "Did the German actions in the Herero Rebellion of 1904-1908 constitute genocide?." PhD diss., Fort Leavenworth, KS: US Army Command and General Staff College, 2012.

5   Joint Declaration by the Federal Republic of Germany and the Republic of Namibia. "United in Remembrance of our Colonial Past, United in our Will to Reconcile, United in our Vision of the Future." 2021. Available online: https://www.dngev.de/images/stories/Startseite/joint-declaration_2021-05.pdf.

6   Theurer, Karina, Minimum Legal Standards in Reparation processes for Colonial Crimes: The Case of Namibia and Germany (2023). German Law Journal, Forthcoming.

7   Wallace, Marion. History of Namibia: From the beginning to 1990. Oxford University Press, 2014.

which wielded considerable influence over its governance and affairs. In 1948, the ruling the Afrikaner National Party formally introduced apartheid as a governance system that institutionalized and sustained racial and ethnic divisions. During this period, there were countless cases of human rights abuse and institutional violence, as well as conflict and power imbalances, social stratification, and economic inequality.[8] This continued the legacy of discrimination and dehumanization and further entrenched the impact of the German colonial period and was an ongoing racist reality of Nambia for the next seventy years, until independence was gained from South Africa and its apartheid.

Independent Namibia and Initial Progress Toward Healing

At the time of independence in 1990, Namibia made significant strides to confront its complex historical background by adopting numerous laws aimed at addressing past injustices. These measures included land reform policies and efforts to promote racial and ethnic equality, as well as initiatives to redress economic disparities among different communities. Despite these efforts, the legacy of the pre-independence period continues to manifest in various ways. These issues support a central theme in the broader context of the case and will be explored and explained in further detail throughout this case study.

Since independence, land distribution mostly has favored individuals from the country's northern regions who are members of the ruling South West Africa People's Party. Importantly, these groups were not dispossessed of their land under the colonial regime, and local Nama and Ovaherero populations express frustration and anger toward this transfer of territory to these northern groups.[9] Meanwhile, marginalized communities, such as the San, are largely overlooked in these discussions. Adding to these complexities is the unresolved issue of ancestral land restitution, referring to land that was usurped during German colonial rule and further expropriated following the defeat in what is referred to as the Namibian-German War. Regrettably, the national discourse on land

currently lacks any mention of retributive justice.[10]

National Reconciliation

Since gaining independence, Namibia's government has acknowledged the deep-rooted inequalities stemming from a century of exploitative and discriminatory German and South African colonialism and apartheid. Independence necessitated acknowledging and accepting the existing socioeconomic systems including the recognition of ownership and property rights, reducing social change to only constitutional measures under the theme of "national reconciliation."[11] The need to maintain stability and foster economic growth led the government to work within certain aspects of the inherited socioeconomic system rather than completely overhaul it. The approach was both pragmatic and contentious, reflecting the complex challenges faced by Namibia to overcome the legacy of colonialism and apartheid.

Key Policy Frameworks

Namibia passed The Prohibition of Racial Discrimination Act of 1991 which prohibits racial discrimination. However in examining the Namibia report, the Committee on The Elimination of Racial Discrimination highlighted the challenges that remain to empower previously disadvantaged people, especially regarding unemployment and persistent poverty.[12] Although initiatives to alleviate these discrepancies through affirmative action and land redistribution have been attempted, considerable hurdles and restrictions remain.[13] Namibia continues to struggle with wealth disparities: both the historical power concentrated within the pre-independence White economic elite and more recently the growing politically-

8   Chomba, Salome M. "The universality of human rights: Challenges for Namibia." Human rights and the rule of law in Namibia. Windhoek. Macmillan Namibia (2008).

9   Melber, H. (2019). Colonialism, Land, Ethnicity, and Class: Namibia after the Second National Land Conference. Africa Spectrum. https://doi.org/10.1177/0002039719848506

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12   "COMMITTEE on the ELIMINATION of RACIAL DISCRIMINATION EXAMINES the REPORT of NAMIBIA." 2016. UN GENEVA. May 6, 2016. https://www.ungeneva.org/en/news-media/meeting-summary/2016/05/committee-elimination-racial-discrimination-examines-report.

13   "Namibian President Wants Land Expropriated to Boost Black Ownership." Reuters, October 1, 2018. https://www.reuters.com/article/us-namibia-land/namibian-president-wants-land-expropriated-to-boost-Black-ownership-idUSKCN1MB2TM.

connected Black elite.[14] Figures from 2018 revealed that just over 6% of Namibia's 2.4 million person population were White, yet they owned the great majority of enterprises and lucrative farming land. In addition, they had a significant share of the finance and tourism economies.[15]

A few attempts have been made to rectify this imbalance and empower Black Namibians, such as the National Equitable Economic Empowerment Framework bill, which originally included a provision requiring White enterprises to sell a 25% ownership stake to historically disadvantaged Black Namibians. The clause was later removed from the bill as it was expected to lead to a Fitch downgrade, which stated that the proposal would frighten away investors.[16]

Additionally, there were attempts to amend the country's laws so that the government could seize land from White landowners and give it to the majority Black population as the concept of "willing buyer, willing seller" (voluntary selling of land), had failed.[17] The government also established a development bank and a small and medium enterprises bank to assist people from historically disadvantaged groups moving into White-controlled economic fields. This later failed due to money laundering.[18] Currently, many Namibians remain unable to participate in the economy in any meaningful way due to the historical disadvantages they have faced and more recent solutions not delivering significant change.

2 Current Status of Race Relations

The population of Namibia is diverse, and race is only one part of the story. About 88% of Namibia's population is

Black; 6% is White; and 7% is mixed. However, breaking down beyond these broad racial categories reveals the complexity of identity in Namibia. Approximately 50% of the total population belongs to the Ovambo tribe, the largest group. The second-largest group are the Kavango people, who constitute 9% of the population. Other groups include Damara (7%), Herero (7%), Nama (5%), Caprivian (4%), San (3%), Basters and Coloreds (community of mixed origin) (2%), and Tswana (0.5%).[19]

The Namibian government is criticized for failing to address the marginalization of minority groups, particularly the San population, that was instigated by former apartheid policies. When Namibia ratified the Convention on the Elimination of All Forms of Racial Discrimination in 1982, the focus was primarily Black–White apartheid racism. However, the strategy for including ethnic minorities in implementing the convention was insufficient, leading to continued discrimination, particularly against groups like the San.[20] By 1971, the majority of the San were living in White commercial farming areas or under native authorities, with only 2% retaining some control over their traditional lands. The dispossession of lands further increased their economic vulnerability. On White farms, this dependency allowed farmers to pay the San less and treat them more poorly compared to other laborers. In communal areas, the San became an underclass of cheap labor, and their economic marginalization was compounded by social stigmatization. Many in the communal areas characterized the San's impoverished status as innate inferiority rather than recognizing the treatment they received, which further entrenched their marginalization. For example, some San had difficulty obtaining a government ID because they lacked birth certificates or other evidence of identity. Without a government-issued identification card, the San could not obtain government assistance or register to vote.[21]

14   Suzman, James. Minorities in independent Namibia. Minority rights group international, 2002.

15   Al Jazeera. (2018). Namibia pledges land reforms to boost Black ownership | News | Al Jazeera. https://www.aljazeera.com/news/2018/10/2/namibia-pledges-land-reforms-to-boost-Black-ownership

16   Reuters. (2018). Namibia to make White-owned businesses sell 25 percent stakes to Blacks | Reuters. https://www.reuters.com/article/uk-namibia-economy-empowerment-idUKKBN17F20I

17   "Namibia Pledges Land Reforms to Boost Black Ownership." n.d. www.aljazeera.com. Accessed June 06, 2023. https://www.aljazeera.com/news/2018/10/2/namibia-pledges-land-reforms-to-boost-Black-ownership.

18   Namibian Sun. 2021. "SME Bank Depositors Still Licking Their Wounds." Namibian Sun. September 15, 2021. https://www.namibiansun.com/news/sme-bank-depositors-still-licking-their-wounds2021-09-15.

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20   "COMMITTEE on the ELIMINATION of RACIAL DISCRIMINATION EXAMINES the REPORT of NAMIBIA." 2016. UN GENEVA. May 6, 2016. https://www.ungeneva.org/en/news-media/meeting-summary/2016/05/committee-elimination-racial-discrimination-examines-report.

21   United States. Department of State. Country reports on human rights practices for 2020. Government Printing Office, 2020.

Due to limited access (or lacking access entirely) to essential education, employment, health care, and housing, many San people were employed for cheap labor, extorted and forced into isolation. San women in Namibia bear the consequences of marginalization in particular due to gender, for example, the inability to report and seek protection from gender-based violence.[22]

The Namibian government maintains that advocacy and promotion of human rights issues affecting marginalized communities are carried out in accordance with international conventions, instruments, and protocols such as the United Nations Declarations on the Rights of Indigenous Peoples, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Elimination of All Forms of Discrimination Against Women.[23]

3 How Does Racism Contribute to Atrocity Risks?

Racism's contribution to atrocity risks in Namibia is deeply rooted in the country's complex history and the lasting effects of apartheid and genocide, which influence the current societal dynamics, including inequality and discrimination in education, upward mobility and other fundamental elements of daily life.

Education and Social Mobility: the Limitations of Racism

Apartheid further enforced race-based segregation by enacting various discriminatory policies against Black Namibians, such as differential education systems. For example, the Bantu Education Act of 1953, which entailed four years of primary schooling for Black individuals in 1958, saw only 20% progress to higher levels.[24] This had a significant impact on educational and employment outcomes. Namibia has one of the highest rates of unemployment at 20.8%. Even though it is classified as a middle-income country, there are significant disparities in wealth. Some marginalized populations are faced with the worst of these disparities.[25] The historical policies of apartheid, particularly in education, have left a legacy that continues to affect contemporary Namibian society. The link between limited education and high unemployment illustrates a complex interplay that exacerbates social fragmentation as it relates to race relations and deepens economic mobility.

One-city, Two-system: Enduring Spatial Segregation

Despite laws forbidding racial segregation, places like Windhoek remain a stark example of racial division. The city's planning and structure reflect a continued "one-city two-system" (OCTS) approach where Black Namibians often live in poor conditions, mirroring the country's colonial and apartheid history. Under the Odendaal Plan (1964), ethnic groups were forcibly resettled into designated "homelands" or reserves, each with varying levels of limited self-administration. This process aimed to solidify the territorial entities for each ethnic group, aligning with the broader Bantustan Policy. Windhoek is recognised as one of sub-Saharan Africa's most unequal cities, with an unbalanced distribution of resources and services that trace back to Namibia's colonial apartheid heritage, which imposed geographical, economic, and social isolation. Windhoek's delivery of services, access to high-quality facilities, planning, law enforcement, government, and administration are all still separate.[26]

A policy leader recalls in an interview the harsh displacement of her family due to racist practices. "The day they [White soldiers] came to bulldoze our house is something that stayed with me throughout." Her father lost his job, and her mother was forced into domestic work. She further provides an intimate glimpse

22   United States. Department of State. Country reports on human rights practices for 2020. Government Printing Office, 2020.

23   "Division of Disability Affairs and Marginalized Communities—MGEPESW—GRN Portal."www.mgepesw.gov.na. 2020. https://mgepesw.gov.na/division-of-disability-affairs-and-marginalized-communities.

24   Oppel, Annalena. Exploring economic support networks amidst racial inequality in Namibia. No. 2021/102. WIDER Working Paper, 2021.

25   "Unemployment, Total (% of Total Labor Force) (Modeled ILO Estimate—Namibia | Data." n.d. Data.worldbank.org. https://data.worldbank.org/indicator/SL.UEM.TOTL.ZS?locations=NA.

26   Kohima, Jennilee Magdalena, Uchendu Eugene Chigbu, Malcon Liyali Mazambani, and Menare Royal Mabakeng. 2023. "(Neo-)Segregation, (Neo-) Racism, and One-City Two-System Planning in Windhoek, Namibia: What Can a New National Urban Policy Do?" Land Use Policy 125 (February): 106480. https://doi.org/10.1016/j.landusepol.2022.106480.

into the duality of her interaction with the White populace. "Mrs. Visser would let us eat with her but when the husband came we had to go to our place. I was confused because White people are bad... I was staying as a domestic in an outside room... yet, she was seeking friendship."[27]

Within the Namibian context, spatial segregation highlights a troubling image of racism. According to one academic expert stated in his interview that there is a clear divide between White people who predominantly live in urban areas, specifically towns, and Black people who primarily reside in villages. This division is deeply ingrained in Namibian society, resulting in distinct demarcations in town planning along racial lines. This separation also influences personal interactions. This interviewee reported that when his father would meet any White person he would call them "bass" (boss), even when they were not working for them.[28]

Despite efforts to address racial disparities, remnants of racial inequality are still evident in Namibia's urban planning. Townships, which are predominantly occupied by non-White inhabitants, serve as a stark reminder of this racial divide. By avoiding a direct confrontation of the racial disparities in urban planning, Namibia forgoes an opportunity to tackle the root causes of inequality and create inclusive communities.[29] This discomfort surrounding the topic of racial inequality contributes to the perpetuation of structural violence, as pointed out by a public policy expert. Such violence not only undermines human dignity but also diminishes the overall quality of people's lives.[30]

One prominent aspect visible through the lens of a domestic workers is the daily routine they endure. Often these workers must wake up early and take buses to reach the homes where they work, often for White families. This highlights the spatial divide in Namibian society, with White people predominantly living in urban areas and Black people primarily based in villages. The housing crisis further exacerbates this issue, as many domestic workers live in shacks (a roughly built structure usually of metal and wood) or informal settlements. The prevalence of shacks not only reflects a lack of adequate housing but also

exposes the racial segregation within urban planning.[31] The divide between predominantly non-White townships and predominantly White urban areas is deeply ingrained and perpetuates racial disparities.

Additionally, the legacy of the Odendaal plan continues to be felt in Namibia, contributing to the persistent racial divisions and inequalities that still characterize the country's social and urban landscape. The OCTS approach in Windhoek stands as a stark example of how ethnic segregation has left a lasting imprint on the nation.[32]

Land Ownership and Historical Disenfranchisement

In the 1920s, South Africa implemented a policy to settle poor White South Africans in Namibia, then called South West Africa. To accommodate these White settlements, a law was introduced called the Native Administration Proclamation 11 of 1922. The law prohibited natives from squatting on the land without permission from a magistrate and allowed the Administrator to establish "native reserves" for the use of natives or specific racial or tribal groups. The South African government gave considerable economic support to White settlers at the time, notable because it was a time of drought and difficult market conditions. However, little support was offered to native Black farmers residing in the native reserves. In 1922, the Native Reserves Commission recommended that 9% of the land within the Police Zone (a holdover term from German colonial policy) be set aside for native reserves. The entire Police Zone was 5 million hectares, but by 1925, only 2,813,741 hectares south of the Police Zone were designated for a Black population of 11,740 people, while 7,481,371 hectares were available for 1,106 White settlers.[33]

Agricultural land ownership has been crucial in Namibia's social and political evolution, from pre-colonial times through the colonial era to post-independence. Land issues remain central to post-colonial state-building efforts, particularly

27   Interview with policy leader, 2023.

28   Interview with an academic, 2023.

29   Interview with public policy expert, 2023.

30   Ibid.

31   Shacks Boom in Urban Centres." The Namibian Newspaper (Windhoek), November 22, 2017. https://www.namibian.com.na/shacks-boom-in-urban-centres.

32   Melber, H. (2019). Colonialism, Land, Ethnicity, and Class: Namibia after the Second National Land Conference. Africa Spectrum. https://doi.org/10.1177/0002039719848506

33   An analysis of the Namibian Commercial Agricultural Land Reform Process Land, Environment and Development (LEAD) Project LEGAL ASSISTANCE CENTRE (2005). Available at: https://www.lac.org.na/projects/lead/Pdf/landwefarm.pdf (Accessed: 06 June 2023).

in achieving national reconciliation and nation-state objectives. Liberation movements focused not only on ending foreign domination but also promised a society where Namibia's disadvantaged citizens could participate in fair national development processes.[34] Land ownership is not only a financial issue; it is strongly linked to identity. The injustices inflicted upon the Nama, Herero, San, and Damara people have had long-lasting economic and social consequences. Disparities in wealth, resources, and opportunities often disproportionately affect marginalized racial or ethnic groups, perpetuating cycles of poverty and reinforcing racist attitudes. "Even today, most Namibian land belongs to White farmers. The colonial transfer of wealth, the genocides and century-long racist oppression have created a legacy of transgenerational social, economic, and cultural exclusion." [35] Historical policies like the Native Administration Proclamation still shape Namibia's land ownership issues. However, land ownership transcends mere economy and is also linked to cultural identity.

Missed Opportunities: The German-Namibian Joint Reconciliation Agreement

In 2015, Germany recognized its genocide in colonial South West Africa and reached a reconciliation deal with Namibia in May 2021. However, the agreement has been criticized for being insufficient and a form of tokenism. Community leaders criticized the negotiation process itself, arguing that they were not adequately consulted or involved.[36] Meanwhile, the German government resisted the characterization of the agreement, stating that the aid package should not be seen as reparations. Critics argue that it represents an evasion of responsibility, as it does not acknowledge a specific moral obligation to redress historical wrongs, unlike reparations. Further, the broad application of development funding may fail to address the unique needs of affected communities. It also may reflect unequal power dynamics between Germany and Namibia, allowing Germany to retain control over how the funds are used. This approach is seen by some as perpetuating historical inequalities and paternalistic attitudes. The government-

to-government level talks also have not produced real reconciliation with the individual descendants of the genocide's most impacted local populations. The reconciliation accord may indicate the start of a shared process of reconsideration in foreign policy on culture and education. However, the preliminary findings of German-Namibian bilateral discussions show that real reconciliation remains a distant objective. The nature of the apology (as an admission of genocide) has legal ramifications for compensation, and the phrase "reparations" has been purposefully avoided by the German side, as it would set a dangerous precedent over the reconciliation process.[37]

There are strong feelings of exclusion among the affected communities who believe they were not adequately represented in the negotiation process. While the government argues that affected community members were part of the Namibian team, the communities counter that these were individuals employed by the government, not true representatives of their interests. As a result, they feel the negotiation was more government-to-government, lacking true community input and buy-in.[38] The affected communities say that the fact that negotiators were employed by government means they came into an already established framework with parameters resulting in the negotiations being between the two envoys. Additionally, the amount of money (1 billion euro over 30 years) proposed by Germany as an apology toward development is seen as insufficient, as they believe it fails to address the emotional scars and pain caused by the genocide. As one interviewee flatly stated: "The money that Germany proposed is a joke."[39] Therefore, there is a call for the process regarding the reparations be restarted to better incorporate their perspectives.[40]

Socio-economic Disparities

Despite being classified as a middle-income nation, Namibia has substantial wealth discrepancies, and socioeconomic disparities inherited from the apartheid

34   "Unemployment, Total (% of Total Labor Force) (Modeled ILO Estimate)—Namibia | Data." n.d. Data.worldbank.org. https://data.worldbank.org/indicator/SL.UEM.TOTL.ZS?locations=NA.

35   Oppel, Annalena. Exploring economic support networks amidst racial inequality in Namibia. No. 2021/102. WIDER Working Paper, 2021.

36   Interview with national politician, 2023.

37   Nguherimo, Jephta, and Henning Melber. "Reconciliation Is Different The Flaws in the German-Namibian Joint Declaration on the Genocide." The Namibian Newspaper (Windhoek), December 17, 2021. https://www.namibian.com.na/reconciliation-is-different-the-flaws-in-the-german-namibian-joint-declaration-on-the-genocide/.

38   Interview with national politician, 2023.

39   Interview with national politician, 2023.

40   Melber, Henning. "Germany and reparations: the reconciliation agreement with Namibia." The Round Table 111, no. 4 (2022): 475-488.

regime. The country's current wealth and future economic prospects continue to be concentrated in the hands of a pre-independence White economic elite.[41] In Namibia, marginalized populations include, but are not limited to, those excluded due to their race, gender identity, sexual orientation, age, physical ability, language, and/or immigrant status. The San, Ovatue, Ovatjimba, and Ovazemba are all considered marginalized, illustrating how marginalization occurs when individuals or groups are neglected or pushed to the edges of society, unable to fully participate in social, economic, and/or political life.[42]

Entrenching White Supremacy: The Role of Apartheid in Racism

The interview with a national politician provides insight into the long-term personal impacts of systemic racism on Namibian communities. She recalls her grandmother's praise: "When you are grown up, I want to make sure that you get a German husband." This aspiration to marry outside the Black race reflects an internalized inferiority complex born from a history of genocide and systemic racism.[43]

The personal and the systemic can converge, as indicated in the multiple accounts by interviewees regarding racial segregation in education and the impact on their ability to learn and achieve. A theology professor recounted in an interview his personal experiences and reported eyewitness accounts of violence: "My uncle was killed in front of my eyes by the apartheid soldiers...I was 10 years old." He said on another occasion "a random White guy slapped me because I stood next to his car." And his education was also significantly impacted, as he explained: "During my senior secondary schooling, I went to a previous[ly] White school but because I had failed math, I struggled to access the school." The interviewee went on to explain the segregation in education: "Math was the standard for intelligence. We were put in the same class with a few Colored learners and no White learners." The education system not only treated Black and White students differently academically, but also financially

excluded based on race. He indicated that he was threatened with suspension from school due to non-payment of school fees but his White counterparts were not suspended when faced with non-payments. Beyond actual grades, the interviewee articulated the emotional damage of low confidence as a non-White student. "The school was predominately White...[I was told] You will not cope [at the] higher grade therefore you must stay at the ordinary level." He explained the simple but painful reality of his youth: "We experienced racism in school...but nobody protected us."[44]

Another interviewee recounted his own experiences growing up in Ngandu village, now known as Kavango West. He described the mistreatment he and other students faced in secondary school, where White teachers discouraged them from pursuing certain studies. He also shared an incident where he and his brother were wrongly assumed to be thieves and faced hostility in a White-dominated area.[45]

A political analyst notes in his interview his experiences of racial hostility, beginning with overt aggression in the early 1990s. "[Someone] shouted at me from a car and disappeared." In later years, he points to subtler forms of discrimination, sometimes referred to as "micro-aggressions," particularly in the coastal city of Swakopmund. For example, he recounts the feeling of being ignored in a restaurant as an example of continued, albeit less overt, racism.[46]

There remains a need to acknowledge the enduring impact of systemic racism, through the genocide and apartheid that entrenched White supremacy in Namibian society. The discussions highlighted how these historical events have fostered racial discrimination, inequality, and internalized feelings of inferiority among marginalized communities. These personal narratives detail the often-dismissed experiences of racism, educational disparities, and societal microaggressions, highlighting the far-reaching consequences of these historical injustices. The discussions also illuminated the impact of policies such as school segregation and access to work permits and how these measures aimed to control and devalue Black individuals, perpetuating a narrative of inferiority.

41   "Unemployment, Total (% of Total Labor Force) (Modeled ILO Estimate)—Namibia | Data." n.d. Data.worldbank.org. https://data.worldbank.org/indicator/SL.UEM.TOTL.ZS?locations=NA.

42   Division of Disability Affairs and Marginalized Communities—MGEPESW—GRN Portal."www.mgepesw.gov.na. 2020. https://mgepesw.gov.na/division-of-disability-affairs-and-marginalized-communities.

43   Interview with national politician, 2023.

44   Interview with theology professor, 2023.

45   Interview with public policy expert, 2023.

46   Interview with political analyst, 2023.

It is important to address the actions of non-state actors, and their role in historical events like genocide in Namibia. In an interview, a public policy expert questioned the lack of accountability for the atrocities committed during the genocide and highlights the importance of acknowledging the systemic violence inflicted by the military and non-state actors. "The common fallacy is to solely focus on the state and disregard the role of non-state actors. We need to address the violence committed by state and non-state actors, coordinating a comprehensive response to systemic racism."[47]

National Days: The Exclusion in Celebration

"What am I celebrating? Millions are spent on this celebration… people scrambling for food. I wouldn't want my parents to spend so much money celebrating my birthday while we have nothing to eat in the home."[48]

Interviewees raised concerns over the lack of full acceptance and open discussion regarding the genocide, particularly the absence of national recognition and commemoration. Therefore, a call for more inclusive remembrance practices, including a national genocide remembrance day and the erection of more memorial structures is proposed. The lack of participation by White citizens was also highlighted along with a proposal for more inclusive practices that cater to the post-independence generation. Related, some participants questioned the relevance of national holidays in a society marked by inequality and hardship, critiquing the expenditure on celebrations while many struggle for basic necessities.

National days and the construction of nationhood can also be influenced by racial dynamics. The legacy of apartheid and racially segregated development still impacts how national days are observed and who feels included in these commemorations. For instance, the politicization of food during national commemorations can reflect deeper racial and socio-economic divisions. And recognizing certain figures as national heroes can intersect with issues of race,

since certain figures resonate differently with various racial and ethnic groups within the country, reflecting historical divisions.

The interpretations and meanings attached to these national days can differ across various levels of government, highlighting the fluid nature of nationhood. In fact, the concept of nationhood is often developed and negotiated not just from a national perspective, but from local and regional authority perspectives as well.[49]

The concerns over national days and stories in Namibia, encompass the lack of recognition of historical atrocities, inequality in celebration practices, persistent racial dynamics, controversy over national figures, and the complex nature of nationhood – all of which highlight deep societal divisions and unresolved issues. It not only reflects historical and current socio-economic disparities but also expose underlying tensions that may increase the risk of atrocities.

Ethnic Bias and Tribalism

"[T]his racism, it's not always something that is conscious… it's not always readily visible, but it can be picked up [on] in behavior."[50]

"There is an unwritten classism based on ethnicity… because being tribalist is doing what the colonialists wanted."[51]

The increasing social and racial division within Namibian communities, exacerbated by a pervasive sense of low self-esteem, stands as a prevalent theme. This division and lack of confidence are believed to originate from a lengthy history of human rights abuses, with subjects linking them to internalized racism and the haunting remnants of genocide.

"When you go into government agencies you come to realize that flow of

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47   Interview with public policy expert, 2023.

48   Interview with children's rights activist, 2023.

49   Interview with anthropologist. 2023.

50   Ibid.

51   Interview with theology professor, 2023.

power is concentrated in [the] hands of individuals from the same region." [52]

Issues of cultural bias and the challenge of managing multiple identities in a multicultural society also surface, with an emphasis on the importance of national identity. Acknowledging the tribes' diversity and their cultural richness is vital to crafting a national identity. However, a cautionary note is sounded about identity politics hegemony, which could foster tribal dominance and impede the nation's embrace of multiculturalism.[53]

Interracial marriage and intermarriage between different tribes is still limited in Namibia, although there are signs of progress, particularly among the younger generation. Historical segregation and the belief in the superiority of certain ethnic groups have contributed to a lack of acceptance. While younger generations exhibit more openness and acceptance of diversity, the broader societal view on intermarriage remains mixed. Some participants highlighted that "Whites are not ready to marry Black people especially the White Namibians," indicating significant barriers to such integration remain. There is also a need to heal historical wounds inflicted by Namibians on one another as one participant highlighted that "we should not only reconcile with the Whites but also our fellow comrades who tortured me in the Lubango dungeons."[54]

These reflections underscore subtle and latent forms of racism and tribalism within Namibian society, revealing an underlying issue that may contribute to atrocity risk. Unconscious racist behavior, often along with power concentrated within specific regions or ethnic groups, enforces systemic biases. These factors can foster social and racial divisions, further exacerbated by a history and experiences of human rights abuses and genocide. Finally, the sense of internalized racism and tribalism can fuel feelings of resentment, mistrust, and exclusion, which, if left unaddressed, may create an environment ripe for additional conflict and atrocities.

The Importance of Equitable Allocation of Resources

Another theory is that the government's decision-making processes, particularly resource allocation, might be influenced by ethnic bias. There is a perceived disparity in regional development, leading to speculation whether government perception of certain communities could be a factor. With regard to area of residence, the rural population was multidimensionally poorer than the urban population, reported at 59.3% and 25.3%, respectively. This indicates that persons in rural areas have a higher chance of experiencing multiple deprivations than those in urban areas. Poverty indices were also examined across the fourteen administrative regions of Namibia. An obvious gradient was observed in the headcount ratios by region, where the incidence of multidimensional poverty was highest in Kavango West (79.6%), Kavango East (70.0%) and Kunene (64.1%)"[55] These patterns highlight an overwhelming sentiment of exclusion, injustice, and dissatisfaction among some communities in Namibia. These sentiments could escalate existing tensions, fostering a climate of resentment and mistrust that might, in turn, lead to conflict or even atrocities if not addressed.

Hate Speech and the Role of Social Media

Hate speech and inflammatory rhetoric, particularly on social media, pervade Namibian society, with specific tribes or ethnic groups often singled out and insulted based on their customs, attire, food, or behavior. This situation further intensifies existing divisions and challenges the idea of "One Namibia, One Nation."[56] While the Namibian Constitution enshrines freedom of speech and prohibits racial discrimination (enforced through the Racial Discrimination Prohibition Act of 1991), the effectiveness of this act is questioned due to no successful prosecutions and the rise of digital platforms exacerbating the problem.[57]

52 Interview with anthropologist, 2023.

53 Interview with public policy expert, 2023.

54 Interview with policy leader, 2023.

55 "Namibia Multidimensional Poverty Index (MPI) Report 2021." Namibia Statistics Agency. Namibia Statistic Agency, June 10, 2021. https://ophi.org.uk/wp-content/uploads/Namibia_MPI_report_2021.pdf.

56 Tjivikua, James . "Are We Doing Enough to Combat Hate Speech?" The Namibian Newspaper (Windhoek), April 23, 2023. https://www.namibian.com.na/are-we-doing-enough-to-combat-hate-speech/.

57 Chomba, Salome M. "The universality of human rights: Challenges for Namibia." Human rights and the rule of law in Namibia. Windhoek. Macmillan Namibia (2008).

Another group that suffers from discrimination is the LGBTQI+ community. This was seen after a recent Supreme Court ruling in Namibia, requiring the government to recognize international same-sex marriages.[58] This decision triggered a marked increase in hate speech and aggressive rhetoric against the LGBTQI+ community. Various members of parliament have since been accused of inciting violence and hate speech, due to statements calling for harassment, abuse, and physical harm against LGBTQI+ persons particularly across social media and WhatsApp groups.[59]

The hate speech targeting specific groups, particularly the LGBTQI+ community, can foster an environment of hostility and division as hate speech is not classified as a criminal offense.[60] Where hate speech becomes normalized or unchecked, the risk of it leading to more significant atrocities becomes a very real and alarming possibility.

Interconnected Inequality

Socio-economic Disparities

"We inherited this apartheid system and simply replaced it with Black people." "The violent culture has not changed...protecting the privileges of minority Blacks and Whites...enshrined in our political culture."[61]

Namibia's sociopolitical backdrop, rooted in the repressive history of apartheid, only changed the color of oppression without removing its deadly overtones. The inherited system sustains a divisive culture of power protection, favoring an elite minority of Blacks and Whites disproportionately, while the majority languishes in socioeconomic hardship. This unequal distribution of money and opportunity is firmly woven into the fabric of the country. That leads to

a perilous road to criminality for some, further exacerbated by the lack of effective diversion and rehabilitation programs. Complicating matters further, social support institutions are divided, frequently resulting in family relocation, aggravated socioeconomic gaps, and perpetuation of the cycle of violence. Thus, the violent culture persists, not only due to inherited racial ideas, but also as a result of ongoing structural inequalities that feed into this vicious cycle. It is not simply a Black-and-White story, but a larger reflection of power, privilege, and systematic inequity.

Informal Markets and the Legacy of Racism:

"The future of work is in the informal economy..."[62]

Informal markets[63] in Namibia largely consist of individuals from marginalized communities who lack access to formal economic opportunities, partly due to remnants of the racially prejudiced structures of apartheid. The Namibian Labor Force Survey 2018 Report showed that more than half (57%) of the 725,742 employed people in the country are in the informal sector.[64] This exclusion from formal economic structures reinforces socio-economic racial divides, leaving those in the informal sector vulnerable to systemic racism. Although the risk of atrocities isn't directly addressed, the underlying conditions and themes certainly highlight potential areas of concern that could lead to such risks.

4 How Communities Have Resisted and Confronted Racism

The Lasting Pain of Transgenerational Trauma

The victims' experiences of witnessing horrific violence have cast a long shadow

58 Reuters. "Namibia's Top Court Recognises Same-Sex Marriages Formed Elsewhere," May 2023. https://www.reuters.com/world/africa/namibias-top-court-recognises-same-sex-marriages-formed-elsewhere-2023-05-16/.

59 Peterson, Shelleygan , Eliaser Ndeyanale, and Andreas Thomas. "Katjavivi Cautions MPs on LGBTQI+ Hate Speech." The Namibian. May 24, 2023. https://www.namibian.com.na/katjavivi-cautions-mps-on-lgbtqi-hate-speech/.

60 Shikongo, Arlana. "Namibia: Hate Speech Not Defined As an Offence—Ombudsman." The Namibian. June 15, 2021. https://namibian.com.na/hate-speech-not-defined-as-an-offence-ombudsman/.

61 Interview with theology professor, 2023.

62 Interview with anthropologist. 2023.

63 Informal Sector Contributes a Substantial Part of Economic Activities." The Economist (Windhoek), November 23, 2022. https://economist.com.na/75354/retail/informal-sector-remains-a-critical-part-of-economic-activities.

64 "Namibians Turn to Informal Employment." The Namibian (Windhoek), April 16, 2019. https://www.namibian.com.na/namibians-turn-to-informal-employment/.

over subsequent generations. One interviewee's exploration of transgenerational trauma underscores the enduring effects of the genocide. She reflects on this: "that pain and trauma has been transformed from one generation to the next." This powerful remark demonstrates the long-lasting psychological impact of such atrocities.[65]

In another interview, a development policy expert illustrated the trauma that persists in Namibia and emphasizes the need for healing. "I see a traumatized Namibia, where for the sake of peace, many of us put behind our own pain to serve. There are flashes that come back... We don't even know where their graves are... how do we get closure..."[66]

There are deep-seated scars left by the German genocide on the Herero, Nama, Damara, and San communities, affecting not just their lands but also their identities. One interviewee continued to highlight that neglecting the psychological well-being of the country perpetuates the legacy of colonialism.[67]

A public policy expert also reflected in their interview on colonialism's effects on the psychological impact on Namibia. He raised the question, "Have we done enough work to address the psychological effects?" While acknowledging that "political independence is in place" in Namibia and across the continent, the interviewee laments the lingering mental scars, stating, "We thought independence would be the cure [to] it all... but we neglected the damage done to our minds." His words reveal a deep concern for the unaddressed psychological wounds that persist in the wake of colonial rule.[68] The mistreatment and violence inflicted upon certain races and ethnic groups have engendered a culture of anger that has yet to be fully addressed. The culture of violence and mistreatment has affected all communities, regardless of ethnicity, creating a shared experience of trauma. The unhealed wounds of the past continue to impact Namibian society, sustaining social divisions and hindering the nation's path toward reconciliation.

Cultural Genocide

Cultural loss among Namibian communities is another crucial theme. One interviewee observed: "Our systems and values as culture are now seen through a European lens. Academia is [a] Eurocentric way of teaching, the people we are quoting, the content, dead White men live in our classrooms through the education system."[69] The interviewee also noted the distinction in Namibia curriculum between German colonial genocide in Black Africa and German genocide in Europe. "The Namibian national curriculum does not include much on the genocide in Namibia, but it covers the crimes of Nazi Germany. Up until grade 10, history is a compulsory subject, but it is very general and more factual, along the lines of 'this happened on that day'. It is only in grades 11 and 12, where history is an elective, that the curriculum becomes more detailed, involves students and demands a more critical reflection of history." [70]

> *"A pipeline of indoctrination is active and alive and often memorials represent the oppressor, not the victims. Pre-colonial culture is often demonized. There remains a need to contextualize these statues and what they took from us."[71]*

Mental liberation through the decolonization of academia across the continent is important but yet to be achieved. Eurocentric influences in teaching methods, curriculum content, and reliance on Western expertise overshadow indigenous knowledge and practices.

Furthermore, a critique of the prevailing iconography and memorials that reinforce colonial narratives and downplay the suffering endured by indigenous communities was expressed. These symbols perpetuate a skewed version of history and undermine the significance of pre-colonial culture. Finally, it addresses governmental indifference to indigenous art and culture, which reflects a broader societal issue of favoring Western ideals at the expense of

65   Interview with national politician, 2023.

66   Interview with development policy expert, 2023.

67   Interview with creative professional, 2023

68   Interview with public policy expert, 2023..

69   Interview with public policy expert, 2023.

70   Global Campaign for Peace Education, "Education about the Holocaust and Genocide in Namibia," Global Campaign for Peace Education, April 4, 2020, https://www.peace-ed-campaign.org/education-about-the-holocaust-and-genocide-in-namibia/.

71   Interview with creative professional, 2023.

indigenous traditions and practices. This neglect is seen as another aspect of cultural loss and a barrier to achieving decolonization.

Advocacy by Local Communities

Legal Front

> *"The brutal murder of my brother catalyzed my pursuit of justice. "At that time, there is no way we will ever get justice... there was a White judge, White prosecutor, and White polices. I went to study law to get justice."[72]*

Community groups in Namibia have taken the lead in a 2023 legal battle challenging a joint declaration between Germany and Namibia on the genocide of the Herero and Nama people from 1904 to 1908. This significant step emphasizes the community's demand for direct reparations and transparent negotiations.[73] Meanwhile, in a related but separate 2019 case in the United States, descendants of the Herero and Nama tribes, representing community interests, sought damages from Germany for historical atrocities. However, their efforts were thwarted when U.S. District Judge Laura Taylor Swain dismissed the lawsuit, invoking Germany's immunity under the Foreign Sovereign Immunities Act. Together, these community-led legal actions reflect the intricate and ongoing struggle to address historical injustices stemming from German colonial rule in Namibia, showcasing the crucial role of community advocacy in international law and negotiations.[74]

Community Mobilization

Activists and community members in Windhoek successfully campaigned for the removal of the statue of Curt von François, which symbolized colonial

oppression and violence against the Nama people. The removal of the statue represents a collective effort to confront historical injustices and racism.[75] Similarly, activists started an online petition to remove the gallows, a monument representing lynching and White imperialism, insisting that it should have been removed after Namibia gained independence.[76] Both examples showcase efforts by activists and communities to challenge and remove symbols that represent and perpetuate racial oppression and colonialism in Namibia. There was a recommendation that historical statues be replaced with more representative figures which encapsulate the various tribes of Namibia driven by the local communities, not just the national government.

5 Successes and Challenges in Confronting Racism

Successes and Progress in Namibia

We can summarize some of the successes we observed through the conversations with interviewees, policy development, and legal changes that can help reduce systemic racism and legal biases in Namibian society. These include legal reforms, for example the end of nearly a century of apartheid under South African rule. The establishment of legal frameworks to promote equality might be seen as steps in the right direction. We also note the international community's pressure on Namibia to address current racial and ethnic divisions have led to the country's alignment with global human rights principles and agreements, which signifies a commitment to addressing these issues. We also credit the increased groundswell awareness and advocacy from groups, both within and outside Namibia, which could be considered positive, though effectiveness may vary.

Challenges That Remain for Greater Racial and Ethnic Equity in

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72   Interview with development policy expert, 2023

73   Pelz, Daniel. "Herero and Nama File Suit against Genocide Agreement." Deutsche Welle. Deutsche Welle, January 22, 2. https://www.dw.com/en/herero-and-nama-dispute-genocide-agreement-with-germany/a-64476907.

74   Stempel, Jonathan. "Lawsuit against Germany over Namibian Genocide Is Dismissed in New York." Reuters. Reuters, March 6, 2019. https://www.reuters.com/article/us-namibia-genocide-germany-idUSKCN1QN2SQ.

75   Chothia, Farouk. "Namibia Pulls down German Colonial Officer's Statue in Windhoek." BBC. BBC News, November 23, 2022. https://www.bbc.co.uk/news/world-africa-63728105.

76   De Klerk, Eveline. "Gallows Make 'Mockery of Black Pain'... Petition Seeks to Remove Offensive Landmark." New Era Namibia (Windhoek), June 3, 2020.

Namibia

Despite the successes articulated above, the lingering effects of apartheid continue to create racial disparities and divisions. Among the most prominent issues is the economic disparity. This includes historical dispossession of lands, the decision post-independence to recognize and maintain the existing disparity in land ownership and the spatial segregation of communities. Minority groups like the San continue to suffer, while a White and minority Black elite thrive. We also note the ineffective government policies where current development programs exist but are not well resourced with clear and measurable guidelines. There remains a lack of robust legal protection. Even where laws exist, they are not enforced effectively and consistently enough to have the desired impact. And as many interviewees explained, some racial biases are the more subtle cultural attitudes and perceptions about race. This includes everything from how inclusive national days are, to attitudes about interracial and interethnic marriage. Despite some improvements among the younger generation, the social beliefs about disenfranchised groups continue to damage their acceptance in society as well as their internal narrative about themselves.

6 Recommendations

Government

Policy Frameworks

Affirmative action, constitutional protections, and the New Equitable Economic Empowerment Framework are some of the proactive strategies addressing historical marginalization and systemic discrimination. However, these mechanisms cannot single-handedly remove racial disparities—unequal outcomes and opportunities that different racial or ethnic groups face across various societal domains such as employment, education, wealth, housing, and resource accessibility.

To address inequality, amend existing frameworks, and open opportunities for marginalized communities focus on macroeconomic environment, infrastructure, skill development, and financial accessibility. It is also important to ensure robust housing, universal healthcare, and improved public policy. Open opportunities through affirmative action policies and anti-discrimination legislation and promote marginalized voices in decision-making bodies. Reconsider economic policies, as unemployment and economic growth are important factors, as wealth concentration can persist or worsen inequality.

National Days and More Inclusive Commemorations

Namibia's population, although small, is composed of diverse ethnic groups, each with their own unique stories, traditions, and historical experiences which should be celebrated and acknowledged. Therefore, we must ensure that national holidays and museums represent all communities and reflect all historical events of the Namibian story arc. From the heroism of the Herero and Nama people in the resistance wars to the legacy of the San people as the earliest inhabitants of Namibia, these narratives should be incorporated into national day celebrations. It is worth noting how the changing demographics and shifting attitudes are also impacting how these days are celebrated, often politicizing the events and leading to debates about their relevance.

Facilitate a National Dialogue About the Past

Namibian museums can offer opportunities to both confront and understand the nation's multifaceted history, including the painful legacies of colonization including the genocide and apartheid. While museums can serve as repositories of the collective memory, curating exhibitions that delve into the historical experiences of each ethnic group and pay attention to underrepresented voices, can provide a platform for dialogue, forgiveness, and restorative justice. There is need to present an inclusive and unbiased view of history, while navigating the delicate balance between truth-telling, reconciliation, and justice.

Increase Psychosocial Support Mechanisms

There needs to be a systematic integration of psychosocial support within all spheres of public policy, from education and health to criminal justice and social welfare. This will help address various levels of trauma, whether individual, familial, or community-wide, since experiences and manifestations

of trauma can differ. Investing in community-led healing initiatives is also key as evidenced by countries such as Rwanda. It is essential to recognize the power of communities in healing and reconciliation processes. However, all these measures should be executed with great caution to ensure they do not unintentionally turn deeply painful personal experiences into a public spectacle. There should be a clear emphasis on respect and dignity for survivors of trauma, and their stories should be handled with sensitivity and confidentiality.

Improve Collection of Racial Data and Information

The lack of exhaustive racial data collection impedes a thorough comprehension of the progress made in addressing these issues. By quantifying these disparities, policymakers, researchers, and activists can gain insight into the underlying causes of inequality, how they are reinforced, and create targeted interventions to combat them. In addition, the compilation of racial data provides historical context and permits the monitoring of progress over time. Finally, data can help quantify and amplify the perspectives of underrepresented groups and cast light on the experiences of various racial and ethnic groups.

Meaningful Community Engagement

The government must ensure that indigenous and minority communities are meaningfully engaged in the decision-making processes concerning the planning, execution, and assessment of development programs. There should be room to amend programs if the communities involved voice their opposition through a consultation process that is independently overseen.

Civil Society

Improve the Process: Engage Leaders from Affected Communities and Build Alliances

A consistent approach should be adopted, regardless of race or ethnicity, to address historical injustices and seek reparations. State and non-state actors should play a significant role in the negotiation and implementation, ensuring that affected communities' voices are amplified and that members are

active participants in shaping the reparations process. Traditional authorities within these communities should be involved to ensure a comprehensive understanding of past atrocities and the needs of affected populations. Reparation negotiations should focus on healing, rehabilitation, and development, including educational programs, memorialization initiatives, healthcare support, and economic empowerment for affected communities.

In addition to making sure that the affected communities are part of the process, it is important to also give them the support of other groups. This includes collaboration with other civil society organizations, international bodies, and government agencies to build intersectional response.

Specific Goals of Civil Society Improvements.

In addition to improving the process by including the community and organizational allies, it is important to identify specific goals. For example, it is key to improve education about genocide and apartheid, as well as current systemic racism and social biases. Collaborate with academia, media, and other stakeholders to create public awareness about racism, cultural diversity, and inclusion. Integrate and strengthen indigenous knowledge alongside Western knowledge. Similarly, legal assistance is important and therefore it is recommended to offer support services, such as legal assistance to individuals and communities affected by racial discrimination. This can help them navigate legal challenges. Providing psychosocial support can help heal the negative self-image of affected communities and therefore it important to offer community-led services to individuals and groups affected by racial discrimination. In order to track the progress of all of these initiatives, there must be monitoring and reporting on racial discrimination. Establish community-based monitoring systems to track incidents of racial discrimination and the implementation of relevant policies to combat it.

Multi-lateral Agencies

Support comprehensive anti-discrimination initiatives

Support the Namibian government in developing and implementing comprehensive anti-discrimination laws and policies that specifically address

the rights and needs of indigenous and minority communities. This includes promoting active and inclusive participation of these communities in decision-making processes, as mentioned earlier, and ensuring that development programs align.

Invest in Education and Public Awareness Campaigns

Collaborate with grassroots NGOs and community leaders to create and fund public awareness campaigns that target racism and tribalism. These programs should aim to foster understanding, tolerance, and acceptance among different racial and ethnic groups.

Strengthen Monitoring and Reporting Mechanisms

Establish robust, independent, and transparent monitoring and reporting mechanisms to assess the implementation of policies and the overall situation of racial discrimination in Namibia. This could include supporting the creation of independent bodies that can consult with affected communities.

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RACISM AS A RISK FACTOR FOR ATROCITY CRIMES:

A Case Study on South Africa[1]

Author: Tshepo Madlingozi

This country is still in the hands of the colonial masters. This country is still in the hands of White people…. The White man has been too comfortable for too long. We are here unashamedly to disturb the White man's peace because we have not known peace. We don't know what peace looks like. They have been swimming in a pool of privilege. They have been enjoying themselves because they always owned our land. They found peaceful Africans here. They killed them. They slaughtered them like animals. We are not calling for the slaughtering of White people, at least for now…

—Julius Malema, the commander in chief of the Economic Freedom Fighters, the third largest political party in South Africa, 2016

Introduction

In 1994, South Africa went through an internationally acclaimed process of transition to democracy and adopted an interim constitution that guaranteed civil and political

rights as well as justiciable socio-economic rights to all. These processes were followed by the establishment of the Truth and Reconciliation Commission in 1996. However, as this case study will show, these processes and mechanisms were not decolonizing acts and processes, and thus did not go to the root causes of historical atrocities.

In South Africa, widespread despair and discontent brought about by the state's failure to meet citizens' basic needs together with staggering rates of unemployment (youth unemployment is officially at sixty-six percent) conspire to make South Africa a ticking timebomb for massive social unrest. This anger at the state combined with persisting racial inequality, institutionalized racism, soaring crime rates, and xenophobia has led to rising populism. In the current climate, the state's inability to deal with the afterlives of colonialism and the unfinished business of transitional justice process could be pushing South Africa toward a recurrence of atrocity crimes.

One of the main aims of this case study is to show that in the matter of South Africa, there is a risk for recurrence of atrocity crimes. However racism is merely a symptom. The cause of the risk of atrocity crimes recurring is the history of colonialism and its enduring impact on the lives of South Africans today.

1 Historical Context

European Arrival and the Creation of the Racial "Other"

There is little to no regard for Black lives and their human rights.[2]

South Africa's colonial history is often framed as starting with the arrival of Jan van Riebeeck in 1652. Van Riebeeck's arrival indeed set the course of European

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2   Interview with researcher, September 2023.

settler invasion, conquest, and racist dehumanization in the territory that later became South Africa.[3] However, the roots of colonization, dispossession, and its abhorrent injustices against humanity had long been planted. As early as the late 1400s, Portuguese explorers such as Bartholomeus Dias and Vasco da Gama had already established trading posts along the coast of what the Portuguese named the Cape of Good Hope. This encounter between the Europeans and the Indigenous people was the start of centuries of European aggression, racial strife, and exploitation.

As early as 1503, various explorers tried to exploit Indigenous peoples by buying livestock with mere trinkets and beads.[4] In the period between 1500 and 1650," at least 1000 Portuguese, 600 Dutch, and 400 English and French ships landed on the South African coast" leading to large-scale plundering of resources and people.[5] For purposes of this case study, it is important to underline that Europeans explained and legitimized the dispossession of African resources and labor on the basis that they were not human beings. Coloniality of power thus went together with coloniality of being. One scholar expounds on the European racist ideas of the 1500s as follows:

> *These [racist] ideas were formulated on the basis of accounts of travelers who were happy to use Khoikhoi as the link between man and animals in the Great Chain of Being. Indeed, these ideas led to flow of racial abuse that has no equal in literature. It was the first obvious and extensive exercise by Europeans of a belief in the sub-strata within humanity: lesser species; and the word Hottentot would long be used as synonym for brute or boor in many Western European languages.[6]*

Divide and Rule: Settler Colonization, Dispossession, and Slavery

The year 1652 is significant "as the genesis of the colonial assault and dispossession of land and resources that changed the lives of so many."[7] Van Riebeeck arrived as part of a scheme by the Dutch East India Company (referred to here as "the Company") to ostensibly establish a refreshment station in the Cape. The disregard by Europeans of the rights of Indigenous peoples was first made apparent when the Company, without any regard for Indigenous people that had occupied the land for centuries, decided to arbitrarily occupy land in the Cape to establish their permanent victualing station (Magubane, 2007).

Within a few years, the Company allowed the importation of enslaved people and thus the Cape became a slave settlement with a code of inequality in practice.[8] The very first shipments of slaves initially arrived from Guinea and Angola in 1658.[9] But those slaves were actually stolen by the Dutch from a Portuguese vessel bound for Brazil. In fact, West African slaves were the exception and not the rule. The vast majority of slaves that arrived in South Africa came from Madagascar, the Indian subcontinent and South-East Asia. They were largely the product of opportunity: when there were wars or famine in that region, prisoners of war or excess family members were sold into slavery. By the time the slave trade ended in 1808, roughly 26% of the slave population in the Cape were from the African continent, another 26% from the Indian sub-continent, 25% from Madagascar, and 22.7% from Indonesia.[10]

By 1657, the Cape had become a settler colony. This was primarily because several ex-Company officials and soldiers were given permission to become "free burghers" with the right to acquire as much of Indigenous peoples' land as they wished in order to make provisions for passing fleets.[11] In 1658, the Company moved towards a position of permanent settlement in the Cape, with clear disregard for the Indigenous people who were already there. In various entries, Van Riebeeck referred to the Khoe and the San as "dull, stupid, and

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3   Magubane, 2007.

4   South African History Online, 2016.

5   Terreblanche, (2002: 153).

6   Mostert (1992: 107).

7   Mellet, 2020.

8   Krüger, 1969.

9   South African History Online, "Early Cape Slave Trade", Accessed November, 2023.

10   Ibid.

11   Mostert, 1992.

odorous and black stinking dogs."[12] This creation of inferior "other" based on colonialities of knowledge and being persists today despite the official fall of colonialism.

The first anti-colonial war in the territory that became South Africa occurred in 1659. The war was provoked by the Company's awarding of farms to free burghers, the imprisonment of local leaders, and the Company's "divide and conquer" strategy.[13] The war ended with the Dutch cordoning off Khoe lands and expelling them from it. Between 1700 and 1703, the Company removed the prohibition against moving inland. Prospective colonist farmers (later called Boers) only had to apply for grazing permits for anywhere that they claimed was unoccupied. The Boers' invasion of Indigenous land and seizure of thousands of cattle belonging to Indigenous peoples provoked two European-Indigene wars in 1673–77 and 1701–05. Soon after, between 1710 and 1713, a smallpox epidemic broke out in the Cape leading to the decimation of most of the Khoe population. The epidemic, brought by a docking European ship, spread to other regions of the Khoe leading to pandemic-level deaths of Indigenous peoples. Afterward, the colonists moved into those depopulated areas and claimed them for themselves.

The introduction of slavery in the late 1600s strengthened the foundation of racism.[14] Not only did it reaffirm already existing racist beliefs but created formal racism in the form of policies and laws. Although the Company writ dictated that the Khoe could not be enslaved, their children could be forced into "apprenticeship" until they were eighteen years old in the farms where they were raised—thus securing cheap labor for the colonists.[15] Children who were born of slaves were automatic successors of their slave parents.[16] Enslavement went together with cultural genocide as slaves lost their own customs: "it was an accepted prerequisite of manumission that a slave should be baptized, speak good Dutch...."[17] Therefore, not only people but cultures began to be subject to a racist hierarchy.

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12   Magubane, (2007: 182).

13   Mellet, 2020

14   Moleah, 1993.

15   Welsh, 2020.

16   Moleah, 1993.

17   Thompson, (1990: 44).

Wars of Dispossession: The Extermination Impulse, Ethnocide, and the Seeds of Atrocity Crimes

The deeper into the frontier the colonists went, the more conflict ensued. The main preoccupations of colonists became defending themselves against raids by the San and launching retaliation, leading to massacres. This period between the 1700s and early 1800s is now known as the period of the genocide of the San.[18]

In 1806, the British took over the Cape from the Dutch. The arrival of the British caused the Boers to move away from the Cape Colony. The Boers felt oppressed by the British self-proclaimed civilization mission and attendant British laws forcing the Boers to treat the Khoe laborers in certain ways. For example, there were regulations against flogging and prohibiting the docking and withholding of salaries. This culminated in the Great Trek of 1836—the Boers left the Cape Colony and moved deeper inland. On their way, the Boers expropriated Indigenous people of their livestock and kidnapped their children. The Boers established their first inland colony, Natal colony, in 1839. The system between the Boers and Indigenous people was unequal akin to a master-slave relationship. The Boers imposed this rigid system of White supremacy wherever they founded a colony inland.

Once the British determined to rule the Cape, they launched a series of wars of dispossession against the Xhosa kingdoms in pursuit of land to give to British settlers.[19] After three wars, the British were able to expel the Xhosas from their land and expand the colonial boundaries. The wars of dispossession culminated in the dispossession of lands; the outlawing of pivotal African customs and traditions; the fracturing of clans; and the general stupefaction of the worlds of Indigenous peoples.

The eighth war of dispossession (1850–53) has the distinction of being the longest of the nine wars of dispossession and the longest sustained military resistance against colonialism in Africa. The defeat of Xhosa and allied groups in this war further consolidated embryonic beliefs in European invincibility. This defeat and subsequent ones convinced most Indigenous peoples that their

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18   Adhikari, 2010.

19   Magubane, 2007.

salvation would not come from anti-colonial military struggles. Rather, salvation was to come from converting to Christianity, attaining Western education, and thus integrating into colonial society.

The last war of dispossession took place in 1879. The British deemed the subjugation of African kingdoms to be essential for White security. This was achieved in 1879 with the defeat of the Zulus and the last mopping operations against the Sotho groups in 1881. In total, nine wars of dispossession took place between 1779 and 1879. These wars are central to understanding the atrocity crimes that took place in South Africa including "ethnic cleansing", "ethnocide", "genocide", and "crimes against humanity."[20]

The Founding of South Africa as a "White man polity": Ethnic Cleansing, Crimes Against Humanity, and the Foundations of Institutionalized Racism

Forced removals were not just physical displacements. They dislocated people's identity. This is because, for Africans, identity is tied to land and space. physical displacement dislocates much more than just the material.[21]

Soon after the colonists' military triumph against the Zulus, the British and the Boers signed a treaty of peace which paved the way for the establishment of the Union of South Africa. British and Boers constitution-makers decided that the Union constitution would not extend the restricted franchise that Africans historically enjoyed in the Cape Colony to the rest of the envisaged Union. The 1910 Constitution of the Union of South Africa, therefore, created South Africa as White man's polity where conquered people did not have basic civil and political rights. Over the next several decades, a number of laws were passed to further restrict the movement, settlement, and economic opportunities of Africans.

In 1913, the colonial government passed the Natives Land Act. This act

designated only seven percent of the land for Africans. The act legalized land dispossession, segregation, and mass removal of Africans to "tribal" reserves. In 1923, the state introduced the Native Urban Areas Act with a requirement that African males should carry "passes" showing that they had permission to be present in urban areas. This 1923 act also declared cities to be White areas and made provision for the establishment of "Black locations." In 1934, in response to widespread White anxiety about the presence of Africans in the city, the colonial state passed the Slums Clearance Act with the view of making, "comprehensive provision for the elimination of slums." Under this law, "African people were rounded up and sent to reserves."[22] The 1936 Native Trust and Land Act consolidated land dispossession—a "final deed of disinheritance."[23]

The post-1939 economic boom saw more Africans being drawn into urban areas. This increased White anxiety and provoked fear of labor competition. It was in this context that the National Party won the 1948 elections on the ticket of poor Afrikaners. The National Party came to power on the ideology of apartheid. The apartheid regime quickly set about consolidating colonial segregation through a raft of laws. The Population Registration Act categorized people into four races: White, Colored, Indian/Asiatic, and Native. In 1950, the apartheid government enacted the Group Areas Act providing for the segregation of residential areas into four race groups. This act mandated local authorities to remove "Black spots" (Black and multi-racial residential areas adjacent to or in between "White residential areas"). This led to unprecedented mass removals of Africans to newly established townships on the periphery of cities. In 1951, the Prevention of Illegal Squatting Act obligated land owners to evict "illegal squatters" and build "transit camps" to which evictees could be relocated. The Reservation of Separate Amenities Act of 1953 imposed social segregation in all public amenities.

In rural areas, the Bantu Authorities Act of 1951 sought the re-tribalization of conquered people by imposing a system of distinct African politics with an associated system of "traditional authorities." The apartheid state followed this segregation effort with a doctrine of separate development. This doctrine "implied that every South African must be assigned to an ethnic group, nation,

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20   Mellet, 2020.

21   Interview with political science academic, August 2023.

22   South African History Online.

23   Motlhabi, (1984: 51).

or tribe, and that each of these must have its own site of self-government. Ethnic categories were enforced on a largely unwilling Black populace by means of comprehensive social engineering. Communities, and even families, were divided as the bureaucracy of apartheid categorized an entire people in accordance with the rules of descent."[24] The regime buttressed these efforts by setting up a "homeland" system through the Promotion of Bantu Self-Government Act of 1959. The act converted existing reserves into eight (later ten) distinct "Bantu Homelands." Africans living in declared homelands were thus denationalized—no longer South Africans but citizens of "homelands." The homeland policy was a culmination of a policy of ethnic cleansing through mass removals: "between 1960 and 1989, there were 3.5 million forced removals of people who were found to be of 'incorrect' ethnicity for their location."[25]

In 1960, the Pan-Africanist Congress of Azania (PAC)—a breakaway political party from the Africa National Congress (ANC)—organized a protest march against the passes. The police responded to this peaceful march by shooting protestors. According to official records, 69 people died with a further 180 wounded. After this massacre (known as the Sharpville massacre), the apartheid regime banned the ANC and the PAC and gave police-wide powers to detain and ban political activists. The banning of the ANC and the PAC meant that there was no effective national opposition against apartheid. In the late 1960s and early 1970s, Black students at universities formed the Black Consciousness Movement to advocate for the reclamation of black humanity and the setting up of self-reliance programmes. The Black Consciousness Movement influenced students to revolt against the apartheid education system—culminating in the Soweto Uprising of 1976. Between 200 and 700 people died during this uprising. In 1977, the apartheid police killed Steve Biko, the leader of the Black Consciousness Movement, and banned Black consciousness newspapers, youth groups, and other associated entities.

A national movement against apartheid finally came into being in 1983 with the formation of the United Democratic Front (UDF). UDF affiliates instigated unprecedented nationwide uprisings in the early 1980s. In response, a scared and desperate regime declared a series of formal states of emergency,

beginning in 1985. On June 12, 1986, then-prime minister P. W. Botha extended the state of emergency to the whole country and gave the securocrats free rein to implement their own counter-revolutionary strategy. By the end of that year several thousand activists faced arrests, indefinite detention, and in some cases, assassinations. On February 24, 1988, the Minister of Law and Order effectively banned the UDF and several of its affiliates. Despite this ban the UDF continued to operate quietly, maintaining and rebuilding structures and engaging in discrete campaigns against the repression.

Widespread unrest, high inflation, international ostracization, and pressure from big business forced the state to start negotiating with the ANC. On February 2, 1990, F.W. de Klerk, the last colonial-apartheid president, announced the unbanning of the ANC and other liberation parties and organizations and the release of political prisoners. On the one hand, the apartheid regime was negotiating with the ANC, and on the other hand, it was fermenting a "Black-on-Black violence"—it plunged parts of the country into a civil war between the ANC and the apartheid-aligned Zulu ethnonationalist party called Inkatha.

Political negotiations culminated in an Interim Constitution of 1993 and the first non-racial general election in 1994.

2 After Apartheid: Laws, Institutions, and Processes in Response to Racism

Despite more than 25 years of Constitutionalism and the enactment of several laws and policies that give effect to the rights and values enshrined in the Constitution, the effects of systemic, structural, or institutional racism can still be felt and are experienced daily in the lived realities of the majority of South Africans.[26]

After the legal end to colonialism and apartheid in South Africa, there was recognition that much more additional work was necessary to bearing on racism and the dismantling of the legacies of colonialism, including: the Constitution of South Africa, the Employment Equity Act (mandating affirmative action policies);

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24   Butler, (2009: 19).

25   Butler, 2009: 20.

26   Interview with advocacy specialist, August 2023.

the Broad-Based Black Economic Empowerment Act (BBBEEE) (mandating the inclusion and participation of Black entrepreneurs and companies in the economy) and the Promotion of Equality and Prevention of Unfair Discrimination Act (whose title is self-explanatory). This section will also focus on institutions that were established to support democratization and ensure a move from a culture of authority to a culture of accountability and human rights. The following section will explore the disjuncture between these laudable legal provisions and policies and actual practice. This section will end with a consideration of the Truth and Reconciliation Commission and its contribution towards the non-recurrence of atrocity crimes.

The Constitution of 1996

The current Constitution of South Africa is founded on the principles of equality, human dignity, and non-racialism. As this study discusses, the history of the country has formed its present, and continuing to acknowledge that history is integral to its future efforts to address racism. And so, it is worth pointing out that the words "colonialism" and "apartheid" are missing in the Constitution. And although the term "ubuntu" (humanity)—the living philosophy of Indigenous peoples—was mentioned in the Interim Constitution, it is perhaps telling that it was not included in the Final Constitution.

The Constitution includes the Bill of Rights in chapter 2. This chapter enshrines classic civil and political rights such as the rights to freedom of movement, peaceful assembly and expression, religion and conscience, culture, and bodily integrity. Section 16 guarantees the right to freedom of expression but excludes hate speech and incitement to violence. The Constitution contains a bouquet of socio-economic rights with the proviso that *access* to those rights is provided *within available resources*. Section 26 is the longest clause in the Bill of Rights. That section guarantees the right to property and allows the state to expropriate land (in limited cases) to enable restitution and redistribution of land. Section 9 is the right to equality, and guarantees the fundamental right to equal protection and benefit of the law. This section outlines an extensive list of prohibited grounds for discrimination including nationality, sexual orientation, and ethnic or social origin. This section also mandates the adoption of "legislative and other measures" to benefit historically disadvantaged

groups. Section 9 led to the enactment of the Employment Equity Act (EEA), the BBBEEE, and the Promotion of Equity and Prevention and Prevention of Unfair Discrimination Act (PEPUDA).

Employment Equity Act 55 of 1998

As discussed earlier, the history of Europeans (initially as traders who eventually became settlers and undemocratic rulers) in South Africa began with unequal and unlawful economic exchanges. The race-based legal and social structures of the country extended to all areas of life including employment opportunities. The purposes of the EEA are to eliminate discrimination in the workplace, to ensure fair levels of equitable representation in all categories in the workplace, and to take affirmative action measures to redress disadvantages in the employment of designated groups. Designated groups are Africans, Coloreds, Indians/Asians, women, and people living with disabilities. A parliamentary researcher for the ANC pointed to this policy as one of the post-1994 success stories.[27]

The Broad-Based Black Economic Empowerment Act 53 of 2003

BBBEE is a government policy aimed at redressing apartheid's legacy of economic exclusion and inequality through economic transformation that would increase Black participation in the economy. The act promotes equal opportunity and equal access to government services and procurement. The act includes the BBBEE Codes of Good Practice that makes provision for a scorecard to measure progress. The codes are binding on all state bodies and public companies, and the government is required to apply them when making decisions on procurement, licensing and concessions, public-private partnerships, and the sale of state-owned assets or businesses. These codes help monitor, for example, the racial make-up of companies bidding on procurement agreements from the government, and award these contracts to those who meet a certain mix of Black employees. Black is defined in the BBBEEE to include African, Indian, and mixed race individuals, and in 2008 Chinese South Africans were

27 Interview with researcher, September 2023.

added to this definition. The goal is to help redistribute the traditionally White-dominated access to wealth to these historically excluded groups.

Promotion of Equality and Prevention of Unfair Discrimination Act of 2000

PEPUDA is one the most important pieces of legislation designed to facilitate the transition from a racial apartheid state to a democratic society guided by principles of equality. The law aims to prevent and prohibit unfair discrimination while simultaneously promoting equality. Chapter 2 of the act deals with the prevention, prohibition, and eradication of unfair discrimination, hate speech, and harassment. Besides the general listed grounds identified in section 9 of the Constitution, special attention is given in chapter 2 to unfair discrimination on the basis of race, gender, and equality. This is emphasized in the preamble which states that "the purpose of the Act is to give substance to the constitutional commitment to equality by providing a legal mechanism with which to confront, address and remedy past and present forms of incidental, as well as institutionalized or structural, unfair discrimination and equality." Section 10 prohibits hate speech and section 11 proscribes harassment of any person based on listed grounds. A unique aspect of this act is that it also provides a legal mechanism specifically to address discrimination. The law established the Equality Courts, special courts that hear only cases relating to unfair discrimination, harassment, and hate speech. They are meant to be forums for accessible and quick justice. In an effort to make these courts more affordable for all, one does not need to engage a lawyer to approach these courts.

State Institutions to Support Constitutional Democracy ("Chapter 9" Institutions)

In addition to the Equality Courts, chapter 9 of the constitution establishes several state institutions to support democracy including the Human Rights Commission, the Commission for Gender Equality, and the Commission for the Promotion and Protection of the Rights of Cultural, Religious, and Linguistic Communities. The mandate of the South African Human Rights Commission is to promote a culture of human rights, to monitor the implementation of the Bill of Rights, and to embed a culture of human rights. The primary objectives of the Commission for the Promotion and Protection of the Rights of Cultural, Religious, and Linguistic Communities are to promote respect for the rights of cultural, religious, and linguistic communities and to promote and develop peace, friendship, humanity, tolerance, and national unity among cultural, religious, and linguistic communities, based on equality, non-discrimination, and free association. The Commission for Gender Equality is tasked with promoting respect for gender equality and the protection, development, and attainment of gender equality.

3 Transitional Justice and the Truth and Reconciliation Commission

In South Africa, transitional justice began in the second half of the 1990s. First, it is important to recognize that transitional justice is often a question of timing—get the timing wrong and the eventual result is a mess. A common narrative is that South Africa underwent a peaceful transition—even a miracle transition. The reality is that between 1988 and 1994 more people were killed in political violence than during any other comparable recent period of South African history. It was a very bloody transition. The story of a peaceful—or miracle—transition is a myth.

The Goals of the Truth and Reconciliation Commission

South Africa's transitional justice process began in the second half of the 1990s with the Truth and Reconciliation Commission as its main vehicle. In 1995, the new Parliament enacted the Promotion of National Unity and Reconciliation Act (TRC). The goals of the TRC were to establish the truth about the past, grant amnesty where appropriate, and establish measures for reparations. To that end, the TRC was comprised of three committees: the Amnesty Committee, the Reparation and Rehabilitation Committee, and the Human Rights Violations Committee (HRV). The

Amnesty Committee was responsible for deciding upon amnesty applications for crimes associated with a political objective. The Reparation and Rehabilitation Committee enabled individual and community reparations. Lastly, the Human Rights Violations Committee afforded a platform to victims and survivors to tell their stories. This committee also identified who qualified as a victim of gross violation of human rights and was thus entitled to reparations.

The TRC was the biggest commission to date: it received more than 22,000 statements and conducted 100 hearings. Eventually just under 17,000 of the submissions were deemed worthy of being declared victims. Bear in mind that South Africa has a population of more than 50 million people and legal apartheid began in 1948. It is very limiting, at best, to declare only 17,000 people were victims. First, many people were excluded from even engaging in the TRC process. When the TRC started, violence was still raging in some parts of the country. Many people could not engage with the commission because they were still traumatized or displaced. Secondly, many people fell through administrative gaps due to language-based miscommunications and incorrect classification of those who gave statements. Khulumani Support Group, the national movement of victims and survivors of gross human rights violations, estimated that only 10% of people who fit the TRC's own narrow and legalistic definition of "victim" were able to participate in the process.[28]

What Did the South African Transitional Justice Process Achieve?

For purposes of this case study, we will set aside the lens of a post-conflict paradigm which would suggest that a transition should lead to decolonisation and historical justice in the context of settler colonialism. Instead, we will use the United Nations framework of transitional justice. And yet, we still find that not much was achieved.

For example, the overall sense of satisfaction—in terms of recognition and financial remuneration—from those who were victimized is poor. Some victims felt better because they received official recognition and public acknowledgment after years of denial of their victimization. However, because

the focus was on the stability and reconciliation of elites (a perpetrator-centric process), many felt that their tears and testimonies served to legitimize the elite compromise. The commission did not provide adequate proper psycho-social support and some victims felt re-traumatised. Related, victims' wounds were opened without any balm to soothe them. While perpetrators got amnesty immediately, victims had to wait many, many years for financial restitution. The catharsis was for the nation as a whole rather than victims. Furthermore, there were only a handful of cases of victim-perpetrator reconciliation. This is all the more significant because of the TRC focus on individual harms, it did not enable social reconciliation.[29]

Another challenge is the ongoing pain of victims. More than ten years after the end of the TRC hearings, Khulumani members reported that they still had bullets in their bodies, they continued to need wheelchairs and prosthetic equipment, and their psychosocial needs remained unmet.[30] To make matters worse, victims have no guarantee that these traumas and crimes will not happen again. While there have been some institutional reforms such as the establishment of "institutions of democracy" mentioned above, a culture of impunity continues. In part, this is because perpetrators who did not go to the TRC have not been prosecuted. Another challenge is the lack of restitution. Only eight percent of the land has been redistributed. Poverty in South Africa is endemic, and remains most pervasive among the Black population. In short, South Africa is the most unequal country in the world.

In terms of actual financial compensation, there was only a one-time payout of R30,000 ($1,600USD) was given to victims of human rights abuses, meaning those fortunate enough to be determined as victims by the TRC. The state still operates on the basis of this "closed list" in making decisions about which victims to help, therefore victims and survivors who did not go to the TRC are excluded. And although the TRC recommended a program of community reparations for the worst affected communities, this has not been done to date.

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28   Bryne, (2010: viii).

29   Mamdani, 2002; Madlingozi, 2007.

30   Bryne, 2010.

Revisiting Reconciliation:
Is Another Reckoning with the Past Necessary?

A member of the TRC Amnesty Committee shared that he did not think that the TRC achieved either truth or reconciliation:

> *The TRC was an attempt to reconcile various groups in South Africa. But, I will not say it has been a 100% success. I was fortunate to serve as a member of the Amnesty Committee of the TRC. The people who came forward to seek forgiveness and reconciliation were from the Black or African side. There were very few who were from the White group. Also, those from the White group who came to apply for amnesty were so economic insofar as they were disclosing the extent of the atrocities of the past.*[31]

Some maintain that the TRC produced a particular "past": it generated, beyond its implementation and operation, a set of concepts and discourses which shaped the ways in which the "past" is produced, presented, and understood, and the "everyday" is inhabited. More specifically, the TRC "produced" a past not of conquest and colonization, but softer narrative—one of "conflict" and "division."[32]

Some interviewees believe that there is a need for another commission to reckon with the past. One of them is of the view that the TRC "perpetuated White supremacy" because it did not go to the core of the problem, which is White privilege and colonization.[33] Britannica defines White supremacy as "beliefs and ideas purporting natural superiority of the lighter-skinned, or 'White,' human races over other racial groups." [34] As discussed in the history section above, the entire project of settler colonization in South Africa was based on and justified by these ideas and beliefs. Settler colonizers committed

atrocity crimes such as genocide, ethnic cleansing, and apartheid to consolidate and perpetuate White supremacy. Commentators accuse the TRC, firstly, of unwittingly perpetuating White supremacy by not addressing beneficiaries of that supremacy and colonialism.[35] As mentioned above, the TRC's overwhelming focus on individual perpetrators and victims jettisoned structural racism and White supremacy. Second, (and related), the TRC is alleged to have "perpetuated racism" by not having a clear conception of how atrocities were related to racism. One of the key architects of the TRC, Charles Villa-Vincenio, puts it as follows: "The limitation of the South African TRC was that it did not have the mandate, the time, or perhaps the will to address the underlying problems of racism and privilege that underpinned the gross violation of human rights that it sought to uncover."[36]

Attitudes towards the reconciliation project and the Rainbow Nation myth are particularly stark among young Black people. For example, qualitative research carried out at the University of Pretoria showed that Black students have given up on the Rainbow Nation, squarely laying the blame on Mandela. Various responses illustrated the lack of confidence. One respondent stated that Mandela is a non-starter in their discourse: "if you're having a political debate and somebody mentions Mandela, it's very common to hear somebody say, 'Ah, don't tell me about that guy'." Another was even more dismissive of Mandela's strategy, stating: "Mandela opted for peacemaking, which found us compromising us." Some views not only disregarded Mandela specifically but expanded more broadly on the idea of why a "post-apartheid" lens did not resonate:

> *I'm really indifferent to the term [post-apartheid] because it changes nothing for me, at least [in] how I view the world. [J]ust like the 'born free' term it invokes a lot of: "We're good now. We are fine." [...] You know every time you bring up anything that can be associated with apartheid they will tell you, "Oh, we're past that, we are in the post-apartheid era," and it's used to shut people up.*

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31   Interview with politician, August 2023.

32   Grunebaum 2011.

33   Interview with researcher, August 2023.

34   Charles Mills' definition of White supremacy includes the following dimensions: "Juridico-political: the state and the legal system; economics: access to and accumulation of wealth; Cultural: 'non-White' peoples' contributions are either appropriated or minimized so that Europeans become the only people capable of culture; metaphysical: 'people of color have always recognized that racial subordination is predicated on regarding them as less than fully human, as subpersons rather than persons." (cited in Garner, 2007: 24)

35   Interview with researcher, August 2023.

36   Villa-Vincenio, 2009.

Another echoed the disbelief of a post-apartheid freedom in light of the generational racism they experienced:

But the older I got, it was just like, is this what freedom really looks like? If I was born free, why am I still facing some of the challenges that my mom faced, and my grandmother faced? Why is it so hard for me to find my identity in my country, in my community? Why are all these things contending against me? So as you grow older you start to ask, am I really free?[37]

Responding to the question whether there is a risk of occurrence of atrocity crimes, a commissioner at the South African Human Rights Commission said that he did not think that would happen. He elaborates:

I don't think racial conflict will escalate to that extent as to become genocide. I'm saying that because the conflict is not of such a large scale that it defaults into genocide or any large scale of racism. I also don't think that there will be any tribe or group that will be cleansed or removed because when these incidents take place, they don't place directed to an ethnic group or a crowd, but we have incidents where one individual is directing racist utterances against another individual of a particular group. The TRC was an unfinished business.[38]

4 State of Racial Injustice and Other Forms of Discrimination Against Marginalized Groups

The colonial and apartheid hierarchy of race in relation to privilege and access has not fundamentally changed.[39]

37   Kenyon and Madlingozi, (2022: 9-11).

38   Interview with politician, August 2023.

39   Interview with researcher, September 2023.

Stats SA 2022 mid-year estimates indicate that there were just over 60 million people living in South Africa.[40] In its 2026 Community Survey (Census) Report, Stats SA pointed out that it retains the categorization of South Africans into four distinct groups: Black, Colored, Indian/Asiatic, and White people.[41] Stats SA justifies this decision as follows: "The classification … by population group is useful as a means of stratifying the population given the country's [historical classifications have] been accepted as the best measure of previous socio economic deprivation."[42] Stats SA 2022 estimates indicated that Black people comprised 81% of the population, Colored people are 8.8% of the population, people of Indian/Asian descent was 2.6%, and White people constitute 7.7% of the population.[43] In addition to the many historical and current atrocities to race-based groups by race, there are two other very vulnerable and marginalised groups: the LGBTQI+ community and non-nationals.

The LGBTQI+ Community Path to Protection: Recent Successes and Ongoing Risks

Though adequate protection of the LGBTQI+ group is yet to be achieved, the country's legal regime has made a few remarkable strides for the legal recognition and protection of queer people. The ruling in *National Coalition for Gays and Lesbian Equality v Minister of Justice*[44] de-linked homosexuality from the crime of sodomy. In *Du Toit and another v Minister for Welfare and Population Development,*[45] the court confirmed the rights of same-sex life partners to jointly adopt children where they are deemed fit parents. In *Gory v Kolver,*[46] a partner in a permanent same-sex life partnership was included in the Intestate Succession Act's definition of a spouse. And the case of *Minister of Home Affairs and Another*

40   BusinessTech, 2022.

41   People classified as Black are mainly indigenous African people. White people are mainly descendants of European colonists. Indian/Asiatic are people of Asian descent, and Coloured people refer mainly to "mixed raced" people or people of "mixed ancestry."

42   Stats SA (2016: 20)

43   BusinessTech, 2022.

44   National Coalition for Gays and Lesbian Equality v Minister of Justice (CCT11/98) [1998] ZACC 15; 1999 (1) SA 6; 1998 (12) BCLR 1517

45   Du Toit and another v Minister for Welfare and Population Development (CCT40/01) [2002] ZACC 20; 2002 (10) BCLR 1006 ; 2003 (2) SA 198 (CC)

46   Gory v Kolver, (CCT28/06) [2006] ZACC 20; 2007 (4) SA 97 (CC); 2007 (3) BCLR 249 (CC)

v Fourie[47] resulted in the enactment of the Civil Union Act to address the lack of effective protection of homosexual relationships.

Recognition of the above legal reform over the years, does not negate the current ongoing persecution of queer people. Particularly relevant to this case study is South Africa's unique case of queer Black women being a marginalized group within an already vulnerable group. "This was because, firstly, although all women in South Africa were vulnerable to violence, there was a correlation between increased poverty and increased vulnerability, and, in South Africa, being Black meant there was a greater association with being poor or having less access to resources. Not only did Black women live in environments in which, just as other Black women, they were vulnerable to attack, they also lived in places where cultures were often deeply homophobic and in which sexual violence had become a 'popular weapon'."[48] Hate crimes against Black lesbians include "corrective rape", intentional HIV infection, grievous bodily harm, and murder.[49] Research shows at least 20 Black lesbian hate murders took place in a space of eight months in 2021.[50]

It is important to stress that the ongoing oppression of Black lesbians and broader societal homophobia are also continuities of colonial legacies. To be sure, several studies have shown that colonization either introduced homophobia or buttressed it.

Colonialism served to introduce puritanical, heteronormative Christian beliefs into South African society... Therefore, it is argued that it was through the Christian assertion that homosexuality was an abomination that homophobia first arose within African communities. These conservative colonial-Christian values carried through to the apartheid era and were further entrenched through the criminalizing of homosexuality. Furthermore, by characterizing Black sexuality as rampant, it was assumed that the only form of sexuality the Black

population ascribed to was heterosexuality. The essentialist view of African sexuality has continued to influence assumptions regarding homosexuality in democratic South Africa.[51]

The systemic oppression of sexual minorities was not part of the TRC's purview and TRC did not make specific recommendations around it. The widespread pattern of abuse of Black lesbians has been recognized as a "hate crime."[52] Hate speech and hate crimes, as is well known, are often precursors of atrocity crimes.

Non-nationals in South Africa: the Risks and Perils of Xenophobia

A professor stated in their interview that they believe that while racism is a serious issue in South Africa, it is xenophobia that is likely to end in heinous crimes against humanity.[53] The results of Stats SA's 2016 Community Survey indicated that approximately 1.2 million non-nationals were living in South Africa.[54] Non-nationals are an especially vulnerable and marginalized group in South Africa. Despite the fact that the ANC received a lot of military, monetary, and other assistance from other African countries, the post-1994 state and large swathes of South Africans are xenophobic.[55] Since 1994, shopkeepers from Somalia and Ethiopia have suffered regular attacks and harassment. This all came to a head in 2008, when Afrophobic pogroms resulted in the killing of more than 60 people and the displacement of over 100,000 people. Since then, the state has done little to weed out xenophobia. A study by the Rosa Luxemburg Foundation found that "since the transition to democracy in 1994, a total of 1,028 xenophobic incidents have been recorded, resulting in 659 deaths."[56]

In 2022, three UN Special Rapporteurs released a joint statement raising alarm about increasing xenophobic sentiments in South Africa. They warned that

47   Minister of Home Affairs and Another v Fourie (CCT 60/04) [2005] ZACC 19; 2006 (3) BCLR 355 (CC); 2006 (1) SA 524 (CC)

48   Brodie, 2021.

49   Ibid.

50   Igual, 2022.

51   Westman (2023:1-4)

52   Dowling, 2022.

53   Interview with international law professor, August 2023.

54   Stats SA, 2016: 30

55   Interview with international law professor, August 2023.

56   Guilengue, 2023.

xenophobic sentiments had reached fever proportion with self-styled vigilante groups openly conducting raids against "illegal migrants."[57] A leading example is a group that was formed two years ago in Soweto and calls itself Operation Dudula. The name Dudula (literal translation: "force out") makes it clear that the mission and vision of this "civic group" is to cleanse South Africa of immigrants. Its modus operandi is circulating information on social media blaming non-nationals of committing various crimes or "stealing jobs" and then mobilize members of the public to carry out raids at shops, informal traders' sites, and shack settlements in search of "illegal foreigners." Operation Dudula and its offshoots clothe their hate speech in the rhetoric of South Africa being overrun by those who are "too alien." The president of Operation Dudula, who is a Black African woman, stated: "we must be realistic here that most of the problems that we have are caused by the influx of foreign nationals. Our country is a mess. Foreign nationals are working on a 20-year plan of taking over South Africa."[58]

Hoping to capitalize on anti-foreign sentiments, Operation Dudula has registered as a political party to contest the 2024 general elections. It should be noted that established political parties such as the ANC have also been known to make anti-foreign statements. The most recent former ANC spokesperson endorsed Operation Dudula declaring it as a "progressive and constructive community forum." He further alleged that undocumented non-nationals "… come here to sell drugs, seat [sic] here illegally, undermine our sovereignty, create illegal business."[59] Newly-formed political parties such as the Patriotic Alliance, Action SA, and the African Transformation Movement have also mobilized electoral support on the basis of xenophobia under the banner of "#putSouthAfricafirst." The Economic Freedom Fighters is the one party that has explicitly and consistently rejected and condemned xenophobia and Afrophobia.[60]

The state has not done enough to curb anti-foreign hate speech or to prosecute inciters of xenophobic violence. Indeed, UN experts mentioned above blame the state for failing to adhere to its positive obligations to promote and protect the rights of non-nationals. They condemned political parties for campaigning on the ticket of xenophobia and the state for having xenophobic policies and

practices.[61] It is important to point out there is a racial element to xenophobia in South Africa: xenophobic sentiments and attacks are mostly reserved against Black non-nationals. It is also worth noting that Black South Africans have sometimes been victims of xenophobia because their skin is "too dark." In the words of Michael Neocosmos they are treated like "native foreigners."[62] It is on this basis that some commentators choose to refer to this form of discrimination as Afrophobia or a "new racism."[63]

Rising xenophobia in South Africa is often explained in the same way as elsewhere: that non-nationals are "stealing our women", "they are into human and drug trafficking," "they are stealing our jobs" or that it is an outcome of frustrations with the lack of service delivery by the state.[64] As one interviewee notes "xenophobic attacks are due to competition for limited and constrained resources."[65]

5 The "New" South Africa: The Legacy of Racism in Wealth, Education, and Safety

While immigrants are an easy yet misplaced target for South Africa's problems, it is a fact that inequality, joblessness, and impoverishment continue to bedevil South Africa—a result not of new arrivals but old legacies.

The Inequality of Race and Wealth After Apartheid

Economic inequality in South Africa is one of the clearest manifestations of racial injustice. A study composed by the *Journal of Southern African Studies,* demonstrated how "from 1994 to 2014, the proportion of Black workers occupied in positions considered 'skilled' rose by 3%, a rise which appears paltry compared

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57   OHCRC, 2022.

58   Charlie and Ford, 2023.

59   Tandawa and Harper, 2022.

60   Interview with international law professor, August 2023.

61   OHCRC, 2022.

62   Neocosmos (2006: vi).

63   Addae & Quan-Baffour, 2022.

64   Ibid.

65   Interview with advocacy specialist, August 2023.

to the 19% increase in the proportion of White workers in skilled positions."[66] While the social grant/social security system has led to a modest drop in poverty levels, structural impoverishment and, more importantly, income inequality remain stubborn features of South Africa. In 2019, the Studies in Poverty and Inequality Institute reported that more than 55.5% of South Africans live in poverty and that one in four of them live below the poverty line.[67] A 2020 study revealed that the wealthiest ten percent of the population owned eighty-six percent of the country's wealth.[68] In addition, the 3,500 wealthiest individuals (approximately 0.006 percent of the population) had a combined wealth greater than the total wealth of fifteen percent of the population, some thirty-five million people. In 2022, a multi-country study by the *Journal of Pharmaceutical Negative Results* revealed that "in 2019, the top 1% of South African earners controlled almost 20% of national income, while the top 10% earned 65%. On the other hand, the remaining 90% of South African earners acquired 35% of national income."[69]

The detrimental legacy of the apartheid era persists in economic power as well as educational opportunity. Quality of education and inadequate access to educational facilities and resources disproportionately affect Black communities throughout the nation. A *Geographical Review* article found that "some 80% of children in Cape Town continue to attend schools intended for their race group under apartheid...most such schools have poor resources and have enjoyed little improvement in their facilities since the end of apartheid."[70] These inequities, alongside poor access to quality healthcare benefits, perpetuate the cycle of poverty and further exacerbate the detriments of South Africa's socio-economic discrepancies.

The legacy of forced removals is still obvious today—all races predominantly remain in the geographical areas in which previous racist systems placed them.[71] Black people, without ownership of and financial means to purchase land in economically conducive areas, remain in inner city informal settlements and township squalor when not confined in economically barren rural areas.[72] These areas are often characterized by, *inter alia*, poverty, lack of public and private investment, environmental racism, and social stress.[73] Some interviewees argued that the state was unintentionally reinforcing racism by failing to dismantle this spatial colonization.[74]

Income distribution is glaringly tied to race lines, and further exacerbated by by gender and age. Along racial lines the gap is clear: in 2015, "the annual median expenditure for Whites was more than ten times higher than that of Black Africans."[75] Gender adds yet another component. In 2015, the average annual income of male-headed households was double that of female-headed households.[76] And age-based wealth distribution further illuminates the same story: a recent Human Rights Watch study found that "87 percent of Black African, 81 percent of Colored, and 58 percent of Indian/Asian older people received means-tested social security entitlements in 2020, compared to only 30 percent of White older people."[77] This has led some to conclude that "despite having a progressive constitution and policy mandate, post-apartheid democratic society seems to have reproduced inequality along the same [racial] lines."[78] A study by the state-funded Human Science Research Council effectively concluded that the lives of many (nominally) South African citizens, "remain constituted as bare life, disempowered and ...'marginal' to society...."[79]

Public Safety, Policing, and General Welfare: The Everyday Racism of "Modern" South Africa

Abahlali baseMjondolo (the Shack Dwellers Movement) of South Africa, the largest social movement of impoverished people, refuses to recognize the present dispensation as a state of post-apartheid. Abahlali names the current

66   Jeske, (2018: 31).

67   Moss, 2019.

68   Chatterjee, Czajka, and Gethin (2020)

69   Igbatayo, (2022: 199).

70   Lemon and Battersby-Lennard, (2009: 520-521).

71   SERI, 2018.

72   Ibid.

73   Department of Human Settlements, 2019.

74   Interview with researcher, September 2023.

75   Statistics South Africa, (2019: 27).

76   Id., 26.

77   Human Rights Watch, (2023: 18).

78   Chatterjee, Czajka, and Gethin, 2020.

79   Barolsky, (2012: 137).

situation as a state of "unfreedom", and they explain it as follows:

> *Twenty years after apartheid we live like pigs in the mud, our children die of diarrhea, we are forced into transit camps at gunpoint, the police beat and shoot us in the streets and the assassins kill us with impunity. If we stand up and demand that our humanity is recognised we are removed from the housing list and placed on the death list.*

> —**Abahlali baseMjondolo**/the Shackdwellers Movement of South Africa, Mourn Unfreedom Day Rally, 2014

Abahlali's point is that Black political leaders are "Black boers" [Black colonialists] in the sense that they have internalized their historical oppressors' mode of thinking and governance.[80] To be sure, spectacular incidents involving the death of Black people serve as reminders of the continuing precarity of Black life in the "new" South Africa. Some examples:

- **2008:** sixty-two people are killed in the Afrophobia pogroms
- **2012:** thirty-four protesting mineworkers are killed by the police
- **2016:** a hundred and fourteen mental health patients in state care die from hunger, dehydration, and neglect
- **2021:** more than three hundred and fifty people die during two weeks of social unrest, rioting, and looting
- **2023:** seventy-seven migrants die in a fire blaze in a derelict and abandoned state building.

The 2012 mineworker incident mentioned above is an illustration of both the continuing fungibility of Black life and the continuing need for further reform of the state security system. In 2012, the South African Police Services (SAPS) opened fire at mineworkers who were protesting a mining company for better working conditions and fair remuneration.[81] Police shot and killed 34 miners during this ordeal. At the time of the massacre, the miners had decided to withdraw from their strike position but the SAPS had already fenced them in so

they would have no way to run.[82] Gunfire was opened against mine workers who were already walking away from the strike, forcing them to run for their lives.[83]

A commission of inquiry, the Marikana Commission, was established to investigate the causes of this incident and concluded, among other things, that police had exceeded the bounds of lawful and reasonable policing. It found that some victims were hiding or already on the ground when police shot them.[84] The Marikana Commission made several recommendations to improve public order policing including the proscription of the use of automatic rifles in crowd control situations and the training of SAPS members to carry out public order policing within the prescripts of the law. The Commission also recommended that a panel of experts in public order policing, with specialized expertise and extensive experience, be appointed to revise the current prescripts of public order policing and determine the best possible measures to ensure that public order policing is discharged by adequately equipped personnel.

The Commission's 2015 report mirrored the Policy Ministry's own 2011 finding that the model of public order policing in South Africa "leans too easily in resorting to the use of force especially where crowds would overstep boundaries set by police which in most instances construed as posing a threat to the Police."[85] Per the recommendations of the Marikana Commission, the state appointed a panel of experts in 2016. The Minister of Police released the panel's report in 2021—three years after he had received it in 2018.[86] The panel's main recommendation centered on the need to professionalize and demilitarize the SAPS and ensure greater internal and external accountability of SAPS. The Panel echoed and supported the National Development Plan's sentiments that "the police should be demilitarized and that the culture of the police should be reviewed to instill the best possible discipline and ethos associated with a professional police service."[87]

However, in reporting to Parliament in 2021, the Panel expressed regret that

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80   Mdlalose, 2012.

81   Dyantyi and Masiangoako, 2020.

82   President of South Africa, 2015.

83   Ibid.

84   Marikana Commission, 2015.

85   Ministry of Police, (2011: 21).

86   Parliamentary Monitoring Group, 2021.

87   Panel of Experts, (2018: 144).

some of its recommendations had not been implemented and that the major police failings during the 2021 social unrests indicated there was still a long road to the necessary reforms.[88] In this regard, A 2022 report by the Centre for Applied Legal Studies has shown a trend by police to use violence against protestors. Interviewees for this case study also pointed out that protests by community members is often met with violence by police:

> *Working-class citizens in townships remain the most affected by poor service delivery within their communities, as such more protests would naturally occur within these communities, and protesters are met with varying levels of physical violence from SAPS [South African Police Services] compared to protests in the varying middle class communities...[89]*

Some interviewees expressed the opinion that the "Black state" was racist toward Black people. For example, one interviewee stated that: "The state operates under the guise of neutrality but the effect of its actions are inherently anti-poor and thereby antiblack."[90] An academic insisted in her interview that these ungrievable deaths and general living conditions of Black people constitute "slow genocide."[91] She asserted that these deaths are not an accident but that "the system" has designed things that way because Black people are still not regarded as full humans, they are "just surplus": "Black people live in the liminal space. A space where you are just waiting to die or like, you know, waiting for your turn to die."[92]

In its *Information Sheet on Hate Speech*, the South African Human Rights Commission (SAHRC) reported complaints of racist hate speech to have constituted the highest number the overall complaints received in 2016-17. Further, Black people were often at the receiving end of racial slurs because all the other races believe themselves to be above the Black race.

An interviewee who sits on the South African Human Rights Commission believes that racism perpetrated by White people against Black people is overtly alive.[93] Persisting racial injustice and the failure to address historical injustices obviously have an impact on the state of race relations. Mutual mistrust, fear, and in some instances, antipathy continue. A 2021 annual Reconciliation Barometer carried out by the Institute for Justice Reconciliation (IJR) found that 72% of respondents believe South Africa is still in need of reconciliation.[94]

Telling the Story of Racism: The Role of Media in South Africa

Various interviewees blamed the media for sometimes fanning racial tensions, homophobic sentiments, and xenophobic attitudes. One researcher put it this way: "In my opinion, media has largely not played a developmental role in mitigating current racist discourses and this is evident in the manner in which stories relating to Black people are written about and sensationalized."[95] An advocacy specialist pointed out that the media continues to perpetuate racist tropes even though media ownership has shifted in favor of Black people.[96] On the other hand, a lawyer responded as follows: "Mainstream media largely follows a neoliberal narrative that foregrounds individualism and contempt of the poor. Yet this is not always the case as there is a burgeoning sector of activist journalists which showcase the plight of affected people and this is picked up by mainstream media."[97]

During 2021 and 2022, the South African Human Rights Commission convened an Inquiry into Discrimination or Discrimination in Advertising. The commission received numerous complaints about racist or discriminatory advertising. The commission decided that "instead of having to react to each discriminatory advert as and when they occur, the... [Commission] decided to convene an Inquiry to establish a genuine culture of human rights and prevent discriminatory adverts which discriminate and impair the dignity of people living in South Africa."

88   Ibid.

89   Interview with advocacy specialist, August 2023.

90   Interview with lawyer, September 2023.

91   Interview with political science academic, August 2023.

92   Ibid.

93   Interview with politician, August 2023.

94   IJR, (2021: 12).

95   Interview with researcher, September 2023.

96   Interview with advocacy specialist, August 2023.

97   Interview with lawyer, September 2023.

6 Resistance to Racism

There is a pervasive internalized oppressive view of self by the dispossessed in accepting their fate as marginal aspects of society, superfluous appendages. But the tide is changing, the younger generations are throwing off the shadow of previous generations' inaction and asserting their right to the city and spaces where they can make their livelihoods.[98]

Racism in South Africa today manifests itself through, *inter alia*, microaggressions, racial profiling, denial of White privilege, disparity in access to jobs and in earnings, cultural erosion, coerced conformity, police brutality, watered down history in education curriculum, and pretense that racism is in the past.[99] Confrontation of this kind of racism is sometimes frowned upon by victims as well, because those who point out racist actions masquerading as "legitimate" goals (school rules, crime rate policies, social cohesion arguments, state fund limitations, and work ethics), are sometimes labelled "aggressive", "stuck in the past" or "hooligans" by the society and state.[100]

Confrontation of racism is usually against institutions such as former model-C and predominantly White private schools, places of employment, leaders of faith-based organizations, and individuals. Physical gatherings and marching protests are the most common forms of resisting racism. However, there is a growing culture of social media mobilization against racism.[101] Twitter (now referred to as X) has been a strong platform for Black people to advocate against, expose, and confront racism. Non-nationals have also formed civic groups to advocate for their rights and to challenge hate speech and xenophobic policies. Prominent groups in this regard include the Zimbabwe Exiles Forum, the African Diaspora Forum, and the Consortium for Refugees and Migrants in South Africa. Kopanang Africa against Xenophobia is a strong coalition of civil society organizations that was recently formed to combat xenophobia.

South Africa has a vibrant social justice sector that campaigns against racism and other legacies such as spatial justice, police brutality, corporate impunity and environmental racism. Civil society organizations and movements such as Lawyers for Human Rights, Centre for Applied Legal Studies, Legal Resources Centre, Centre for the Study of Violence and Reconciliation, the Institute for Justice and Reconciliation, the Foundation for Human Rights, Abahlali baseMjondolo, Fees Must Fall, Rhodes Must Fall, and other student movements are some of the noteworthy groups that combine legal and social mobilization against racism and existing injustice emanating from pre-democracy racism. It is important to note that most of these groups' injustice frame is conceptualized on the basis of non-racism and they do not have explicit anti-racist campaigns or projects. The South African Coalition for Transitional Justice brings together organizations and persons who advocate for the "finishing of the unfinished business of the TRC."

One interviewee explained that NGOs can play a significant role in confronting racism by carrying out research that helps society understand the deeper problem.[102] NGOs can also help dismantle racism through reconciliation dialogues with affected communities and persons.[103] A lawyer elaborates in her interview on the role that public interest law organizations can play in resisting spatial apartheid and thus undo some legacies of apartheid: "We're an activist organization and law centre that challenges the reproduction of spatial apartheid in Cape Town and promotes social, economic, and racial justice through increased access to land and dignified homes. We work to broaden access to well-located land and affordable housing. Through our campaigns, Ndifuna Ukwazi combines community organising, research, advocacy, and litigation to advance urban land justice and fuel systemic change."[104] For its part, the Human Rights Commission has set up a program to facilitate dialogue and national cohesion.

I think the program that the SAHRC is having now will bear some fruit. The SHINE—Social Harmony Through National Efforts—will be trying to teach people about social cohesion and then and thereafter it would be followed by trying to make towards letting the people be equal in various

98   Ibid.
99   Pirtle, (2022: 11).
100 Atsango, 2020.
101 Bosch, Wasserman & Chuma, 2018.

102 Interview with advocacy specialist, August 2023.
103 Ibid.
104 Interview with lawyer, September 2023.

Political parties such as Black First/Land First and the Economic Freedom Fighters mobilize explicitly on anti-racist terms. However, it is also important to point out these groups have been successfully reported for anti-White hate speech to the South African Human Rights Commission. A frontal resistance to racism in the contemporary era has been led by the Black "born-free" generation. Starting from 2015, this young Black movement inaugurated a "decolonial turn" in political discourse and praxis. A "decolonial turn" was necessary because, as the first section of this case study indicated, ongoing and institutionalized racial injustice is a symptom of the unfinished business of decolonization. A comprehensive and multi-layered decolonization program would have attended to the aftermath of conquest and colonization including land dispossession, White supremacy, institutionalized racism, internalized racism, cultural subjugation, and epistemicide.

The #RhodesMustFall Movement and Promising Success

In March 2015, a movement emerged against symbols of colonial oppression, anti-Black alienating institutional culture and institutional racism at the University of Cape Town.[106] This movement eventually organised under the hashtag #RhodesMustFall, culminating in the removal from campus of a prominent statue of Cecil John Rhodes. The twin animating impulses of this nascent movement were White cultural supremacy and Black dehumanization. Historical and contemporary "Black pain" was thus the main organizing principle of #RhodesMustFall. The #RhodesMustFall movement adopted Pan-Africanism, Black Consciousness, and Black Radical Feminism to forge a unique decolonial ideology and praxis.[107] Interestingly, the #RhodesMustFall mission statement explicitly rejected human rights discourse, and by extension South Africa's constitutional dispensation, on the basis that human rights cannot ameliorate "Black dehumanization" and that the Constitution "has systematically been used to deter irrepressible urges by Black South Africans to challenge racism

and violence."[108] #RhodesMustFall, then, brought into sharp relief questions of on-going cultural supremacy of Whiteness; the economic, racial and cultural subjugation of historically oppressed people; and the role of institutions of higher learning in legitimizing this post-1994 set up.

The #RhodesMustFall movement, directly or indirectly, inspired similar campaigns at other historically White universities such as #OpenStellenbosch (at the University of Stellenbosch), #TransformWits (at the University of the Witwatersrand) and #TuksSoWhite (at the University of Pretoria).[109] A common thread running throughout these campaigns was the need to decolonize universities and eventually society. "Black students' protest was against their own alienation inside the White institution, but also against their assimilation as new elites into a society that remains stuck in White institutional time."[110] Students thus understood that in South Africa racial capitalism was still the primary mode of oppression. This meant that the struggle to decolonize universities and society had to confront both White supremacy and socio-economic marginalization.[111]

In October 2015, student activists called for a nationwide campaign to demand a zero percent tuition fee increase in 2016. This campaign was organized under the banner of #FeesMustFall (#FMF). Many activists assert that #RhodesMustFall directly influenced and shaped the formation of #FMF.[112] Initially sparked by a government announcement of a proposed fee increase of more than ten percent in one year, relating back to #RhodesMustFall, #FMF later came to call for broader university and societal change. As one researcher confirms in their interview, "issues we were addressing were structural and systematic racism."[113] Demands included a call for free higher education (a promise made in various ANC election platforms and the 1955 Freedom Charter), for decolonized higher education, for changes to language of instruction (i.e. cessation of teaching in Afrikaans), an end to outsourcing on university campuses, "the decriminalization of protests and protesters," "an end to debt," and "an end to all oppressive

105   Interview with politician, August 2023.

106   The following passages borrow from Kenyon and Madlingozi, 2022.

107   Ahmed, (2020: 294).

108   Ahmed, (2017: 10).

109   Swartz, (2016: xviii).

110   Gillespie and Naidoo (2019: 233).

111   Stuurman, (2018: 2).

112   Ahmed, 2019: (36-37).

113   Interview with researcher, September 2023.

systems including racism, exploitation, sexism, homophobia, xenophobia, and ableism, amongst others." Ultimately, the students did not get everything they fought for: fees have not fallen and the movement towards decolonization and Africanization of the curriculum has stalled at most universities. However, the students were successful in influencing a move away from liberal discourse that focused on interpersonal racism to a focus on the coloniality.

Conclusion

> *The violence that is going to happen in South Africa is because the elite is disappearing [getting richer and more isolated] and the poor are becoming more poorer. Therefore there's going to be something that looks like an Arab Spring. That, we are guaranteed. When the unled revolution comes... the first target is going to be White people...*
>
> —**Julius Malema,** 2023

> *Whenever people talk about the fear of upcoming racial conflict, I always ask: What do you mean? Racial violence is there every day. Black people live under racial violence in the ghetto. Their living conditions are violent. And those conditions are violent because they are Black conditions. When people talk of the fear of racial violence, they mean they fear the decentralization of violence from the peripheries to the areas where White people and the Black elite live. There is racial violence now![114]*

In July 2021, social unrest broke out in two of the nine provinces of South Africa. When the riots, looting, and protest came to an end more than 350 people had been killed, and thousands injured. Billions of rands had been wiped off the economy. This period of unrest was the most violent and widespread in the

post-1994 South Africa era. The Presidential High Panel of Experts appointed to carry out a fact-finding mission into the causes of the unrest concluded that the unrest was caused by several inter-related crises plaguing the country. They cited the responsibility of the government including the general weakness of state institutions, rampant corruption, and the phenomenon of sponsored state capture. They also recognized the impact of the high levels of current unemployment, exacerbating generational poverty and deep inequality, as well as poor spatial planning. In addition, they identified the frustrations caused by the COVID-19 restrictions, adding to the feelings of despair among the population.[115]

More significantly, the High Panel finds that the state does not seem to have ideas and plans to address the above challenges and crises, and that "the looting, destruction and violence have come and gone, but we found that little has changed in the conditions that led to the unrest." For purposes of this case study, it is important to highlight this sobering conclusion by the Presidential High Panel: "The question, many argue, is not if and whether more unrest and violence will occur, but when it will occur."

The warning by the High Panel together with Julius Malema's forecast in the epigraph to this section makes the situation in South Africa very urgent.

9
Recommendations

The recommendations that follow seek to propose solutions that go to the heart of the colonial and apartheid legacies, the insufficient attempts at transitional justice, and the social plague of racism that is reflected in so many of South Africa's problems.

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114   Interview with political science academic, August 2023.

115   High Panel of Experts, November 2021.

Constitutional Changes

Amend the constitution to more explicitly recognize the history of colonialism and apartheid. We recommend that the legislature amend the preamble of the constitution to make it explicit that the constitution responds to and seeks to dismantle the legacies of colonialism and apartheid. This will become the guiding spirit for interpreting the Constitution. As it currently stands the constitution does not mention colonialism, conquest, and apartheid at all. The constitution only talks about "conflict of the past" thus masking the facts of conquest and colonization.

Amend the property clause to make it explicitly clear that the state can expropriate land without compensation. Such an amendment must contain strong principles of administrative justice to ensure transparency, legality, and fairness. The current clause is not clear on this issue and has thus been interpreted in the spirit of "willing buyer-willing seller." This has hamstrung land restitution and land redistribution.

Introduce ubuntu as a fundamental value of the Constitution. A constitution is a mirror of society. The majority of South Africans—Black people—don't see themselves when they look at the constitution, an overwhelmingly Euro-American liberal document. Introducing ubuntu will go a long way to countering ongoing epistemicide.

Introduce a Wealth Tax

A wealth tax levied in respect of beneficiaries of apartheid and colonization —White people—will be a start of reparative justice. Reparation is the route towards dismantling White privilege and a way of demonstrating penance. This sends a powerful message to those who profited from the history of racism, but also elevates public awareness of the historical disenfranchisement of the majority of South Africans.

Recommendations to Civil Society Actors, Universities, and the Department of Education

Africanize the curriculum to better reflect the stories and histories of Black Africans. As the #FeesMustFall movement demonstrated, the education system at both lower and higher levels continues to reinforce White supremacy, internalized racism, the marginalization of African lifeworlds, and institutional racism by continuing to center and privilege Western knowledge. It is true that "there is no social justice without epistemic justice." The curriculum should endeavor to tell factual history and to foster active citizenship.

Improve and Professionalize the Civil Service

This case study has demonstrated that institutionalized corruption and the state's inability to deliver basic services contribute to deepening Black impoverishment and thus perpetuate the legacy of apartheid and colonialism. Professionalize the civil service and strengthen accountability mechanisms to reduce a culture of impunity. Rather than "cadre deployment," there is a need for a professional civil service. A capable state will also be able to monitor and enforce the implementation of laudable policies aimed at affirmative action and redress.

Reconsider the Work of the TRC

The work of the TRC was insufficient. We recommend that the *National Prosecution Authority* prosecute perpetrators who did not seek or obtain amnesty from the TRC. The TRC recommended that hundreds of individuals be investigated and prosecuted for the gross violations of human rights that occurred during apartheid. Evidence has since come to light that the post-1994 cabinet interfered in the work of the prosecution authority for it not to pursue this case. Prosecuting apartheid criminals will go a long way in dismantling a culture of impunity and it will contribute towards healing and reconciliation. We recommend organizations like *the UN Committee on the Elimination of Racial Discrimination* play an active role monitoring and holding accountable efforts to address these gross violations.

We also believe that the Department of Justice and correctional services should introduce measures to ensure that all victims and survivors of apartheid receive acknowledgment and reparations. This case study discussed how only a tiny minority of people who qualified under the TRC Act's definition of "victim" were able to participate in the TRC process. Whether through a re-opened TRC or another process, it is important that measures are put in place to allow all victims and survivors to receive acknowledgment and reparations. This case study demonstrates that the limited success of the TRC process undermines the emotional healing necessary and the lack of recognition of individual and community traumas of the past.

Promote Initiatives That Will Foster Harmony: Endorse SHiNE

Endorse and resource the SAHRC's social harmony through national effort. The TRC did not move the country towards social reconciliation. Studies show that racial groups and various ethnic groups continue to grapple with mistrust and sometimes antipathy. The state needs to formally endorse the South African Human Rights Commission's Social Harmony through Nation Effort (SHiNE) initiative which seeks to use positive dialoguing to foster harmony in our diversity. It encourages self-reflection, family meetings and organizational dialogues, and acts of humanity. The interviewed SAHRC commissioner noted that SHiNE has already been launched in seven provinces and has been positively received by community members. People want harmony and social cohesion, but they need inclusive guidance of communal nature. The state needs to formally endorse and resource it. This program must also attend to the problems of Afrophobia and homophobia. ShiNE could then partner with like-minded NGOs and CBOs. This effort must also review national days and other memorialization measures.

Large Scale Private Economic Actors and State Regulatory Actors Should Increase Black Enterprise

Replace the Black economic empowerment model with inclusive and broad-based redistribution programs. The current Black economic empowerment program has failed. It only benefits politically connected business people.

There is a need for a comprehensive and intentional growth and redistribution program. This program must focus on breaking the monopoly of White businesses, stimulating youth employment, and supporting small and medium enterprises. The ongoing enormous wealth disparity discussed in this case study exemplifies the insufficient lack of opportunity for Black South Africans.

To the Executive and the Judiciary, and "Chapter 9" Institutions: Enhance Access to Justice

The state and civil society actors need to ensure access to justice through expanded legal aid services, support for public interest law organizations, constitutional literacy programs and a conducive environment for social movements and other human defenders to protest and dissent. As part of this endeavor, there is a need to increase capacity, resource, and strengthen "Chapter 9" institutions such as the Human Rights Commission, the Commission for Gender Equality, the Office of the Public Protector, and the Commission for the Promotion and Protection of the Rights of Cultural, Religious, and Linguistic Communities.

Reform the Security Cluster

Finally, we recommend that the Ministry of Police and the African Commission on Human and Peoples' Rights make efforts to appoint a special rapporteur on prisons, review conditions of detention, and revise policing in Africa. There is a need to overhaul or reform the police services, the army, and the prisons to ensure that they do not continue to perpetrate torture, discrimination, and other such conduct. Policing in South Africa, like so many other institutions, carries a legacy of racism and colonialism that leads to disproportionate behavior toward Black Africans and less accountability among White people. It is important that the African Commission continue to insist that the state implements reform initiatives stemming from the Marikana Commission and monitor such activity.

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RACISM AS A RISK FACTOR FOR ATROCITY CRIMES:

A Case Study on Sri Lanka[1]

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1 Introduction

In 2023, Sri Lanka celebrated 75 years of independence, after more than four decades of colonial rule. Unfortunately, a history of racial and ethnic tensions rooted in the country's past contributed to a decades-long ethnic war that ended less than twenty years ago. And today, ethno-nationalism and racism continue to plague Sri Lanka. The root causes of the conflict remain, with limited to no effort made to address structural factors that contribute to discrimination and violence. The failures on multiple fronts—to address the root causes of the conflict, to halt ethno-nationalism and violence, and to hold perpetrators accountable and initiate measures preventing recurrence—have contributed to a culture of impunity. This outlook exists because Sri Lanka has witnessed decades of violations from both state and non-state actors with limited action taken to hold perpetrators accountable.

This case study briefly examines key aspects of racism and atrocity crimes in Sri Lanka. It begins with a short overview of relevant historical dynamics. It then discusses the present status of racism in Sri Lanka and the marginalization of particular communities. The study goes on to examine factors that contribute to atrocity crimes, followed by an examination of the strategies and tools used by stakeholders to address racism and violence in Sri Lanka. This is followed by an examination of the successes and setbacks of these efforts and concludes with a brief section on recommendations.

2 The Complex History of Sri Lanka: Centuries of Ethnic and Racial Tensions

Sri Lanka's last national census in 2012 indicated that the Sinhalese were 74.9% of the population, Sri Lankan Tamils were 11.2%, and Muslims were 9.3%, The remainder are comprised of Malaiyaha Tamils, Burghers, Malays and those classified as "others."[2] The population is further categorized by religion including Buddhists, Hindus, Muslims, Roman Catholics, Christians, and others. Most Sinhalese are Buddhist, and most Tamils are Hindu, although both groups have significant numbers of Christians and Catholics. The most recent census reflects a diverse population in Sri Lanka, some of whom have existed together for hundreds of years, but due to racist policies and structural bias, has struggled to find a lasting peace and equality for all. The current challenges began long ago and a brief history is an appropriate place to begin this case study.

Sri Lanka faced colonial rule under three groups: the Portuguese (1505–1658), the Dutch (1658–1796), and lastly the British (1796–1948). Sri Lanka's ethno-nationalism and tensions emerged significantly during this colonial period,

2   Census, 2012.

pitting the majority Sinhala community against the minority Tamil community. This history influenced policies and legislation introduced post-independence, helping to perpetuate discrimination and violence. This section briefly examines events that have contributed to Sri Lanka's ethnic and religious cleavages, including institutional discrimination and the evidence of atrocity crimes throughout the country.

Post-independence: The Pervasiveness of Racism in Sri Lanka

During British rule, the Tamil community was perceived as benefitting more from official appointments, creating tensions between the Sinhalese and Tamil groups. When Sri Lanka obtained independence from the British in 1948, the country subsequently saw a spate of developments that benefitted the Sinhalese. A key law that benefited the majority community—and has impacted the trajectory of Sri Lanka—is the Sinhala Only Act of 1956. This law made Sinhala the only official language in Sri Lanka, which created significant obstacles for Tamil-speaking people to access public services as well as government jobs and promotions.[3] Another key policy that highlighted discrimination toward the minority populations was standardization. The policy sought to provide educational opportunities for disadvantaged Sinhalese students while requiring Tamil students to achieve higher exam results to be admitted to university. These changes and the language policy were justified as addressing the historical lack of opportunities for the Sinhalese, as the community was perceived as marginalized during the British colonial period. The two policies resulted in Tamil students, civil servants, and the Tamil community as a whole being disadvantaged in access to services, jobs and university admissions.

Since Sri Lanka's independence multiple racial discrimination challenges have remained. The discriminatory practices and policies resulted in exacerbating ethnic tensions between the Sinhalese and Tamil communities, and riots erupted in 1958 and 1977. The 1983 pogrom that saw days of state sponsored violence targeting the Tamil community resulted in thousands of deaths and displacement as Tamil homes and properties were destroyed.[4] These cycles of violence resulted in some of the Tamil community seeking asylum in other countries, creating a large diaspora scattered around the world.

Political Efforts to Reduce Discrimination: Failures in the System

These continued discriminatory practices and policies occurred during several failed attempts to find a political settlement. Draconian laws such as the Prevention of Terrorism Act (PTA) were introduced and used to target minorities and critics.[5] The war years witnessed the declaration of several states of emergency; emergency regulations were used to restrict fundamental rights of citizens and arrest and detain those seen as a threat to national security. The use of the PTA that was brought as a temporary law in 1979 to target minorities and critics has also seen decades of abuse. These and other laws have been used to target individuals and communities, with anti-terror and emergency laws becoming the norm rather than the exception during the war years and in some periods of post war Sri Lanka.[6]

The demand for a political settlement continued over the decades. In 1987, the governments of Sri Lanka and India signed the Indo-Sri Lanka Peace Accord which culminated in the adoption of the Thirteenth Amendment to the Constitution and the Provincial Councils Act 1987. This provided for the devolution of power to the provinces.[7] This is the current framework in Sri Lanka but there has been limited realized power devolution as well as challenges in the implementation.

The continued discrimination faced by minorities has also resulted in formation of political parties to represent their interests.[8] Sri Lanka's electoral system is a proportional representative system which provides smaller groups the ability to play a crucial role in politics. Several minority parties thus have become coalition partners in government and used their leverage to negotiate for their

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3   Hoole 2015.

4   Ibid.

5   OISL, 2015.

6   OISL 2015; OHCHR 2021; OHCHR 2022.

7   Uyangoda, 2001.

8   Uyangoda 2001; Hoole 2015

communities. Despite this, ethno-nationalism continues. The lack of progress in finding a political solution resulted in the emergence of several Tamil groups, some calling for a separate Tamil homeland or Tamil Ealam.[9] These calls led to armed tactics being used and increased violence within the Tamil groups. One such group, the Liberation Tigers of Tamil Ealam (LTTE) resorted to violence and targeted its Tamil opponents through political assassinations and other violence until it eventually claimed to be the sole representative of the Tamil people.

Black July: The Violent Road to War

The cycles of violence culminated in the near three-decade civil war beginning in 1983 between the government of Sri Lanka (GOSL) and the LTTE.[10] This was sparked by the killing of several Sinhala soldiers in Jaffna (northern part of Sri Lanka). Their funerals were held in the heart of Colombo and violence spread to various parts of city. The Tamil community was targeted, and their properties were looted, burned, and destroyed. Over the course of several days of violence Sinhalese mobs used electoral registers to target Tamil communities, with some accusations that the activity was state sponsored violence. This period became known as "Black July"—2023 marks the 40-year anniversary. For many, Black July came to symbolize the role of the state in the violent targeting of minorities. As noted by one eyewitness, "events around Black July was a clear indicator of state policy of racism and how minorities were treated as second class citizens."[11] Black July commenced the civil war and the nearly thirty years of violence that engulfed Sri Lanka. Eventually the violence ended, but only after the military defeat of the LTTE, including the killing of its leadership in May 2009. Left in the wake of the violence was tens of thousands of people dead, disappeared, and displaced as well as massive devastation more broadly.[12]

3 Current Status of Race Relations: A Fragile Peace After the War

Despite the end of the hostilities, the post war years have been marked with cycles of ethno-nationalist and ethno-religious violence, including new incitement and hate speech. The COVID-19 pandemic and the economic crisis in 2021–22 brought new challenges including restrictions on civil liberties and new uncertainties. These recent events have highlighted Sri Lanka's complex ethnic-religious relations and tensions and contributed to concerns for its fragile peace. The challenges extend to nearly all minority groups in Sri Lanka.

Ethno-religious Violence: Risks for the Muslim Community

The Muslim community has faced discrimination and violence from both state supported initiatives and private actors.[13] The expulsion of the Muslims from the north by the LTTE and the mosque attacks in 1990 which killed several Muslim worshippers are instances where the community faced violence at the hands of a non-state actor—with deep implications for co-existence and reconciliation.[14] The Muslim community has faced discrimination, harassment, incitement, and violence at the hands of extreme nationalist groups.

Ethno-religious violence witnessed in post war years has seen increasing incitement and violence from extreme Sinhala Buddhist groups including Buddhist clergy targeting both Tamil and Muslim communities, including places of worship and properties. Incidents such as the violence in Aluthgama in 2014, Digana in 2018, and the Easter Sunday attacks in 2019, were linked to hardline Sinhalese groups with the involvement of extremist Buddhist clergy who incited violence against the Muslim community.[15] For example, groups like the Bodu Bala Sena (BBS), have been accused of incitement with no known action taken.

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9   Thiranagama, 2010.

10   Hoole, 2015; OISL, 2015; POE 2011; Spencer, 1990.

11   Interview with civil society activist, June 202.3

12   Hoole, 2015; OISL, 2015; POE 2011.

13   Nagraj & Haniffa, 2017.

14   Nagraj & Haniffa, 2017; Saroor 2021.

15   Saroor, 2021.

The post war years have also seen the rise of misinformation and hate speech via social media platforms. In some instances, social media activity has resulted in targeting and violence against the Muslim community as seen in the aforementioned attacks in Aluthgama, Digana and Easter Sunday attacks. Although the use of social media to spread fake news and hate speech resulted in the temporary shutdown of some platforms, no known action has been taken against the parties themselves who were spreading the fake news or inciting violence. Rather than holding individuals accountable, the leader of the BBS was appointed to head a task force by then President Gotabaya Rajapaksa, indicative of protection and patronage by politicians and the government.

Amassing State Power: Demonstrating Impunity Through State-sanctioned Structures

Recent years have also witnessed the emergence of other extreme nationalist groups in all communities.[16] Several claiming to protect the Sinhala Buddhist race have emerged with claims of state support to obtain land and funds. Official support for such groups was evident during the presidencies of Mahinda Rajapaksa (2005–15) and Gotabaya Rajapaksa (2019–22) as key positions in government and institutions were offered to individuals linked to such groups. Such sentiments were also evident in commercial, media and professional groups with close ties to the Rajapaksa family and the military. Ethno-nationalist undertones were seen in some of the positions and in the messages from some media and commercial entities, most prominently in the anti-Muslim campaigns in the post war period.[17]

The appointment of several task forces by then President Gotabaya Rajapaksa raised concerns as to implications on governance and rights. One particular entity to examine issues of archaeology significance in the eastern province of Sri Lanka was headed by the Secretary to Defense Ministry and included a member of the Buddhist clergy and a media company owner. The appointment of this particular taskforce was while there were increasing trends of the government using national heritage and archaeology to appropriate lands

belonging to and used by minority communities. The Eastern Province comprises of all three communities (Muslims, Sinhalese, and Tamil) and the absence of minority representation in the initial task force raised concern.[18] There were also concerns as to why a task force was given the power to look into archaeology when state institutions with the same mandate already existed. Compounding this was the involvement of the military in the identification and protection of sites, fueling the perception of a nexus between Sinhala Buddhist extremist groups and the military. These activities were all occurring during increased measures to appropriate land belonging to minorities under the guise of national security, development and national heritage, raising concerns whether these were continuing old trends of attempting to change demographics in the area to influence electoral prospects. As noted by an academic: "Increasing reliance of archaeology to justify land appropriation feeds into fears that this is the latest tactic to change demographics in the area."[19]

Another task force appointed by President Gotabaya Rajapaksa was headed by the leader of the BBS with the mandate on formulating a "one country, one law" policy. Minorities, civil society and others worried whether this was another tool to undermine Sri Lanka's cultural diversity and pluralism.

The inherent racism in state policy was evident during the COVID-19 pandemic when the government imposed a ban on burials and made cremations mandatory.[20] This policy particularly impacted the Muslim community which were forced to follow a policy that was contrary to their religious burial practices. Despite no evidence of health risks, and health experts urging for reconsideration, the government refused to reverse the policy. The reversal only came several months later—and just weeks prior to the commencement of the UN Human Rights Council (UNHRC) Session where Sri Lanka's human rights track record was under scrutiny, signaling that the reversal was only due to international pressure.

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16   Fonseka & Dissanayake, 2021.

17   Saroor, 2021.

18   Fonseka & Dissanayake, 2021.

19   Interview with academic in Jaffna, May 2023.

20   Fonseka & Dissanayake, 2021; Saroor, 2021.

Racism Risks for Other Minority Communities

Attention must also be given to the Malaiyaha Tamil community who were originally brought to Sri Lanka as bonded laborers by the British to work in the tea plantations or as traders (2023 marks the 200-year anniversary of their arrival in Sri Lanka.) They have faced discrimination over the years, including being denied citizenship and facing significant challenges to accessing basic services like housing, health care, education, addresses and other issues.[21] The community received Sri Lankan citizenship only in 2003 under the Citizenship Act. Two decades later, the community still faces problems obtaining official documentation due to administrative delays and lack of services in the area, putting the community in a vulnerable situation and exposed to further structural violence. Some members continue not to have basic documents such as birth certificates and national identity cards, creating obstacles to obtaining government services or applying for employment.[22] Many in the community still work in tea plantations and receive very low wages, despite the tea industry being a key economy in Sri Lanka. Despite 75 years since independence, the living conditions of the community has not improved. They continue to live in what is termed "line rooms", a single room built as part of a residential unit that was first seen during colonial times. As noted by an activist working with the community: "health care and education services are inadequate with children being under-weight and malnourished."[23] Social problems also persist including domestic violence, alcoholism, and other challenges. Despite efforts to lobby for better wages, living conditions and improved services, the responses from the state and the tea industry have been slow and change resisted. Some have moved to other parts of Sri Lanka in response to structural inequalities and in search of educational and job opportunities.

Discriminatory practices continue targeting other groups, including Sri Lanka's Indigenous groups known as the Wanniyatto or the Veddha community. They reside in parts of the Uva and Eastern provinces in the country and have faced challenges in accessing basic services such as education, health, housing as well as limits to exercising their cultural rights. For decades they were viewed as

being antiquated and unsophisticated though urban migration in recent years has resulted in changes as the younger generation has left the community in search of jobs and better living conditions.[24]

Additionally, language rights have been a persistent problem in Sri Lanka due to the legacy of the Sinhala Only Act. The Thirteenth Amendment to the Constitution recognized Tamil as an official language but practical challenges are still faced by the Tamil speaking communities as government documents, notices and even official sign boards continue to be in Sinhala.

"Sinhalization": Ethno-nationalism Through Land Appropriation

Land has been a highly contested issue in Sri Lanka. There have been several conflicts linked to ethno-nationalism and lands appropriated under the guise of national security, tourism, development, national heritage, and archaeology.[25] Over the decades, state sponsored colonization schemes have witnessed the majority community relocated to areas that were predominately occupied by Tamil-speaking people. In addition, lands were taken for High Security Zones and military cantonments, displacing people from their homes and agriculture lands. The continued occupation by the military of large tracts of private lands even more than 14 years after the end of the war, raises questions as to why the government is unable to find durable solutions.

Further, all of this has occurred within a context of rampant fears that land appropriated for national security is working toward a goal of changing demographics and entrenching the Sinhala Buddhist and military nexus. What has become known as "Sinhalization" has resulted in the emergence of Sinahlese name boards and village names, as well as Buddhist places of worship, all becoming more common in predominantly Tamil areas.[26] The surge in Buddhist temples constructed in the area has led to new Sinhala settlements.[27] The increasing numbers of the Sinhala community in the two provinces fuels

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21   Hoole, 2022; UN Special Rapporteur, 2022; CTF, 2017.

22   Hoole, 2022.

23   Interview with activist, June 2023.

24   CTF, 2017.

25   Fonseka & Dissanayake, 2021.

26   Ibid.

27   Ibid.

fears that state sponsored "Sinhalization" will change demographics and consequently impact election results. This has also contributed to new ethnic conflicts in the area and fears of land appropriation and militarization in addition to the changing demographics. The most recent attempts by the authorities and Buddhist clergy are to use national heritage and archaeology to appropriate lands belonging to minorities and religious worship sites. This has also led to the revival of hardline Buddhist clergy and Sinhala Buddhist groups.

Legislation and the Impact on Structural Racism

 Over the years, Sri Lanka has seen the use of counter terror and emergency laws to target minorities through arrests and detention.[28] The PTA is one example of using a draconian law to detain individuals for years and sometimes decades based on unsubstantiated evidence, including political prisoners detained for years under the PTA and then released without charge. It has also been used to coerce confessions—independent local investigations and judicial pronouncements confirm that torture is often used against minorities to gain these confessions. In addition to the PTA, authorities have resorted to the International Covenant on Civil and Political Rights (ICCPR) Act. Section 3(1) of the ICCPR Act makes it an "offence for a person to propagate war or to advocate national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence." This provision has been used in recent years to arrest and detain comedians, bloggers, and authors on the basis of being critical of Buddhism. In contrast, no action has been taken to hold accountable those who have incited violence against minority communities.

As noted by an educator and activist based in Eastern Province in Sri Lanka, "intolerance and marginalization are evidenced at different levels of government and has seeped into society and media."[29] The inability and unwillingness to address ongoing discrimination and violence incited by extreme Sinhala Buddhist nationalists perpetuates the perception that some are beyond the reach of the law and reinforces a sense of impunity. The appointment of hardline clergy and others to key institutions also sends a message that some are

protected by the current government. Such practices have legitimized racist ideologies and practices among state institutions, the media, and society. As mentioned previously, recent years have also seen social media used to spread fake news, misinformation, and disinformation, resulting in the exacerbation of ethno-religious tensions, and in some instances violence. Developments in post war Sri Lanka demonstrate how social media in a society prone to incitement and violence can trigger further violence that may lead to atrocity crimes.

4 How Racism Contributes to Atrocity Risks

Sri Lanka faces several challenges that contribute to atrocity risks. This section expands on some issues raised previously and how discriminatory practices and policies can contribute to atrocity crime risks.

Despite the Constitution guaranteeing equality to all citizens and Article 12 (2) prohibiting discrimination on the grounds of "race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds", there are practical challenges faced by individuals and communities. While there are laws against discrimination, there is no legislation which provides and promotes equal opportunities similar to laws found in other commonwealths. This leaves minority groups with no legal recourse. Further, discriminatory practices persist within the private sector and other entities outside the public service.

Over the years, local and international human rights groups and the United Nations have documented discriminatory laws, policies, and practices in Sri Lanka, including how ethnic and religious minorities have been targeted and marginalized by state and non-state actors.[30] In her report to the UN Human Rights Council (UNHRC) in 2021, the High Commissioner for Human Rights spoke of early warning signs of a deteriorating human rights situation and heightened risks of future violations, urging member states for a strong prevention

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28   Hoole, 2015; OISL, 2015.

29   Interview with educator/activist in Batticaloa, May 2023.

30   POE, 2011; OISL, 2015.

agenda.[31] The High Commissioner highlighted increased militarization of civilian government functions, reversal of constitutional safeguards, accountability challenges, exclusionary rhetoric, intimidation of civil society, and the use of anti-terror laws. The report was debated at the UNHRC and a resolution adopted in 2021 that called for continued monitoring of Sri Lanka's human rights and reconciliation work, among other measures.

The fact that Sri Lanka has been before the UNHRC for over a decade (the first resolution was adopted in 2012) indicates continuing challenges pertaining to accountability, human rights, and reconciliation. The reports by the High Commissioner, reports by local and international groups, documentation by UN special procedures, and even findings of domestic mechanisms speak to multiple challenges in these broad areas. Some of these issues indicate how ethno-religious conflicts have the potential to trigger further violence.

Ethno-nationalism has informed discriminatory policies and practices over the decades that target minority communities.[32] Laws such as the PTA and the ICCPR Act continue to be in place despite evidence that the PTA has been largely used against both Tamil and Muslim minorities,[33] and the ICCPR Act has been weaponized against those critical of Buddhism. Meanwhile, those inciting violence against minorities remain untouched. In 2021, the then government attempted to implement regulations issued under the PTA to address what was termed "de-radicalization" by sending individuals to "rehabilitation" without due process safeguards. This was seen as the latest attempt by the government to use anti-terror laws to target minorities and sustain the narrative of radicalized Islamic groups. It was challenged in the Supreme Court resulting in a stay order which is currently in place. In recent years other problematic proposals have followed such as the draft Anti-Terror Act which had alarming provisions and limited due process safeguards. Public criticism and court challenges have delayed the introduction of such laws and regulations but the fact that successive governments attempt to introduce such draconian laws in post war Sri Lanka speaks to a mindset where protecting civil liberties is not a priority.

This section highlighted some examples of repressive laws, policies, and practices that are informed by ethno-nationalism and target ethnic and religious minorities. The discriminatory policies, laws, and practices have perpetuated incitement and violence with fears of triggers for new conflicts. And as mentioned previously, some social media platforms provided fake news, misinformation, and disinformation that triggered ethno-religious violence including incidents in Aluthgama (2014), Digana (2018) and the post Easter Sunday attacks (2019) targeting the Muslim population. This led to the temporary shutdown of some social media platforms, but no action was taken to hold individual perpetrators accountable. As noted by a former commissioner of a state initiative "Sri Lanka's inability to address the root causes of conflict and take action against perpetrators of violence continue to fuel racism with the potential for new conflicts to erupt."[34]

5 Community Resistance: A Response to Racism

Sri Lanka has a vibrant citizen led resistance that over the decades has used a variety of methods to challenge discriminatory laws, policies, and practices.[35] Protests, vigils, peaceful sit-ins, public debates, and public petitions, among other citizen mobilization tactics, have been used to oppose state initiatives. This has included diverse actors—from victim groups and civil society to trade unions, political parties, and professional groups. Most recently an unprecedented economic crisis resulted in thousands of people protesting for several months which ultimately resulted in the resignation of the president and his government.

The citizen mobilization in 2022 (discussed below) was built on Sri Lanka's rich history of political activism. This includes the formation of the Mothers Front in

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31   OHCHR, 2021.

32   Fonseka & Dissanayake, 2021.

33   Hoole, 2015; Saroor, 2021.

34   Interview with a former commissioner of a state initiative, May 2023.

35   Fonseka, 2022; Amarasuriya, 2015.

Sri Lanka which raised awareness of enforced disappearances and pushed for accountability.[36] Post war protests by the families of the disappeared continued for over 2000 days. Other issues that have seen different forms of mobilization include farming and fishing communities whose livelihoods were affected by disastrous state policies, communities opposing land grabs, and teachers and trade unions who opposed militarization of higher education, as well as those remembering lost loved ones throughout Sri Lanka. The impeachment of the then chief justice and atrocities committed during the war were common grounds that brought together diverse groups to oppose the Mahinda Rajapaksa presidency.[37]

The democratic regression and ethno-nationalism evident during the Gotabaya Rajapaksa presidency and his mishandling of the economy led to an unprecedented level of mobilization. People from all walks of life were unified: different professional groups and ethnicities, religions and age groups. The first movement to unify Tamil and Muslim groups under the Gotabaya Rajapaksa regime was the Pottuvil to Polikandy march held in February 2021. Thousands united to demand equality and justice for minority communities. The protestors faced surveillance and intimidation and defied court orders to continue the march and make their demands. As protests evolved, so did government efforts to quell dissent through violence, intimidation, and other tactics including arbitrary restrictions.[38]

The Power of PIL: Public Interest Litigation to Raise Awareness

Protests in Sri Lanka have evolved in recent years beyond traditional street protests to include public interest litigation (PIL), the use of social media, and the arts. Social media in Sri Lanka has injected new levels of energy and creativity into protests and increased engagement among all age groups and regions. This was evident in 2022 when many used social media platforms to raise awareness and to resist repressive tactics.

The use of PIL increased in recent years, with more citizens filing cases to challenge proposed amendments to Sri Lanka's constitutional and legislative framework, and unjust and arbitrary practices. PIL has also informed broader debates among policymakers and the public, raising awareness on important contemporary issues. Social media has helped inform the public of developments in the court room and its implications. PIL also has been used to challenge proposed laws and regulations that provide broad powers to the executive to arrest and detain—arbitrary practices that attempt land appropriation and silence media and critics, among others. In recent years different actors uniting through PIL and other measures have pushed back on such arbitrary action. For example, the 2018 Constitutional Crisis united political parties, civil society, trade unions, and academics to challenge the blatant power grab by Mahinda Rajapaksa which saw the arbitrary ouster of the sitting prime minister and chaos in governance. In a rare moment of unity, many took to the streets to challenge this in the Supreme Court and Court of Appeal in Sri Lanka. Fifty-two days of activism resulted in a historic judgement that brought an end to the crisis with the resignation of Mahinda Rajapaksa and the reinstallation of Ranil Wickremasinghe as prime minister.

Similarly, the introduction of the 20th Amendment Bill to the Constitution in 2020 which consolidated further power within the executive presidency and weakened independent institutions led diverse actors to unite. Activists acted against the bill by filing legal challenges with the Supreme Court, and used protests, media campaigns, and political debates to express their dissent, forcing the government to introduce several amendments to the bill. Despite having a majority in Parliament, the government was forced to incorporate several of these amendments, a triumph for a confederation of underrepresented groups.

Aragalaya: The Power of the Protests

In 2022, unprecedented crisis reawakened citizen mobilization. Rallies protested shortages of essential items (and long queues to obtain them), the sky rocketing cost of living, and long power outages. These protests continued for several months including the formation of occupation sites such as the one at Galle

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36   De Alwis 2009; Kodikara 2021.

37   Fonseka, 2022.

38   Ibid.

Face Green (known as "GotaGoGama") that existed for more than 100 days.[39] Remarkably, despite the government imposing emergency measures and using intimidation to deter protests, the peaceful protests continued, ultimately resulting in the resignation of the president and his government.

One year since the Aragalaya, the citizen mobilization continues but at a smaller scale. The space that was created during the Aragalaya raised awareness on other issues including ethno-nationalism, reconciliation, and other issues. For example, the first public remembrance event in the south for the end of the war was held at GotaGoGama in May 2022 and followed by one in another area in Colombo in May 2023.

The Aragalaya was also remarkable as it connected communities from different regions, with several from the north and east joining in the protest. However, there continues to be ambivalence among some in the north and east toward protesters in the south. This is largely due to the lack of support and solidarity toward the victims and affected communities during the war and post war years. The community mobilizations have also raised issues such as continuing poverty and discrimination faced by the Malaiyaha Tamil community. It has highlighted the low wages received by the community, the lack of services, and discrepancies with language rights. As noted by an activist working with the community "the recent mobilization and activism resulted in attention that has been paid toward the community with some effort to address shortcomings but much is yet to be done to address inequalities."[40] The persistent mobilization of victims and communities also has kept the space open to memorialize loved ones lost during the war and post war period despite varied tactics by the state to threaten, intimidate, and restrict memorial spaces.

6 Confronting Racism: Understanding Successes and Challenges

The discrimination and violence over the decades led to the massive mobilization discussed in the previous section. Activism by victims, communities, and others have kept attention on Sri Lanka's multiple challenges and the need for change. This mobilization also pressured several administrations to initiate investigations into specific violence and incidents, and institute structural and legislative reforms. For example, mobilization by victims and others on enforced disappearances led to the appointment of several commissions of inquiry.[41] The pressure for accountability also saw the appointment of other commissions of inquiry such as the Udalagama Commission of Inquiry.[42] And the push for reforms and steps at reconciliation resulted in the Lessons Learnt and Reconciliation Commission. While there is no definitive answer as to the impact of such state initiatives on victims' search for justice, one must recognize that these initiatives produced findings that recognized violations that occurred during the war and the need for steps to be taken by the authorities.

It is the continuing demands and activism by victims and civil society that has kept international pressure on the government. Failures to deliver on truth, justice, and reconciliation promises in Sri Lanka resulted in several resolutions on Sri Lanka adopted at the UNHRC. Resolution 30/1 is key as it was the first instance where the GOSL acknowledged the need to take measures to recognize and remedy past violations and ensure non-recurrence.[43] The result was an ambitious set of proposals including measures to address enforced disappearances, truth and justice, reparations, land releases, security sector

39   Fonseka, 2022.

40   Interview with activist June 2023

41   Kodikara, 2021.

42   ICJ, 2012.

43   Medawatta, 2017; Fonseka, 2017.

reforms, and other confidence building measures. While two mechanisms were established—the Office on Missing Persons and Office for Reparations—questions remain regarding the effectiveness of such mechanisms. In addition, the other two mechanisms are yet to be established.

These promises were possible at a time when people were looking for a change. The peaceful regime change that occurred in 2015 led to much anticipation that the "Yahapalanaya Government" would initiate structural and legislative reforms. There were some encouraging signs including the introduction of the Nineteenth Amendment to the Constitution, some land releases in northern Sri Lanka, singing the national anthem in Tamil at the Independence Day event, and the criminalization of enforced disappearances. Yet many of the promises made are yet to be realized. This is characterized as human rights "half measures."[44] The failure to fully implement reforms is blamed on a lack of political will and leadership to see through complex issues, as well as internal governance challenges that came to a head in 2018 with the constitutional coup that paralyzed governance for 52 days.

The constitutional coup in 2018 and the Easter Sunday attacks in 2019 exposed the breakdown in communication within the Yahapalanaya Government and internal fissures. It also exacerbated uncertainties and apprehension among many who felt national security and the economy needed to be prioritized. The rhetoric pushed by the Rajapaksa camp and their public relations machinery was able to meet the public appetite for a strong leader, feeding into ethno-nationalism and particular ideologies.[45] The space for work on co-existence and reconciliation diminished, replaced by a narrative from hardline extremists fueled by fear and ethno-nationalism.

Truth and Justice: The Efforts for Reform and Reconciliation

Recent attempts at truth and justice in Sri Lanka have also exposed the challenges confronted by victims and others. Apart from structural and legal shortcomings, there is a lack of expertise and capacity to deal with complex issues like atrocity crimes. The presence of ethno-nationalism in different spheres is a constant reminder of the need for sustained work to address the root causes of conflict that require long term energy and attention. There is much work necessary to build trust within and across communities. Due to the Aragalaya in 2022, there is greater political awareness among citizens that is now being used by many to hold political actors accountable. This space must be used to mobilize and keep pressure.

Sri Lanka is now confronted with the prospect of establishing a truth and reconciliation commission (TRC). While it is early days, victims and civil society have questioned the need for a TRC when Sri Lanka has had several past commissions resulting in limited implementations of their recommendations. Others also critique the prioritization of a TRC when Sri Lanka is plagued with impunity regarding attention and resources needed to tackle accountability.

In some instances, the courts have played an important role in upholding pluralism and fundamental rights and pushing back on attempts by the state to restrict rights and undermine the rule of law.[46] The Supreme Court determination on the Thirteenth Amendment to the Constitution was an important moment in jurisprudence that recognized the need for devolution of power within a unified country and acknowledged the demands of minority parties for a power sharing model. Since then, several other determinations and orders from the Supreme Court have recognized the role of provincial councils and the devolved powers. The courts have also heard cases of land appropriation and in some instances urged the state to desist from arbitrary practices that deprive people of their lands (or that they provide compensation when they do so).

Yet in cases where the PTA and the ICCPR Act have been used, the courts have been somewhat hesitant to challenge the state, amplifying a perception that the state is all powerful in determining what falls within national security and religious and racial harmony. That said, recently the Supreme Court has diverged from this position in cases where regulations issued under the PTA (in 2021) and emergency regulations (in 2019 and 2022). Instead it has led to the Supreme Court staying some regulations and granting leave to proceed others, recognizing there is a matter to review. Despite some good news with the judiciary, there are also

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44   Cronin-Furman, 2020.

45   Fonseka & Dissanayake, 2021.

46   Fonseka & Ganeshathasan, 2023.

instances where courts have issued orders to prevent memorialization events in the north and preventing the Tamil people's right to remember their lost loved ones. In other instances, the Supreme Court refused leave to proceed in several fundamental rights applications that challenged the forced cremation policy. This raised concerns as to the Court's position on minority rights.[47]

There are also concerns regarding the selective implementation of laws by the executive arm that targets some communities and protects others. For example, the use of the ICCPR Act in 2023 to target individuals like comedians and bloggers must be contrasted with other recent instances where Buddhist clergy inciting violence on minorities were never held accountable. In addition, authorities have not taken action against Buddhist clergy and others who are accused of land appropriation in the north and east but have threatened action against minorities.

And yet one must acknowledge positive shifts to recognize violence, discrimination, and other practices that target ethnic and religious minorities and push back on racist policies and practices. The role played by community and religious actors in mitigating or preventing violence also must be noted. After the Easter Sunday attacks in 2019, inter-religious groups and community leaders played a key role in containing some violence and ensuring early warning systems were in place. Local actors have also played a role in the north and east to address inter-religious issues and land conflicts. They have maintained a dialogue within and among communities. More recently, local actors were able to prevent violence from erupting in Trincomalee town and other areas in the east, places that have witnessed violence over the decades. These are examples where local entities were able to play an effective role in preventing conflict, and perhaps can be viewed with some optimism for the future.

47   Saroor, 2021.

7 Conclusion and Recommendations

This case study speaks to continuing challenges pertaining to racism that can contribute to atrocity risks. Sri Lanka's cycles of violence and discriminatory policies and practices make it a fertile ground for potential violence in the future. Several measures can be taken in the short, medium and long-term regarding legal and policy reform, structural measures, and awareness raising. The following recommendations are made to the government of Sri Lanka, international actors (including donors, the UN, and international agencies), and finally to local actors including civil society, community groups, academics, and media.

Recommendations for the Government of Sri Lanka

- Demonstrate political leadership in tackling racism and root causes of conflict. This can be in different ways from making public statements and initiating policy and legal reforms, to demonstrating zero tolerance toward racism, incitement, and violence.
- Take steps to hold perpetrators accountable by initiating independent domestic accountability processes.
- Review and reform institutional frameworks including structural reforms required to address root cases of conflict and lack of accountability.
- Review existing laws and policies that fuel racism and provide reforms to prevent the occurrence of atrocity crimes.
- Ensure full implementation of laws and policies to tackle racism, discrimination, and impunity.
- Support initiatives that focus on awareness raising and citizen engagement and education activities that support and exacerbate racism including fake news, misinformation, disinformation, hate speech, discrimination, and forms of violence.

- Introduce and implement structural and legal reforms to independently monitor traditional media and social media and the distribution of fake news, misinformation, disinformation and hate speech. Include in the reforms powers for content moderation and, if needed, ability to suspend and/or cancel licenses.

- Initiate individual and collective reparations including memorialization for past cycles of violence.

Recommendations for International Actors Including Donors, the UN, and International Agencies

- Support the state's efforts to address racism and have in place effective prevention measures and mechanisms.

- Provide necessary resources and training for local actors including civil society, citizen committees, mosque committees, and media actors in order to combat racism and maintain effective early warning systems.

- Support documentation and other initiatives that capture trends and practices that can inform policy interventions and practical prevention measures.

- Monitor trends of racism and atrocity crimes and explore international measures that can hold governments and individuals accountable including prosecutions, travel bans, and financial sanctions.

- The UN Human Rights Council, European Union, and others to continue to monitor the human rights situation and initiate necessary action to prevent atrocity crimes.

- Provide financial and technical support for early warning systems, awareness raising and education work.

Recommendations for Civil Society, Community Groups, Academics and Media

- Map existing mechanisms at the local/community level, and identify

strengths, gaps, and limitations.

- Engage in dialogue with community and religious groups and provide resources for an effective early warning system.

- Develop educational material on Sri Lanka's experiences with violence, root causes of the conflict, and related issues with a focus on engaging youth and the broader public.

- Conduct awareness raising initiatives and citizen education programs on racism, atrocity crimes, and related issues.

- Conduct trainings for media, civil society, academics, and others on identifying triggers/risk factors and ways of mitigating and preventing incitement and violence.

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CONCLUSION AND RECOMMENDATIONS

Identity-based targeting has always been acknowledged as a critical factor in the commission of atrocity crimes. However, there has been insufficient analysis as to how racism specifically affects the likelihood of atrocity crimes in a particular country or region. Recognition of racism as a risk factor for atrocity crimes is a starting point for acknowledging how historical and current racist practices impact communities of color, marginalized communities, and indigenous communities in their day-to-day life. These crimes are as varied as they are harrowing: targeted violence against Afro-Brazilian men in the favelas of Rio de Janeiro, forced assimilation (and erasure of the culture) of indigenous populations, sexual and gender-based violence within marginalized communities. In all cases, these lived experiences demand urgent action.

Racism as a risk factor for atrocity crimes requires response and reform by a multitude of stakeholders. This includes institutions and individuals within national and local governments, regional and multilateral institutions and their various bodies, civil society, the private sector, and the media. The indicators and case studies in this document highlight why and when racism can lead to atrocity crimes. This toolkit can therefore be utilized by state actors and affected communities to assess risk. Specifically, to understand how race plays a central role in patterns of violence directed against particular populations, and advocate for necessary response and reforms in policies and practices. The following recommendations are a non-exhaustive list of actions that different stakeholders can take to alleviate and address the risk of war crimes, crimes against humanity, ethnic cleansing, and genocide in their societies.

To States, Territories, and Local Governments

- Commit to social and economic equality for all populations, regardless of race, color, ethnicity, origin or other status. This includes adopting or strengthening laws and policies that ensure equitable access to opportunities for development and advancement, social goods and services, education, employment, property and land ownership, and social safety net programs.

- Remove systematic barriers impeding comprehensive access for vulnerable and marginalized groups.

- Strengthen the transparency, inclusivity, and accountability of public institutions, including through initiating reforms that promote the full and equal participation of underrepresented groups in leadership and decision-making positions and government institutions, reflecting the full diversity of the communities they govern.

- Dismantle structures and systems designed and shaped by slavery and colonialism, as well as their legacies of unequal, racially discriminatory policies and systems.

- Combat, reform, and remove policies and practices that enable or promote exclusion and discrimination on the basis of identity, including race, color, descent, origin, ethnicity, or other status. Remove policies that enable racial segregation or create barriers to equal participation in public life, including those that block equal access to voting.

- Ratify and/or implement the International Convention on the Elimination of All Forms of Racial Discrimination and other international and regional mechanisms for achieving racial justice and equality, including those aimed at equality for people of African descent such as the UN's Four Point Agenda Towards Transformative Change for Racial Justice and Equality.

- Cooperate with, implement recommendations by, and invite visits from international treaty bodies and UN Special Procedures mandate holders relevant to examining cultures of racism, racial injustice, and racial discrimination within countries, such as the Committee on the Elimination of Racial Discrimination, the UN Working Group on Experts of People of African Descent, the Special Rapporteur on the rights of Indigenous Peoples, the Special Rapporteur on minority rights, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and the Independent Expert Mechanism on Racism and Law Enforcement,

- Establish and support independent national human rights institutions, an ombudsperson's office and/or other bodies to hear grievances from marginalized populations. In addition, these institutions should track and monitor trends in abuses against specific groups on the basis of race, color, descent, origin, ethnicity, or other status, and alert relevant government actors as an early warning of potential atrocities. Include risk factors related to structural racism, racial discrimination, and the growth of supremacist ideologies within submissions to the UN's Universal Periodic Review.

- Implement security sector reform by building the professionalism and legitimacy of the police and security forces. This should include establishing codes of conduct that comply with international human rights standards, enforcing disciplinary procedures for non-compliance, and rigorously vetting potential personnel to exclude individuals with a past history of atrocities, human rights abuses or supremacist behavior. In addition, there should be thorough and transparent investigation of incidents that result in civilian harm or demonstrate biased treatment on the basis of race, descent, color, origin, ethnicity, or other status. Ensure law enforcement officials comply with recommendations of the Committee on the Elimination of Racial Discrimination, including General Recommendations No. 31 on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System and No. 36 on Preventing and Combating Racial Profiling by Law Enforcement Officials.

- Promote access to justice and legal assistance for all populations, regardless of race, descent, color, origin, ethnicity or other status. This includes empowering courts and tribunals to provide access to legal representation and interpreters, offer financial support for legal assistance and psychosocial support services, especially for vulnerable and marginalized groups. Support should be provided to such services to expand the geographical reach of judicial services, including through outreach and referral services. And measures should be taken to ensure the judiciary includes adequate representation of minority and Indigenous populations.

- Cultivate, support, and protect a strong, free, and independent civil society—including independent media. Ensure the safety and security of human rights defenders and other members of civil society that stand up to racism and are engaged in the promotion of racial equality and justice.

- Utilize the education sector to promote tolerance, respect for diversity,

and an understanding of the history of mass atrocities. Review and revise national curricula to ensure that teaching history includes narratives that have been historically suppressed or marginalized. Support schools as platforms for building social cohesion in communities, including through developing educational resources that combat negative stereotyping and supremacist narratives while promoting tolerance and respect for diversity.

- Provide acknowledgement, justice, and redress for past and current atrocity crimes. This includes establishing transitional justice processes for truth-seeking, truth-telling, justice and accountability, reconciliation and social cohesion, as well as memorialization of past atrocity crimes to guarantee non-recurrence. Acknowledge abuses perpetrated or directed by state entities against vulnerable populations, including Indigenous peoples. Ensure the effective participation of affected communities and the use of victim-centered approaches in all processes aimed at addressing the past.

- Initiate reparations and reparatory justice that address individual and collective hardships of particular racial groups due to structural racism and histories of violence, enslavement, persecution, and other atrocities.

- Provide psycho-social or culturally appropriate healing support services to address trauma stemming from structural and systemic discrimination, polarization, segregation, and exclusion. This includes legacies of unresolved historical trauma which are the basis of current atrocities and violence. This includes generational historical trauma and present trauma resulting from socioeconomic shock and systemic inequality, all of which pose an existential threat for the majority of those marginalized and excluded.

- Address inter-communal and inter-racial tensions at the local level, including through local mediation and community dialogue programs. Promote local peacebuilding initiatives, and support initiatives that promote inclusivity and impartiality of local dispute resolution processes.

- Acknowledge potential disproportionate impact of environmental degradation and climate change on racial and ethnic minority populations, and adopt and implement policies that confront potential long-term impacts of climate-related fallout.

- Implement regulation that combats hate speech, incitement of violence, and growth of supremacist groups and ideologies. Monitor the spread of hate speech, xenophobia, racism, antisemitism, and other supremacist ideologies. This includes dangerous misinformation and disinformation (including through the media) targeting racial or ethnic groups, and respond to direct threats to particular groups.

- Support public officials and religious leaders to publicly promote values of tolerance and respect for diversity, and encourage speaking out against derogatory stereotyping, stigmatization, intolerance, and hate speech.

- Regulate and curtail activities of multinational corporations and businesses complicit in increasing risks of atrocities against vulnerable groups located in regions rich in natural resources.

- Regulate trade and investment with countries where atrocity crimes persist, particularly instances of forced labor of particular ethnic or racial groups or intentional degradation of traditional lands belonging to such groups.

To the United Nations, Regional and Local Organizations, Regional Courts, and Human Rights Groups:

- Establish and sufficiently resource offices, special mechanisms, committees, and other entities that work toward the elimination of racial and ethnic discrimination at the international and regional level.

- Utilize the international human rights system to address racism. Ensure that the Office of the UN High Commissioner for Human Rights has the necessary capacities and expertise to analyze the impact of racism on human rights within a particular country. Facilitate participation and shadow reporting from dissenting voices for the Universal Periodic Review of a particular country. Within that process include indicators that measure progress toward ending racial and ethnic discrimination. With regard to providing technical assistance and capacity building programs for countries, include programs that specifically address racial and ethnic discrimination and provide financial and technical support for early warning mechanisms.

- Continue to monitor trends of racism and related atrocity risks and encourage states to adopt international measures that can hold governments and individuals accountable for potential violations and abuses of international law.

- Provide funding to national and regional civil society programs that seek to address and eliminate racial discrimination.

- Provide administrative, financial, and legal assistance to civil society at all levels. This includes support for indigenous communities and human rights defenders that are resisting and holding the state accountable for atrocities committed against certain racial and ethnic groups.

- Amplify and share best practices on addressing structural and institutional racism.

- Establish hiring practices that promote diversity, equality, and inclusion at all levels of the organization.

- Acknowledge potential disproportionate impact of environmental degradation and climate change on racial and ethnic minority populations, and adopt and implement policies that confront potential long-term impacts of climate-related fallout.

To local, National and International Civil Society:

- Promote social and communal cohesion through educational and social programs.

- Educate and explain how structural and institutional racism affects everyday life experiences of particular racial and ethnic groups.

- Create spaces that promote inter-racial and inter-communal dialogue.

- International and national civil society organizations should provide a platform for, and elevate voices of, local and indigenous civil society and actors who are often at the front lines of resistance.

- Use arts, memory, and cultural activities to create safe spaces for having dialogue, exploring diversity, and discovering commonalities in values.

- Civil society working on health, education, women's empowerment, child development, environmental issues, and other issues should promote diversity, inclusion, and equality in its programming and staff. Recognize how their organizations can address structural and institutional biases.

- Create coalitions that can elevate and amplify messaging to state and non-state actors about institutional and structural violence often experienced by particular racial and ethnic groups.

- Strengthen channels of communication between local and international society to bolster affected communities' access to multilateral spaces.

- Learn and share best practices, tactics, and strategies that have worked in the past or in other contexts to combat racism, prevent atrocities, and ensure non-recurrence of past abuses.

- Promote national, regional, and international solidarity with other civil society organizations working on similar themes.

- Urge government actors to become signatories to relevant treaties, declarations and conventions to promote adherence to international standards of conduct, including the International Convention on the Elimination of All Forms of Racial Discrimination.

- Collect and promote data on discriminatory practices, human rights violations, hate speech and other factors that disproportionately affect populations on the basis of race. Raise awareness within government of discriminatory human rights violations and make submissions to the UN, including the UPR process, and regional human rights bodies utilizing documented evidence of such violations.

Endnotes

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