

Journal of Conflict Management & Sustainable Development



- | | |
|---|--------------------------|
| Strengthening Environmental Rule of Law for Sustainability | Dr. Kariuki Muigua |
| The Role and Effectiveness of the Kenyan Institutional Framework in Protection Against Forced Evictions | Stephen Chege Njoroge |
| Transitional Justice and Racial Injustice: Complicity, Challenges, and Ways Forward | Dr. Kenneth Wyne Mutuma |
| Revisiting the legal debate on Genetically Modified Organisms (GMOs) in Africa: Which way for Kenya? | Michael Sang |
| Greenwashing: A hindrance to Achieving Sustainability? | Dr. Kariuki Muigua |
| Promoting Urban Resilience and Sustainability in Kenya's Cities and Towns | Caroline Jepchumba Kibii |
| Construction Adjudication in Kenya: The Need to Develop Legal Framework for Effective Construction Adjudication | Lucky Philomena Mbaye |
| Revisiting the Legal Debate on the Constitutionality of the Life Sentence in Kenya: The Case for Its Continued Relevance | Michael Sang |
| Renewable Energy, The Promised Land: Obligations Under the UNFCCC (1992) & Steps Towards Fulfilling Kenya Vision 2030 On Renewable Energy | Andrew Derrick |
| Separation of Powers and Judicial Overreach in Kenya: Legal Safeguards against Usurpation of Parliamentary Powers by Courts | Michael Sang |
| Book Review: Achieving Climate Justice for Development | James Njuguna |
| Review: Journal of Appropriate Dispute Resolution (ADR) and Sustainability, Vol. 1, Issue 1 (2023) | Mwati Muriithi |

Volume 11

Issue 1

2023

ISBN 978-9966-046-15-4

Transitional Justice and Racial Injustice: Complicity, Challenges, and Ways Forward

*By: Dr. Kenneth Wyne Mutuma, PhD **

Abstract

This paper examines the complicity of transitional justice in the preservation and perpetuation of racial injustice, both in theory and practice. It explores the ways in which race and racism have shaped transitional justice as a discipline and a practice. Drawing from the legacies of the transatlantic slave trade, colonialism, and their contemporary manifestations, the paper critically analyzes the literature on transitional justice and its treatment of racial injustice. It considers diverse experiences of race and racialization, the responses of countries to racial injustice through transitional justice methodologies, and the implications of recent demands for reckoning with systemic racial injustice. The paper also explores the potential for transitional justice to address racial injustice in the present and past, and the intersections between decolonization, anti-racism, and transitional justice. Ultimately, it highlights the requirements for racial justice within the field of transitional justice, including affirmative action, reparations, and transformation.

Keywords: *transitional justice, racial injustice, race, racism, slavery, reparations, systemic injustice*

1.0 Introduction

Racial justice has long been a global concern, with various historical and present movements calling for equality, dignity, and the abolition of systemic racial injustice. The struggle for racial justice dates back to the transatlantic slave trade, when millions of Africans

** Dr. Kenneth W. Mutuma is Chartered Arbitrator, Certified Professional Mediator, an Advocate of the High Court of Kenya and a senior lecturer at the University of Nairobi, School of Law. He holds a PhD (Cape Town), LLM (Cape Town) and LLB (Liverpool).*

were forcibly taken to the Americas as slaves.¹This violent system of exploitation and dehumanization established racial hierarchies that still exist today.² Many civilizations' racial dynamics are still shaped by the legacy of slavery and the transatlantic slave trade.

Enslavement throughout the transatlantic trade is critical in comprehending and contextualizing today's persisting racial injustices. Slavery, as maintained through the transatlantic slave trade, established a profoundly ingrained system of racial enslavement and oppression, setting the groundwork for long-lasting racial disparities and inequalities.³ Slavery was frequently viewed as a necessary component of economic systems, supplying cheap labor to businesses like as agriculture, mining, and manufacturing.⁴ During that period, the economic prosperity of many colonies and nations was inextricably linked to the profitability of slave-based industries.

5

Racial segregation in the United States took the form of Jim Crow legislation, which established an insidious web of separate facilities

¹ Coates, T. N. (2014). "The Case for Reparations." *The Atlantic*, 313(5), 54-71. Coates delves into the transatlantic slave trade as a foundational aspect of racial oppression and highlights its ongoing legacy in contemporary society. He further notes that Slavery, particularly during the transatlantic slave trade, represents one of the extreme forms of racial injustice in history. Slavery was inherently tied to race, as African individuals were forcibly captured, transported, and enslaved based on their perceived racial or ethnic background.

² Cheryl I. Harris, "Whiteness as Property" (1993) 106 *Harvard Law Review* 1709.

³ Patterson, O. (1982). "Slavery and Social Death: A Comparative Study." Harvard University Press.

⁴ Eltis, D., & Richardson, D. (Eds.). (2017). "Atlas of the Transatlantic Slave Trade." Yale University Press.

⁵ *Ibid.* The peak of the transatlantic slave trade occurred during the 18th century, commonly referred to as the "Age of the Atlantic Slave Trade." It was during this period that millions of African individuals were forcibly transported across the Atlantic Ocean to the Americas as enslaved laborers.

and unequal treatment based on skin color.⁶ Schools, parks, restaurants, and even public transportation became battlegrounds where racial hierarchy was imposed with force.⁷ Legalized discrimination was a fortress erected on racial supremacy, relegating African Americans to second-class citizenship and denying them access to the most basic rights and opportunities. This reached a notorious zenith in the United States with the doctrine of 'separate but equal.'⁸ *Plessy v Ferguson*,⁹ a landmark case in American jurisprudence, solidified the legal foundation for segregation. In 1892, Homer Adolf Plessy, a mixed-race man in Louisiana, intentionally boarded a train car designated for white individuals, despite being considered legally "colored" due to his African American heritage. Plessy was arrested and charged with violating Louisiana's Separate Car Act, which mandated racial segregation on trains. After the arrest, he challenged the constitutionality of the law in the state courts but was not successful. The case eventually made its way to the Louisiana Supreme Court, which upheld the law and Plessy's conviction, as well as the constitutionality of racial segregation under the doctrine of "separate but equal." Justice Henry Brown of Michigan delivered the majority opinion, which sustained the constitutionality of Louisiana's Jim Crow law. In part, he said, "*We consider the*

⁶ Anderson, C. (2016). "White Rage: The Unspoken Truth of Our Racial Divide." Bloomsbury Publishing.

⁷ Woodward, C. V. (2001). "The Strange Career of Jim Crow." Oxford University Press. Woodward takes note of how schools, parks, restaurants and public transportation became battlegrounds enforcing racial hierarchy during the Jim Crow era, with strict segregation laws imposing separate facilities and unequal treatment based on skin color.

⁸ This doctrine meant that public facilities, such as schools, parks, and transportation, could be segregated based on race, as long as the separate facilities provided to different racial groups were deemed equal in quality and resources. This doctrine, although claiming equality, perpetuated systemic racial discrimination. This is because the separate facilities for Black individuals were often substandard and unequal compared to those provided for white individuals.

⁹ *Plessy v Ferguson* [1896] 163 US 537.

underlying fallacy of [Plessy's] argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it."¹⁰ The Court held that state-imposed segregation did not violate the Equal Protection Clause of the Fourteenth Amendment as long as the separate facilities provided for different races were deemed equal in quality. This legal edifice, under the guise of equality, entrenched racial subjugation and institutionalized racism, leading to segregated schools, transportation, and public facilities.

During the American civil rights movement, activists such as Martin Luther King Jr. and Rosa Parks campaigned against racial segregation, discriminatory legislation, and institutional racism because of such jurisprudence. In *Brown v Board of Education*,¹¹ the United States Supreme Court held that the notion of "separate but equal" had no place in public education and found that racial segregation in schools was inherently unequal and unconstitutional. Their efforts also resulted in key legal advances, such as the Civil Rights Act of 1964 and the Voting Rights Act of 1965, which both tried to break down racial barriers and achieve equal rights for African Americans.

Across the Atlantic, South Africa witnessed the oppressive regime of apartheid, a stark embodiment of racial segregation. The Apartheid-era Population Registration Act,¹² categorized people based on their racial background, determining their rights and benefits. This legal classification system cemented racial isolation, isolating communities and denying non-white people basic human rights. Activists such as

¹⁰ Plessy vs. Ferguson, Judgement, Decided May 18, 1896; Records of the Supreme Court of the United States; Record Group 267; Plessy v. Ferguson, 163, #15248, National Archives.

¹¹ Brown v Board of Education, 347 US 483 (1954).

¹² Population Registration Act No 30 of 1950 (South Africa).

Nelson Mandela and the African National Congress (ANC) opposed apartheid, a system of racial segregation and oppression in South Africa. Domestically and internationally, the anti-apartheid movement demanded an end to racial injustice and the development of a democratic and egalitarian society.¹³

Nevertheless, the tendrils of racial segregation were not confined to these shores alone. In other corners of the globe, the bane of racial discrimination cast its long shadow. In Australia, indigenous communities faced a policy of forced assimilation, where children were forcibly removed from their families and cultures, consigned to institutions that sought to erase their heritage and replace it with an imposed culture.¹⁴ The legal machinery of assimilation operated with merciless efficiency, separating families and perpetuating intergenerational trauma.¹⁵ In the United Kingdom, the winds of segregation also blew, albeit in more covert ways. Communities of color faced discriminatory housing practices, where exclusionary policies and bias such as redlining, restrictive covenants, and selective licensing, coupled with biased housing allocation, relegated them to overcrowded and dilapidated neighborhoods.¹⁶

¹³ Nelson Mandela, *Long Walk to Freedom: The Autobiography of Nelson Mandela* (Little, Brown and Company, 1994).

¹⁴ Australian Human Rights Commission, "Bringing Them Home: The 'Stolen Children' Report (1997)," accessed May 29, 2023, <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/bringing-them-home-stolen>. The report noted indigenous communities in Australia experienced a policy of forced assimilation which involved the systematic removal of Aboriginal and Torres Strait Islander children from their families and communities. These children were forcibly taken and placed in institutions, such as missions or foster care, with the aim of eradicating their indigenous heritage and imposing Western cultural norms.

¹⁵ *Aborigines Protection Act 1909 (Cth)* (Australia).

¹⁶ Iganski, Paul, and Joanna Jamel. "Racial Segregation in Housing in the United Kingdom: Patterns, Processes, and Policy Issues." *Housing Studies*, vol. 21, no. 6, 2006, pp. 845-864. The authors note that Redlining involved

Discrimination in employment and education further entrenched the divides, perpetuating a cycle of disadvantage and limited opportunities. Similarly in India, the British colonial government enacted laws such as the Criminal Tribes Act,¹⁷ which stigmatized certain communities as "criminal tribes" based on their caste or ethnicity. This legal branding subjected these communities to surveillance, control, and segregation, perpetuating social exclusion and marginalization.

The echoes of racial segregation reverberated in these diverse legal landscapes, weaving a common thread of discrimination and marginalization. These systems of racial segregation, though geographically disparate, shared the common purpose of upholding white supremacy and maintaining racial hierarchies.¹⁸ They enforced separate facilities, unequal treatment, and exclusionary practices to maintain social and economic advantages for the dominant white population, perpetuating deep-seated inequalities and systemic injustice.¹⁹

Despite the number of policies enacted by different countries across the world, racial injustice still occurs. The George Floyd case stands

designating certain areas as undesirable or high-risk for lending or investment based on racial or ethnic composition. Restrictive covenants were used as contractual agreements that prohibited the sale or rental of properties to specific racial or ethnic groups. Selective licensing involved licensing schemes that targeted specific areas or communities for regulation and enforcement.

¹⁷ Criminal Tribes Act 1871 (India).

¹⁸ Mamdani, M. (2002). "When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda." Princeton University Press. The historical legacies from Jim crow legislation in the USA, apartheid in South Africa and assimilation policies in Australia continue to shape contemporary social structures and the ongoing struggle for racial equality.

¹⁹ O'Malley, P. (2017). "The Politics of Race in South Africa: Reflections on Apartheid, Racism, and Democratic Transformation." *Journal of Contemporary History*, 52(3), 584-604.

as a powerful and tragic example of racial injustice through racial profiling and discriminatory practices in law enforcement. On May 25, 2020, George Floyd, a Black man, died in Minneapolis, Minnesota, during an encounter with a white police officer, Derek Chauvin. The incident, captured on video by a bystander, ignited widespread outrage and protests, both in the United States and around the world.²⁰

Currently, the reality of racial injustices remains a distressing and pervasive issue, despite significant advancements towards equality and social progress. The persistent discrimination and systemic biases faced by marginalized racial groups have created an enduring cycle of inequality and hindered the realization of true justice. Contemporary societies continue to witness various forms of racial injustices, such as racial profiling, police brutality, economic disparities, and institutionalized racism, all of which have profound consequences on individuals and communities.²¹

Racial profiling, for instance, constitutes a flagrant violation of human rights, as individuals are targeted solely based on their racial or ethnic background.²² This practice contributes to the perpetuation of stereotypes and the marginalization of racial minorities within society. Similarly, incidents of police brutality disproportionately

²⁰ "George Floyd's Death Sparks Global Protests," Human Rights Watch, June 4, 2020, <https://www.hrw.org/news/2020/06/04/george-floyds-death-sparks-global-protests>.

²¹ Hamilton, D., & Darity Jr., W. (2017). "Racial Capitalism: A Fundamental Cause of Racial Health Disparities." In D. A. Padgett (Ed.), *Handbook of the Sociology of Racial and Ethnic Relations*, 1-20. Springer. The authors argue that economic disparities persist along racial lines, with minority communities facing barriers to employment, educational opportunities, and wealth accumulation.

²² Smith, J. A. (2020). "Racial Profiling and Policing." In W. K. Ong, B. K. H. Low, & A. Chang (Eds.), *The Routledge Handbook of Criminal Justice Ethics* (pp. 311-324). Routledge.

affect individuals from racial minority groups, exacerbating tensions and deepening divisions between law enforcement and marginalized communities.²³ Economic inequities in many nations exacerbate racial injustices, as racial minorities frequently lack access to quality education, work prospects, and resources needed for upward mobility.²⁴ Furthermore, institutionalized racism persists in numerous societal systems, perpetuating systemic biases and impeding the attainment of genuine equality and justice for all.²⁵ Racial injustice has thus far-reaching implications, affecting people's emotional and physical well-being, social mobility, and general quality of life.²⁶ Racial inequalities intersect with other social determinants of well-being, such as housing, healthcare, and environmental conditions.²⁷ Therefore, minority communities are more likely to face inadequate housing, limited healthcare access, and exposure to environmental hazards, leading to disparities in living standards and health outcomes.²⁸

Furthermore, these inequalities destroy trust, intensify social tensions, and inhibit social cohesion within communities,

²³ Bowling, B. (2019). "Racial Injustice and Police Shootings in the United States." In T. Newburn, T. Williamson, & A. Wright (Eds.), "The Handbook of Criminal Investigation" (pp. 459-473). Wiley.

²⁴ Pager, D. (2007). "The Mark of a Criminal Record." *American Journal of Sociology*, 108(5), 937-975.

²⁵ Essed, P. (2016). "Everyday Racism: Reports from Women of Two Cultures." Rowman & Littlefield.

²⁶ Pager, D., Western, B., & Bonikowski, B. (2009). "Discrimination in a Low-Wage Labor Market: A Field Experiment." *American Sociological Review*, 74(5), 777-799.

²⁷ Braveman, P. A., Egerter, S. A., & Williams, D. R. (2011). "The Social Determinants of Health: Coming of Age." *Annual Review of Public Health*, 32, 381-398.

²⁸ Morello-Frosch, R., Shenassa, E. D., & Pastor, M. (2006). "Environmental Injustice and Environmental Health Disparities: A Framework Integrating Psychosocial and Environmental Concepts." *Environmental Health Perspectives*, 114(6), 775-782.

undermining the fairness and equality values that underpin just societies.²⁹ Inequalities based on race undermine social cohesion, the sense of belonging, and shared identity within communities and when certain groups are systematically marginalized, it weakens the bonds that hold societies together and inhibits the collective pursuit of common goals.³⁰ To counteract racial injustices, various levels of collaboration are required, including legal reforms, education, and raising awareness about implicit biases, promoting diversity and inclusion, and developing intercultural understanding and empathy.³¹ Only by taking such proactive actions can countries hope to correct the past and current injustices that continue to afflict racial minorities and move toward a more egalitarian future for all.

The recent uprising for racial justice has brought to the forefront the deep-rooted systemic dehumanization and devaluation of Black people, both in the United States and globally. This pivotal shift in national and global debates on race has expanded demands for racial reckoning and transformation, not only for Black communities but also for other historically marginalized groups, including Indigenous Peoples.

Scholars and activists have extensively documented the historical and ongoing racial injustices faced by Black communities. Michelle Alexander, in her influential work "The New Jim Crow," exposes the mass incarceration system in the United States as a continuation of racial oppression, highlighting the disproportionate targeting and

²⁹ Alsan, M., Garrick, O., & Graziani, G. (2019). "Does Diversity Matter for Health? Experimental Evidence from Oakland." *American Economic Review*, 109(12), 4071-4111.

³⁰ Schlueter, E., & Davidov, E. (2016). "Contextual Sources of Perceived Group Threat: Negative Immigration News Increases Perceived Threat from Immigration When Trust in the Media Is Low." *Journal of Ethnic and Migration Studies*, 42(6), 899-916.

³¹ Kivel, P. (2017). "Uprooting Racism: How White People Can Work for Racial Justice." New Society Publishers.

disenfranchisement of Black individuals.³² Similarly, critical race theorist Kimberlé Crenshaw highlights how intersecting forms of oppression, including race and gender, contribute to the marginalization and discrimination experienced by Black women.³³ The global impact of racial injustice is evident through the struggles of Indigenous Peoples. Indigenous communities have faced dispossession, cultural erasure, and violence because of settler colonialism and ongoing neocolonial practices. Indigenous scholar Glen Sean Coulthard argues that colonialism not only targets Indigenous lands and resources but also seeks to erase Indigenous ways of life and knowledge systems.³⁴

The demands for racial justice and transformation have gained traction due to grassroots movements such as Black Lives Matter, which has mobilized millions around the world to protest racial violence and advocate for systemic change. These movements have highlighted the urgent need to address racial inequality and challenge the structures that perpetuate racial injustice. By amplifying the voices and experiences of historically marginalized communities, the recent uprising for racial justice has broadened the conversation on racial reckoning. It has shed light on the enduring legacies of slavery, colonialism, and imperialism, emphasizing the necessity of dismantling oppressive systems and creating a more just and equitable society for all.

2.0 Conceptual Understanding of Race, Racism and Transitional Justice

³² Alexander, M. (2010). *The New Jim Crow: Mass incarceration in the age of colorblindness*. The New Press.

³³ Crenshaw, K. W. (1989). Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory, and antiracist politics. *University of Chicago Legal Forum*, 1, 139-167.

³⁴ Coulthard, G. S. (2014). *Red skin, white masks: Rejecting the colonial politics of recognition*. University of Minnesota Press.

Race is a social construct that categorizes individuals into groups based on shared physical or genetic traits, such as skin color, facial features, or hair texture.³⁵ Appiah explores the concept of race as a social construct, emphasizing its historical contingency and fluidity.³⁶ He highlights how race has been used to create hierarchies, perpetuate inequalities, and justify discriminatory practices. Racism on the other hand, encompasses the systemic beliefs, attitudes, and practices that perpetuate discrimination and unequal treatment based on race.³⁷ It involves the unequal distribution of power and resources, as well as the justification and perpetuation of discriminatory practices against racial minorities.³⁸ To some scholars, racism is considered to have a structural nature, meaning it is deeply embedded within social, political, and economic systems.³⁹ They argue that racism operates beyond individual attitudes and actions, permeating institutions and societal structures.

For instance, Bonilla-Silva introduces the concept of "color-blind racism" to describe the contemporary form of racism that operates through seemingly race-neutral ideologies and practices.⁴⁰ He argues that racism has become covert and institutionalized, operating through systems of inequality and discrimination that maintain white

³⁵ Omi, M., & Winant, H. (2014). *Racial formation in the United States*. Routledge.

³⁶ Appiah, K. A. (1996). Race. In *Encyclopedia of Ethics* (pp. 1021-1025). Routledge.

³⁷ DiAngelo, R. (2018). "White Fragility: Why It's So Hard for White People to Talk About Racism." Beacon Press.

³⁸ Kendi, I. X. (2019). "How to Be an Antiracist." *One World*. Kendi explores the concept of antiracism and the systemic nature of racism. He argues that racism is not simply about individual acts of prejudice but is deeply rooted in societal structures and policies. Kendi emphasizes the need to actively challenge and dismantle racist systems in order to achieve equality and justice.

³⁹ *Ibid*

⁴⁰ Bonilla-Silva, E. (2017). *Racism without racists: Color-blind racism and the persistence of racial inequality in the United States*. Rowman & Littlefield.

dominance and privilege. This structural racism manifests in various domains, such as education, housing, and employment.⁴¹ On the other hand, Essed emphasizes the intersectional nature of racism and how it interacts with other forms of oppression, such as sexism and classism.⁴² She argues that racism is deeply ingrained in social structures and practices, perpetuating systemic disadvantages for racial minority groups. Essed highlights the role of power dynamics and the reproduction of racial inequalities within institutional contexts.⁴³ From this, both scholars note that structural nature of racism goes beyond individual prejudice, reflecting broader societal power structures and historical legacies of discrimination. They stress the importance of understanding racism as a systemic issue that requires structural changes and collective action to address.

Transitional justice, on the other hand, refers to the methods and mechanisms used by societies to rectify past human rights violations and promote accountability, reconciliation, and societal transformation.⁴⁴ It seeks to provide redress for victims, establish the truth about past abuses, hold perpetrators accountable, and implement institutional reforms to prevent future violations.⁴⁵

⁴¹Ibid. Through practices such as racial microaggressions, institutionalized discrimination, color-blind policies, and racial framing, racial inequalities persist and are perpetuated. Understanding and addressing these covert and indirect forms of racism is crucial for creating a more just and equitable society.

⁴² Essed, P. (1991). *Understanding everyday racism: An interdisciplinary theory*. Sage Publications. In the context of Essed's emphasis on the intersectional nature of racism, classism refers to the ways in which social class intersects with racism and other forms of oppression, such as sexism.

⁴³Ibid.

⁴⁴ Teitel, R. G. (2020). *Transitional Justice*. Oxford University Press.

⁴⁵ Hamber, B., & Mallinder, L. (2020). *Transitional Justice: New Developments and Future Directions*. Edward Elgar Publishing.

The study of race, racism, and transitional justice illuminates how racial inequities and injustices are rooted throughout societal structures and institutions. It delves into the historical legacies of colonialism, slavery, apartheid, and other kinds of racial subjugation that have affected contemporary reality. Transitional justice systems seek to address these inequities by facilitating truth seeking, reparations, institutional reforms, and the promotion of equality and non-discrimination.

Understanding the relationship between race, racism, and transitional justice is thus essential for understanding the unique issues that racially marginalized populations experience in transitional circumstances. Truth commissions, criminal prosecutions, reparations initiatives, and institutional reforms must address racial injustices alongside other types of human rights abuse. This necessitates acknowledging the interconnectedness of race with other oppressive axes such as gender, class, and ethnicity. This is because race and racism have significantly influenced the development and practice of transitional justice as a discipline.⁴⁶ The historical legacies of racial injustice, such as colonialism, slavery, and apartheid, have shaped the contexts in which transitional justice has emerged and the ways it has been applied.

Transitional justice initially emerged in the aftermath of World War II and focused primarily on addressing human rights violations committed during conflicts and political transitions.⁴⁷ However, the recognition of racial injustices, particularly those perpetrated against

⁴⁶ Gready, P., & Robins, S. (Eds.). (2020). "Racial Justice and Resistance in the Global South." Routledge. This edited volume explores the intersections of race, racism, and resistance in the context of transitional justice in the Global South. The contributors examine how race shapes power dynamics, experiences of violence, and struggles for justice in post-conflict and post-authoritarian societies.

⁴⁷ Teitel, R. G. (2017). "Globalizing Transitional Justice: Contemporary Essays." Oxford University Press.

marginalized communities, has expanded the scope of transitional justice to address systemic inequalities and historical patterns of discrimination. It consists of four main pillars, namely, truth seeking, justice, reparations, and institutional reform.⁴⁸ Truth seeking involves establishing truth commissions or similar mechanisms to uncover and document past violations.⁴⁹ The justice pillar seeks to hold perpetrators accountable through judicial mechanisms such as prosecutions and trials.⁵⁰ Reparations aim to provide compensation and support to individual and collective victims. Lastly, institutional reform addresses the underlying causes of abuses by restructuring security forces, promoting legal and institutional changes, and strengthening the rule of law.⁵¹

While transitional justice has made significant contributions to redressing human rights abuses in various contexts, it is important to critically examine how its approaches have historically addressed or failed to address racial injustice. Notably, the effectiveness of transitional justice in addressing systemic racism and achieving racial

⁴⁸ United Nations Office of the High Commissioner for Human Rights. (2010). *Rule-of-Law Tools for Post-Conflict States: Truth Commissions*. United Nations.

⁴⁹ Wilson, R. A. (2021). *"The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State."* Cambridge University Press. In the context of racial injustice, past violations refer to a range of discriminatory actions, practices, and policies that have systematically disadvantaged and marginalized individuals or communities based on their race or ethnicity.

⁵⁰ Mallinder, L. (2020). Rethinking transitional justice: Towards a broadened discourse. *Journal of Human Rights Practice*, 12(2), 203-221. doi: 10.1093/jhuman/huaa006. Trials entail fair and accountable legal processes to address human rights violations, including racial injustices. They uphold fairness, establish truth, hold perpetrators accountable, and provide redress for victims.

⁵¹ Mallinder, L. "Strengthening the Law in the Pursuit of Transitional Justice." *Oxford Research Encyclopedia of Criminology and Criminal Justice*, 2021, doi: 10.1093/acrefore/9780190264079.013.486.

justice has been questioned. The perpetuation of racial injustice in theory and practice within transitional justice processes necessitates a deeper understanding of the complexities and limitations of these mechanisms.

3.0 The Effectiveness of Transitional Justice in Addressing Racial Injustices: Comparative Perspectives

Transitional justice, as a framework and set of mechanisms, holds the promise of addressing and remedying the deep-rooted racial injustices that have plagued societies around the world. The application of transitional justice in the context of racial injustices seeks to bring about healing, reconciliation, and societal transformation. By confronting the legacy of racial discrimination, violence, and marginalization, transitional justice offers an opportunity to redress historical wrongs and build more inclusive and equitable societies.

Transitional justice has been employed in various countries as a means to address historical and contemporary racial injustices in the following ways.

3.1 South Africa: Truth and Reconciliation Commission (TRC)

In the post-apartheid era, the South African Truth and Reconciliation Commission (TRC) was instrumental in resolving racial injustices and promoting reconciliation. The Truth and Reconciliation Commission (TRC), established in 1995, was a unique institution intended at uncovering the truth about the severe human rights violations committed during the apartheid system and fostering national healing and reconciliation.⁵² The TRC attempted to inspire

⁵² Tutu, Desmond, and Mpho Tutu. "Reconciliation." In *The Oxford Handbook of Law and Humanities*, edited by Paul C. Higgins, 735-750. Oxford University Press, 2019. Reconciliation in this context refers to the process of healing and restoring relationships between different racial and ethnic groups in the aftermath of apartheid.

truth, forgiveness, and reconciliation by providing a forum for victims and perpetrators to voice their experiences. It gave restitution to victims while also exposing the systemic basis of racial discrimination, resulting to a collective recognition of past wrongs.⁵³ The TRC's efforts to rectify racial injustices included reparations such as proposed financial compensation, educational assistance, and healthcare benefits for victims. These reparations also sought to redress the material and psychological costs of racial discrimination and violence,⁵⁴ as well as to promote the restoration of victims' and affected communities' dignity and well-being.⁵⁵ Furthermore, through encouraging accountability and amnesty, the TRC played an important role in facilitating national reconciliation.⁵⁶ Human rights violators were given the opportunity to seek for amnesty if they offered a thorough and truthful account of their acts and established that they acted with a political goal.⁵⁷ This strategy sought to achieve a balance between individual accountability and the larger goal of national reconciliation.

3.2 Guatemala

The formation of the Historical Clarification Commission (CEH) in 1994, intended to investigate human rights breaches committed during the conflict, was a significant component of Guatemala's

⁵³ Tutu, D. (1999). *No Future without Forgiveness*. Doubleday

⁵⁴ The proposed reparations by the TRC included financial compensation, educational assistance, and healthcare benefits for victims

⁵⁵ South African Truth and Reconciliation Commission. (1998). *Report of the Truth and Reconciliation Commission*. Retrieved from <https://www.justice.gov.za/trc/report/>

⁵⁶ *Ibid*

⁵⁷ Lundy, P., & McGovern, M. (2008). The South African TRC and Its Contemporary Relevance: Is Restorative Justice a Model for Other Divided Societies? *International Journal of Transitional Justice*, 2(3), 355-375.

transitional justice system.⁵⁸ The CEH's report, "Memory of Silence," provided a comprehensive account of widespread human rights violations, including massacres, forced disappearances, and acts of genocide against Indigenous Mayan communities.⁵⁹ The report was critical in acknowledging the conflict's specific racial dimensions and the targeting of Indigenous populations.

Legal accountability systems were also part Guatemala's transitional justice procedure. Notably, the 2013 prosecution of former dictator General Efraan Ros Montt for genocide and crimes against humanity was a significant step forward in holding offenders accountable for targeted brutality against Indigenous populations.⁶⁰ The trial gave Indigenous survivors and victims' families the opportunity to voice their testimonies and seek justice for the horrors done against them. Additionally, reparations and truth-seeking initiatives were implemented in Guatemala to address the harms caused by racial injustices. The National Compensation Program was established with the goal of providing reparations to victims, especially indigenous individuals and communities harmed by the conflict. Furthermore, truth-seeking programs like community consultations and truth commissions have enabled Indigenous communities to express their experiences, assert their rights, and define the conflict narrative from their point of view.⁶¹

⁵⁸ Roht-Arriaza, N., & Mariezcurrena, J. (Eds.). (2006). *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice*. Cambridge University Press.

⁵⁹ Comisión para el Esclarecimiento Histórico (CEH). (1999). *Guatemala: Memoria del silencio*. CEH.

⁶⁰ International Center for Transitional Justice (ICTJ). (2013). *Rios Montt Verdict: Historic Step for Justice in Guatemala*. Retrieved from <https://www.ictj.org/news/rios-montt-verdict-historic-step-justice-guatemala>

⁶¹ International Center for Transitional Justice (ICTJ). (2009). *Guatemala: Indigenous Peoples Consultations Report*. Retrieved from <https://www.ictj.org/publication/guatemala-indigenous-peoples-consultations-report>

From the examples cited above, one can note that applying transitional justice to racial injustices holds the potential to bring about positive and transformative changes. By confronting the past, promoting accountability, and addressing structural inequalities, transitional justice offers a path towards healing, reconciliation, and the eradication of racial injustices. It provides an opportunity for societies to confront their history, learn from past mistakes, and work towards a more inclusive and equitable future.

While these mechanisms above have made significant contributions to addressing human rights abuses and promoting accountability, they have often failed to adequately address the specific dimensions of racial injustice. One key criticism is the limited focus on individual criminal accountability, which has overshadowed the broader structural and systemic dimensions of racial injustice. Transitional justice mechanisms, such as criminal prosecutions or truth commissions, tend to prioritize the prosecution of individual perpetrators while neglecting the structural inequalities and systemic discrimination that underpin racial injustice.⁶² This narrow focus on individual accountability may overlook the need for broader societal transformation and the dismantling of discriminatory institutions and policies.

Furthermore, transitional justice methods have frequently struggled to adequately incorporate marginalized racial and ethnic minorities' viewpoints and experiences. The dominant narratives and transitional justice procedures may marginalize or exclude marginalized communities' voices and demands, reinforcing power

⁶² De Greiff, P. (2010). *The Handbook of Reparations*. Oxford University Press.

disparities and perpetuating racial injustices.⁶³ Inclusion of varied viewpoints might impair the legitimacy and effectiveness of transitional justice projects.

Furthermore, transitional justice's temporal limits can limit its potential to rectify historical racial injustices. Transitional justice processes sometimes focus on addressing human rights violations and atrocities committed during specific periods of conflict or repression, rather than engaging with the long-term consequences of historical racial discrimination and inequality.⁶⁴ This limited period may leave out key historical backgrounds and ongoing systematic racial injustices.

While transitional justice initiatives have made important contributions to addressing human rights violations, they have typically failed to adequately address racial inequality. Transitional justice can effectively address racial inequalities and contribute to transformative social change by critically evaluating these limits and implementing a more comprehensive and inclusive strategy.

4.0 Transitional Justice and Its Complicity in the Preservation of Racial Injustice

"Complicity in the preservation of racial injustice" refers to the involvement or contribution of individuals, institutions, or systems in perpetuating and maintaining racial inequalities, discrimination,

⁶³ These are the prevailing or widely accepted stories, perspectives, or interpretations that shape public understanding and discourse on a particular topic or issue.

⁶⁴ McEvoy, K., & McGregor, L. (2016). "Transitional Justice from Below: Grassroots Activism and the Struggle for Change." Hart Publishing. McEvoy and McGregor argue that transitional justice processes tend to overlook the intergenerational impact of historical racial discrimination and fail to address the ongoing structural inequalities faced by marginalized communities

and oppression.⁶⁵ It suggests that these actors, whether knowingly or unknowingly, play a role in upholding and sustaining racial injustices rather than actively challenging or dismantling them. As a discipline of study and practice, transitional justice has been critical in addressing past human rights violations, encouraging societal healing, and reconciliation. However, it is vital to evaluate how transitional justice systems may unintentionally contribute to the perpetuation and reification of racial injustice. This is done by examining the ways in which transitional justice, both in theory and practice, can inadvertently perpetuate racial injustices, hindering the achievement of genuine equality and social transformation. This is informed by the argument that transitional justice has been complicit in the preservation and reification of racial injustice in both practice and theory.⁶⁶ This complicity can be observed through various mechanisms and processes within transitional justice framework.

The literature on transitional justice and its treatment of racial injustice has increasingly recognized the interconnectedness between historical legacies, such as the transatlantic slave trade and colonialism, and contemporary manifestations of racial injustice. Scholars have highlighted the ways in which transitional justice approaches have often failed to adequately address racial injustice and its long-lasting effects.⁶⁷ One key aspect of this analysis is the recognition that transitional justice mechanisms and processes have primarily focused on addressing politically motivated violence and

⁶⁵ See DiAngelo, R. (2018). "White Fragility: Why It's So Hard for White People to Talk About Racism." Beacon Press. DiAngelo explores how white individuals' complicity in racial injustice often stems from their resistance to acknowledging and challenging their own racial biases and privileges

⁶⁶ See McEvoy, K., & McGregor, L. (2016). "Transitional Justice from Below: Grassroots Activism and the Struggle for Change." Hart Publishing.

⁶⁷ Kamari Maxine Clarke, "The Future in the Past: Contemporary Legacies of Racial and Colonial Violence," in *Transitional Justice and the Politics of Inscription: Memory, Space and Narrative in Northern Ireland, Colombia, and Beyond* (Palgrave Macmillan, 2018), 157-182.

human rights abuses, while neglecting the broader structural and systemic dimensions of racial injustice.⁶⁸ Transitional justice mechanisms, such as truth commissions and criminal prosecutions, tend to prioritize individual criminal accountability, often overlooking the systemic nature of racial discrimination and inequality. As a result, the root causes and structures of racial injustice are not effectively addressed, perpetuating patterns of marginalization and exclusion.⁶⁹

Furthermore, the literature has emphasized the need to incorporate race-conscious and intersectional perspectives in transitional justice efforts.⁷⁰ It is crucial to recognize that racial injustice intersects with other forms of oppression, such as gender, class, and ethnicity, and that these intersections shape the experiences of individuals and communities affected by racial injustice. By taking an intersectional approach, transitional justice can better capture the complexities of racial injustice and develop more inclusive and comprehensive strategies for redress.

4.1 The Racial Bias in Truth-Telling and Documentation

As a subject of study, transitional justice has primarily concentrated on dealing with human rights violations, political violence, and state repression during transitions from conflict or authoritarian rule to democracy and peace. Scholars, however, have pointed out the

⁶⁸ See de Greiff, P. (2010). "The Handbook of Reparations." Oxford University Press.

⁶⁹ See Hayner, P. B. (2011). "Unspeakable Truths: Facing the Challenge of Truth Commissions." Routledge. Hayner discusses how truth commissions can unintentionally exclude certain voices, particularly marginalized groups, due to factors such as limited resources, power imbalances, and insufficient outreach efforts

⁷⁰ Collins, Patricia Hill. "Intersectionality's definitional dilemmas." Annual Review of Sociology 41 (2015): 1-20.

limitations of transitional justice in properly resolving racial injustice. They contend that transitional justice has mainly ignored the distinctive experiences and concerns.⁷¹

Transitional justice mechanisms often prioritize liberal democratic frameworks, which may limit their ability to address systemic racial injustices.⁷² Mechanisms, such as truth commissions, often fail to fully address the racial dimensions of past atrocities, as they tend to focus on broader narratives of conflict and violence.⁷³ This can perpetuate the erasure of racialized experiences and reinforce the invisibility of racial injustices in official records and historical accounts.⁷⁴

4.2 Limited Accountability for Structural Racism

Transitional justice processes often prioritize individual criminal accountability, neglecting to address the structural roots of racial injustices. By focusing primarily on prosecuting individual perpetrators, systemic issues of institutional racism and socio-economic inequalities may remain unaddressed.⁷⁵ Critical race theorists argue that transitional justice approaches often fail to recognize the systemic and structural nature of racial injustice as they overlook the historical and ongoing legacies of racial oppression and

⁷¹ De Greiff, P., & Duthie, R. (Eds.). (2009). *Transitional justice and development: Making connections*. Social Science Research Council.

⁷² Jones, Briony. "Analyzing Resistance to Transitional Justice: What Can We Learn from Hybridity?" *Conflict and Society* 2 (2016): 74+. *Gale Academic OneFile* (accessed May 29, 2023). <https://link.gale.com/apps/doc/A546404825/AONE?u=anon~928d93b0&sid=googleScholar&xid=a2ccb6d1>.

⁷³ Balint, P., & Dancy, G. (Eds.). (2016). *The Oxford Handbook of Transitional Justice*. Oxford University Press.

⁷⁴ *Ibid*

⁷⁵ Kabeer, N., & Subramanian, A. (2014). *Institutions, Relations, and Outcomes: A Framework and Case Studies for Gender-aware Planning*. *World Development*, 64, 97-112.

privilege.⁷⁶ This omission can perpetuate the marginalization of racialized communities, reinforcing existing power imbalances within societies undergoing transitions.

CRT also highlights the significance of intersectionality in understanding and addressing racial injustice within transitional justice frameworks. Intersectionality recognizes that individuals experience multiple intersecting forms of oppression, including race, gender, class, and more. Applying an intersectional lens to transitional justice allows for a more nuanced understanding of how racial injustice intersects with other forms of oppression and shapes individuals' experiences.⁷⁷

4.3 Reparations and Redistribution

Transitional justice measures, including reparations programs, may not adequately address the structural inequalities and historical injustices that perpetuate racial discrimination. Without considering the need for redistribution of resources and power, reparations may fail to bring about meaningful change and perpetuate existing power imbalances.⁷⁸ An example of reparations for racial injustice can be seen in the case of the United States and its historical enslavement of African Americans. The concept of reparations for African Americans has gained significant attention in recent years, with discussions focusing on addressing the enduring legacy of slavery, segregation, and systemic racism. In this context, proposals for reparations including measures such as financial compensation, educational initiatives, community investment, and systemic reforms to combat

⁷⁶Ndulo, M. (2004). Transitional justice, gender, and cultural traditions. *Yale Human Rights and Development Journal*, 7(1), 51-89.

⁷⁷Collins, P. H. (2015). Intersectionality's definitional dilemmas. *Annual Review of Sociology*, 41, 1-20.

⁷⁸Nino, C. (2019). Transitional Justice and Economic Justice: A Comparative Study of Reparations Programs in Colombia and Peru. *International Journal of Transitional Justice*, 13(1), 38-55.

racial inequality have not been effective.⁷⁹ The aim of providing redress for the historical injustices endured by African Americans and to address the ongoing disparities and disadvantages faced by the community as a result of systemic racism seems defeated because while there have been proposals for reparations have been put forth, it does not appear that compensation has been made by the US government.⁸⁰ Issues such as the psychological trauma and social-well beings of the victims are not properly catered for in the transitional justice system.

4.4 Marginalization of Minority Groups

Transitional justice processes can exclude or marginalize the voices and experiences of racial minority groups, particularly when they lack representation in decision-making bodies and institutions.⁸¹ This can result in the perpetuation of racial inequalities and the failure to

⁷⁹ Maddison, S. and Shepherd, L. J. (2014). Peacebuilding and the postcolonial politics of transitional justice. *Peacebuilding*, 2(3), 253–269. Maddison and shepherd thus argue for an extension of the concept of transition, to enable proper accounting for colonial violence. In this way, they propose a post-colonial re-visioning of transitional justice that offers possibilities for deep social transformation at both the national and international levels.

⁸⁰ HRW. (2008). *Reparations for Historical Injustices in the United States: The Domestic Reparations Movement and the Unfinished Work of the Civil Rights Era*. Retrieved from <https://www.hrw.org/report/2008/07/28/reparations-historical-injustices-united-states/domestic-reparations-movement>

⁸¹ These institutions can include judicial bodies, truth commissions, reparations programs, memorialization initiatives, and other relevant mechanisms established to address the legacies of widespread human rights violations and systemic injustices

address the specific needs and concerns of marginalized communities.⁸²

Similarly, when transitional justice processes such as truth commissions do not take into account the historical, social, and cultural contexts of racial minority communities, they may fail to address their unique experiences and needs. The truth commission in Guatemala for example, faced criticism for its limited engagement with indigenous communities.⁸³ The commission's focus on high-profile cases and the dominant narrative of the armed conflict overlooked the historical and systemic marginalization of indigenous populations, who suffered disproportionately from state-sponsored violence and discrimination.

5.0 Advancing Racial Justice in Transitional Justice: Pathways and Imperatives

Within the field of transitional justice, addressing racial injustice requires a comprehensive and transformative approach that goes beyond mere acknowledgement of past atrocities. This is because renewed focus on the causes and consequences of global systemic racism has shown the contemporary human rights system's failure to address racist and colonial legacies, as well as institutions and policies that have perpetuated racial subordination.⁸⁴

Transitional justice processes implemented in conflict, post-conflict, and authoritarian situations have similarly consigned racial prejudice to a secondary concern rather than confronting it full on, contributing

⁸² Zehr, H., & Mika, H. (Eds.). (2013). *The Little Book of Restorative Justice for People in Prison: Rebuilding the Web of Relationships*. Skyhorse Publishing.

⁸³ Grandin, G. (2004). *The Last Colonial Massacre: Latin America in the Cold War*. University of Chicago Press.

⁸⁴ Global initiative for Justice, Truth and reconciliation <https://gijtr.org/wp-content/uploads/2021/12/Racism-Ethnicity-and-TJ-final.pdf>

to the recurrence of atrocities in numerous parts of the world.⁸⁵ These ambitious framings of transitional justice in the contexts of historical colonial and racial oppression opened it up to the critique that it served to legitimize continuities of inequality and structural violence.⁸⁶ Its focus on universal human rights norms has often centered on physical abuses, overlooking systemic violence and neglecting social, economic, and cultural rights that are equally important like the civil and political rights advocated.⁸⁷

Horne⁸⁸ also notes the complexities and challenges in achieving transitional justice goals while maintaining social trust by examining whether lustration⁸⁹ helps repair or undermine social trust in these societies. Her article highlights that while lustration policies may initially serve as mechanisms for accountability and addressing past injustices, their long-term impact on social trust and reconciliation is uncertain.

To solve some of these challenges, Davidovic draws out key characteristics of transformations of non-guarantees (GNRs) including the norm's various contents and contexts, stressing its exceptional future-oriented nature in international law and upcoming pillar in transformational justice.⁹⁰ In terms of structural

⁸⁵ van der Merwe, Hugo, and M. Brinton Lykes. "Racism and Transitional Justice." *International Journal of Transitional Justice*, vol. 14, no. 3, pp. 415–22, Silverchair, 2020, doi:10.1093/ijtj/ijab001.

⁸⁶ Ibid

⁸⁷ Ibid

⁸⁸ HORNE, CYNTHIA M. "Lustration, Transitional Justice, and Social Trust in Post-Communist Countries. Repairing or Wresting the Ties That Bind?" *Europe-Asia Studies* 66, no. 2 (2014): 225–54. <http://www.jstor.org/stable/24533967>.

⁸⁹ the process of purging individuals associated with the previous communist regime

⁹⁰ <https://academic.oup.com/ijtj/advance-article-pdf/doi/10.1093/ijtj/ijab011/38694709/ijab011.pdf>

formations of transitional justice processes, Laidisch argues that any meaningful changes to laws and policies or institutional reforms must be grounded in a recognition and understanding of the society's past atrocities and its connection to present-day injustices, grievances, and violence.⁹¹

However so, there is still a gap in terms of collection of quality of race-based data to combat racial injustices in the world in the best sustainable way . As of July 2021, Twenty of the 38 Organization for Economic Co-operation and Development (OECD) countries failed to collect little/no racial or ethnic identity data.⁹² This may hinder the effectiveness of transitional justice efforts. Without accurate and comprehensive data on racial disparities, discrimination, and systemic inequalities, it becomes challenging to identify patterns, assess the impact of policies, and develop targeted interventions to address racial injustices.⁹³ In light of this gap, sustainable data collection can be embraced in the following ways:

5.1 Promotion of Technology Proficiency Among the Youth

Technology can make it easier to collect, analyze, and use race-based data to discover inequities, track progress, and inform policymaking.⁹⁴ It has the potential to enable the creation of sophisticated databases and analytical tools that provide insights into racial disparities in areas such as education, employment, healthcare,

⁹¹ <https://www.ictj.org/publication/color-justice-transitional-justice-and-legacy-slavery-and-racism-united-states>

⁹² Amanda Shendruk, "Missing Data: Are You Even Trying to Stop Racism If You Don't Collect Data on Race?", Quartz, July 8, 2021, Available at: <https://qz.com/2029525/the-20-countries-that-dontcollect-racial-and-ethnics-census-data/>.

⁹³ Crenshaw, K. (2018). Twenty Years of Critical Race Theory: Looking Back to Move Forward. *Connecticut Law Review*, 50(5), 1587-1607.

⁹⁴ UNESCO. (2018). I'd Blush if I Could: Closing Gender Divides in Digital Skills Through Education. Retrieved from <https://unesdoc.unesco.org/ark:/48223/pf0000262957>

and criminal justice. For a long time, youth have often been characterized as "digital natives" to denote that they are proficient in using technology and have a high level of digital literacy. Similarly, youth have been recognized for bringing fresh perspectives and lived experiences that provided valuable insights into the realities of racial injustices.⁹⁵ However, according to a report by UNESCO, there are challenges related to the nature of technology that can hinder its potential to address racial injustices. These challenges include limited access to technology infrastructure, lack of digital literacy skills, and socioeconomic disparities, which in turn may hinder sustainable data collection.⁹⁶

During the UN Security Council's open debate on transitional justice in 2020, member states identified youth inclusion as a critical aspect in transitional justice systems' success and hence pledged support to them.⁹⁷ This can be done by implementation of resource allocation in less developed countries to youth by investing in broadband connectivity, computer labs, internet access, and mobile devices in schools, community centers, and marginalized areas to improve technology infrastructure hence easier data collection by the youth.⁹⁸ In more developed countries, privacy and data protection measures can be developed to regulate the collection of sensitive information concerning race.⁹⁹ These countries should also establish robust legal

⁹⁵ United Nations Department of Economic and Social Affairs. (2017). Youth and Transitional Justice: Processes and Practices.

⁹⁶ UNESCO. (2020). I'd Blush if I Could: Closing Gender Divides in Digital Skills Through Education. Retrieved from <https://unesdoc.unesco.org/ark:/48223/pf0000262957>

⁹⁷ <https://www.ictj.org/news/landmark-unscc-discussion-transitional-justice>

⁹⁸ UNESCO. (2017). Digital Skills for Youth: Policies, Practices, and Frameworks. Retrieved from <https://unesdoc.unesco.org/ark:/48223/pf0000260516>

⁹⁹ Hinton, A. L., & Sharlach, L. (2019). Data Collection for Transitional Justice: Practical Guidance. The International Center for Transitional Justice

frameworks and protocols to safeguard the privacy and confidentiality of individuals involved in the data collection process.¹⁰⁰ Involving the youth in data collection ensures the long-term viability of anti-racial injustice actions. By giving young people the opportunity to participate actively in transitional justice procedures; they become champions for data collecting and social change, contributing to a long-term commitment to resolving racial injustices.

6.0 Conclusion

This paper has shed light on the complicity of transitional justice in perpetuating racial injustice while also exploring its potential to address and redress such injustices. It has examined the ways in which race and racism have influenced the field of transitional justice, emphasizing the need for a critical and inclusive approach. It has also highlighted the importance of recognizing the historical legacies of the transatlantic slave trade and colonialism, as well as their contemporary manifestations, in understanding racial injustice. By analyzing existing literature, this paper considers the effectiveness of transitional justice in addressing racial injustice. The discussion has encompassed diverse experiences of race and racialization, and the responses of different countries to racial injustice through transitional justice mechanisms.

Furthermore, the paper has underscored the requirements for racial justice within the field of transitional justice. However, there is a notable gap in the collection of data on race, which poses a risk of complicity in perpetuating systemic discrimination. Efforts such as promotion of technology proficiency among the youth must be made

(ICTJ). Retrieved from <https://www.ictj.org/sites/default/files/ICTJ-DataCollectionPracticalGuidance-2019.pdf>

¹⁰⁰ strong privacy frameworks demonstrate a commitment to ethical and responsible data practices, promoting transparency and accountability in the handling of sensitive racial data.

to enhance the collection and utilization of race-based data to inform transitional justice processes effectively. Privacy and data protection measures can also be formulated to aid collecting sensitive information concerning race.

Overall, this examination of transitional justice and racial injustice calls for a comprehensive and critical reevaluation of the field. By embracing a more inclusive and transformative approach, transitional justice can become a powerful tool in dismantling racial injustices and contributing to the creation of more equitable and just societies. In order to achieve meaningful progress, it is crucial for policymakers, practitioners, and scholars to continue engaging in interdisciplinary dialogue, centering the voices and experiences of marginalized communities, and striving for transformative change within the field of transitional justice.

References

Top of Form

Alexander, Michelle. 2010. "The New Jim Crow: Mass incarceration in the age of colorblindness." The New Press.

Alsan, M., Garrick, O., & Graziani, G. (2019). "Does Diversity Matter for Health? Experimental Evidence from Oakland." *American Economic Review*, 109(12), 4071-4111.

Anderson, Carol. 2016. "White Rage: The Unspoken Truth of Our Racial Divide." Bloomsbury Publishing.

Balint, Peter, and Dancy, G. (Eds.). (2016). "The Oxford Handbook of Transitional Justice." Oxford University Press.

Bowling, Benjamin. "Racial Injustice and Police Shootings in the United States." In "The Handbook of Criminal Investigation," edited by Tim Newburn, Tom Williamson, and Alan Wright, 459-473. Wiley, 2019.

Braveman, P. A., Egerter, S. A., & Williams, D. R. (2011). "The Social Determinants of Health: Coming of Age." *Annual Review of Public Health*, 32, 381-398.

Coates, T. N. (2014). "The Case for Reparations." *The Atlantic*, 313(5), 54-71.

Collins, Patricia Hill. (2015). "Intersectionality's definitional dilemmas." *Annual Review of Sociology*, 41, 1-20.

Comisión para el Esclarecimiento Histórico (CEH). "Guatemala: Memoria del silencio." CEH, 1999.

Coulthard, Glen Sean. 2014. "Red Skin, White Masks: Rejecting the Colonial Politics of Recognition." University of Minnesota Press.

Crenshaw, Kimberlé Williams. (1989). "Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory, and antiracist politics." *University of Chicago Legal Forum*, 1989(1), 139-167.

De Greiff, Pablo, and Duthie, Roger. (Eds.). (2009). "Transitional justice and development: Making connections." Social Science Research Council.

*Transitional Justice and Racial Injustice:
Complicity, Challenges, and Ways Forward:
Dr. Kenneth Wyne Mutuma*

(2023) Journal of cmsd Volume 11(1)

DiAngelo, Robin. 2018. "White Fragility: Why It's So Hard for White People to Talk About Racism." Beacon Press.

Eltis, D., & Richardson, D. (Eds.). (2017). "Atlas of the Transatlantic Slave Trade." Yale University Press.

Essed, Philomena. 1991. "Understanding everyday racism: An interdisciplinary theory." Sage Publications.

Essed, Philomena. 2016. "Everyday Racism: Reports from Women of Two Cultures." Rowman & Littlefield.

Grandin, Greg. 2004. "The Last Colonial Massacre: Latin America in the Cold War." University of Chicago Press.

Gready, P., & Robins, S. (Eds.). (2020). "Racial Justice and Resistance in the Global South."

Harris, Cheryl I. 1993. "Whiteness as Property." 106 Harvard Law Review 1709.

Hinton, A. L., & Sharlach, L. (2019). "Data Collection for Transitional Justice: Practical Guidance." The International Center for Transitional Justice (ICTJ).

Horne, Cynthia M. (2014). "Lustration, Transitional Justice, and Social Trust in Post-Communist Countries. Repairing or Wresting the Ties That Bind?" *Europe-Asia Studies*, 66(2), 225–54. <http://www.jstor.org/stable/24533967>.

Ingelaere, Bert. "Rurality and (In) Justice in Post-Genocide Rwanda: The Gacaca Courts Programme in Bugesera District." *African Affairs* 111, no. 442 (2012): 591-612.

International Center for Transitional Justice (ICTJ). "Guatemala: Indigenous Peoples Consultations Report." Retrieved from <https://www.ictj.org/publication/guatemala-indigenous-peoples-consultations-report>, 2009.

International Center for Transitional Justice (ICTJ). "Rios Montt Verdict: Historic Step for Justice in Guatemala." Retrieved from <https://www.ictj.org/news/rios-montt-verdict-historic-step-justice-guatemala>, 2013.

Kabeer, Naila, and Subramanian, A. (2014). "Institutions, Relations, and Outcomes: A Framework and Case Studies for Gender-aware Planning." *World Development*, 64, 97-112.

Kendi, Ibram X. 2019. "How to Be an Antiracist." *One World*.

Mallinder, L. (2020). "Rethinking transitional justice: Towards a broadened discourse." *Journal of Human Rights Practice*, 12(2), 203-221.

Mandela, Nelson. 1994. "Long Walk to Freedom: The Autobiography of Nelson Mandela." Little, Brown and Company.

Morello-Frosch, R., Shenassa, E. D., & Pastor, M. (2006). "Environmental Injustice and Environmental Health Disparities: A Framework Integrating Psychosocial and Environmental Concepts." *Environmental Health Perspectives*, 114(6), 775-782.

Nino, Carlos. (2019). "Transitional Justice and Economic Justice: A Comparative Study of Reparations Programs in Colombia and Peru." *International Journal of Transitional Justice*, 13(1), 38-55.

Omi, Michael, and Howard Winant. 2014. "Racial formation in the United States." Routledge.

Pager, D., Western, B., & Bonikowski, B. (2009). "Discrimination in a Low-Wage Labor Market: A Field Experiment." *American Sociological Review*, 74(5), 777-799.

Pager, Devah. "The Mark of a Criminal Record." In "American Journal of Sociology," Vol. 108, No. 5 (2007): 937-975.

Patterson, Orlando. 1982. "Slavery and Social Death: A Comparative Study." Harvard University Press.

Please note that the format of the citations may differ slightly from the original source due to the limitations of the text-based medium.

Roht-Arriaza, Naomi, and Mariezcurrena, Javier. (Eds.). (2006). "Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice." Cambridge University Press.

Routledge. (2020). "Rethinking transitional justice: Towards a broadened discourse." *Journal of Human Rights Practice*, 12(2), 203-221.

Schlueter, E., & Davidov, E. (2016). "Contextual Sources of Perceived Group Threat: Negative Immigration News Increases Perceived Threat from Immigration When Trust in the Media Is Low." *Journal of Ethnic and Migration Studies*, 42(6), 899-916.

Smith, John A. "Racial Profiling and Policing." In "The Routledge Handbook of Criminal Justice Ethics," edited by Wesley K. Ong, B. K. H. Low, and Alan Chang, 311-324. Routledge, 2020.

South African Truth and Reconciliation Commission. "Report of the Truth and Reconciliation Commission." Retrieved from <https://www.justice.gov.za/trc/report/>, 1998.

Tutu, Desmond. "No Future without Forgiveness." Doubleday, 1999.

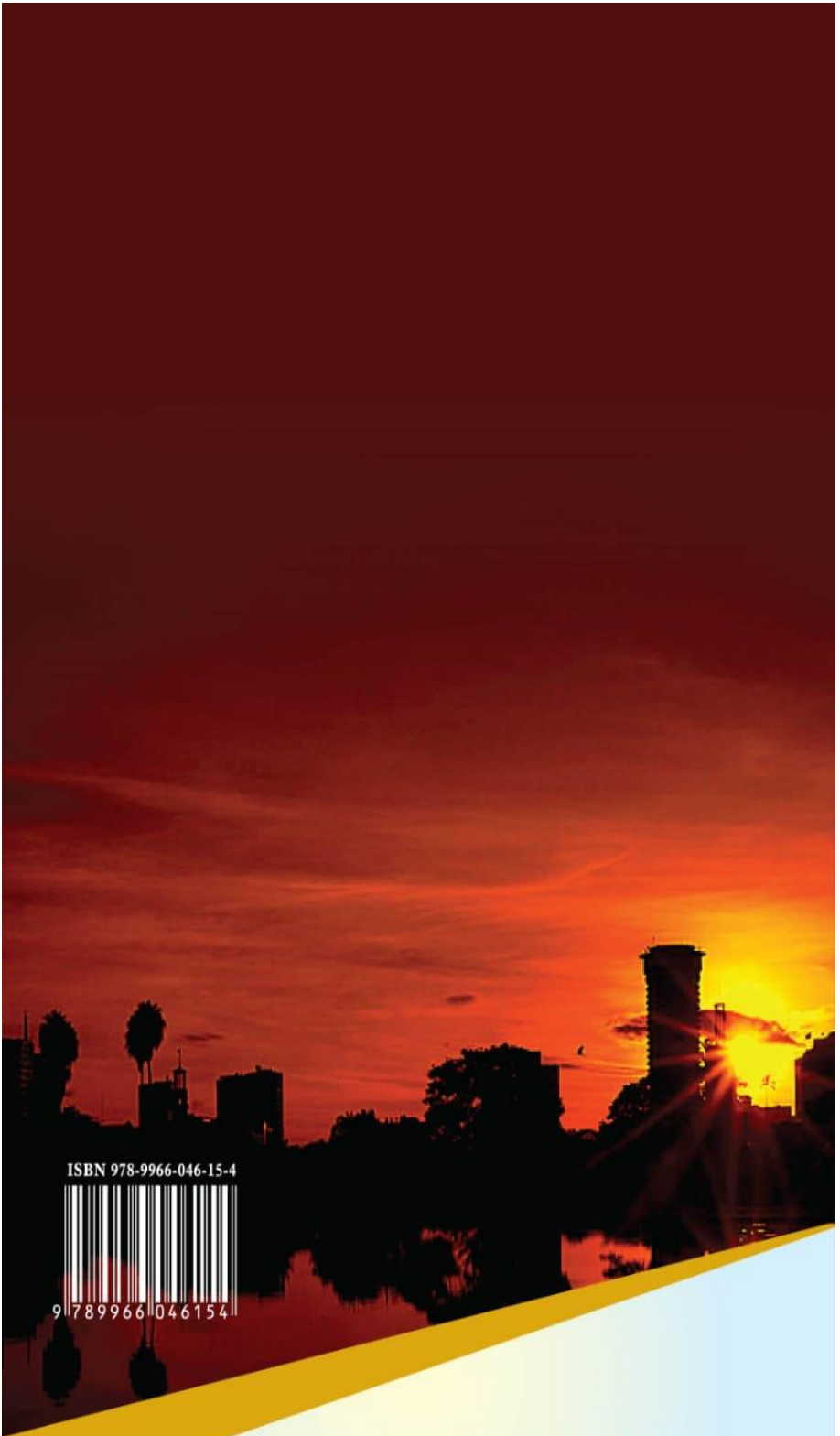
UNESCO. (2017). *Digital Skills for Youth: Policies, Practices, and Frameworks*.

UNESCO. (2020). *I'd Blush if I Could: Closing Gender Divides in Digital Skills Through Education*.

United Nations Department of Economic and Social Affairs. (2017). *Youth and Transitional Justice: Processes and Practices*.

United Nations Office of the High Commissioner for Human Rights. "Rule-of-Law Tools for Post-Conflict States: Truth Commissions." United Nations, 2010.

Uvin, Peter. (2009). "Life after Genocide: Transitional Justice, Post-Conflict Reconstruction, and Reconciliation in Rwanda and Beyond." Columbia University Press.



ISBN 978-9966-046-15-4



9 789966 046154