

*Within and beyond transitional justice shadows: rallying social movements, re-sculpting agendas, re-centring historical injustices*

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Kapogianni, V. ORCID: <https://orcid.org/0000-0002-6512-9054>  
and Thorne, B. (2024) Within and beyond transitional justice shadows: rallying social movements, re-sculpting agendas, re-centring historical injustices. *Social and Legal Studies*. ISSN 0964-6639 doi: <https://doi.org/10.1177/09646639241293021>  
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To link to this article DOI: <http://dx.doi.org/10.1177/09646639241293021>

Publisher: Sage

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# Within and Beyond Transitional Justice Shadows: Rallying Social Movements, Re-sculpting Agendas, Re-centring Historical Injustices

Social &amp; Legal Studies

1–25

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DOI: 10.1177/09646639241293021

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## Abstract

How do processes of contestation and resistance, emerging from the constellation of actors, impact the transitional justice landscape? This article critically explores the dynamic interplay between transitional justice and social movements within the context of continuing historical colonial injustices. Through this critical lens, it seeks to draw attention to both the potential of social movements to poke and push the conventional boundaries of transitional justice, as these movements are not mere bystanders but rather active agents who constantly ‘court’ with transitional justice via purposeful approaches aiming to reshape its contours and challenge its traditional, rigid edges. This article, therefore, argues that social movements play a pivotal role in re-sculpting the transitional justice landscape by amplifying the voices of the marginalised communities and challenging extant hegemonic narratives. By doing so, courting transitional justice through the social movements’ evolving and disruptive vehicles allows for a re-imagining of a more inclusive and nuanced understanding of justice that resonates with the changing needs and values of those re-voiced protagonists and deeply affected societies.

## Keywords

social movements, historical injustices, transitional justice, theories of change, Namibia, Kenya

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## Introduction

This article critically explores the relationship between transitional justice and social movements within the context of continuing historical colonial injustices. Through this critical exploration, it seeks to draw attention to both the potential of social movements to poke and push the conventional boundaries of transitional justice, as well as understanding the tensions and possible limitations of this poking and pushing. Critiques of the conventional four-pillar approach to transitional justice frequently revolve around the need to broaden its conceptualisation and practices (Sharp, 2019). Whether articulated explicitly or subtly, these critiques seek to transcend the predetermined set of mechanisms involving prosecutions, reparations, reconciliation and institutional reforms. The overarching objective is to promote a more inclusive and nuanced understanding of justice that resonates with the changing needs and values of deeply divided societies. This push for a more agile and pliable perspective on justice is closely linked to the burgeoning influence of social movements and their evolving agendas. As societal voices become more pronounced through these movements, there is a growing recognition that justice cannot be confined to a rigid framework but should adapt to the dynamic and multifaceted expressions of societal needs and values. The emphasis, therefore, is on fostering an approach to justice that is responsive, adaptive and aligned with the evolving social landscape.

Social movements can, and sometimes do, play a crucial role in shaping contemporary discussions on transitional justice, despite often occupying a marginal position in related scholarship. Victims' movements, such as the Madres de Plaza de Mayo in Argentina, the Khulumani Support Group in South Africa (Madlingozi, 2010), the Argentinian *escrache* against impunity movement or the Caribbean Movement for Peace and Integration (Bosco, 2006; Burton and Ellsworth, 2023), are some of the examples that steer solidarity and mobilise constituencies through societal transformation and conscientisation. Similarly, the Black Lives Matter movement has had the merit of bringing back to the foreground the structural injustice cause in Europe and North American whilst also emphasising the connections between these structural injustices and colonialism, such as in Belgium and calls for the removal of colonial era monuments (Leyh, 2020). The increasing prominence of social movements is acting as a dynamic and influential catalyst, bringing calls for justice into the forefront of mainstream discourse.

Social movements, serving as informal components of the transitional justice terrain, can forge alternative spaces to confront historical injustices. Initiatives like establishing 'zones of civility' and fostering solidarity amongst victims challenge traditional narratives of accountability (Lundy and McGovern, 2006). Rooted in diverse perspectives, including religious or non-human rights frameworks, these movements pursue alternative transition goals advocating for reparations, reconciliation, forgiveness or even revenge (Boeseneker and Vinjamuri, 2011). Collective actions against presumed perpetrators not only act as coping strategies but also create supportive networks, capable of transforming the victimhood experiences (Peisker and Tilbury, 2003). Therefore, this article argues that the informality of social movement's critical agendas has the potential to disrupt and reshape conventional transitional justice thinking and approaches to colonial historical injustices, through their deliberate confrontational and agitating dynamics.

Importantly, the inclusivity of actors can also contribute to a sense of active participation, voice and connectivity amongst victims and wider society, and relocates debates on injustices to spaces occupied by 'protagonists'.<sup>1</sup>

This article draws upon the illustrative case studies of Namibia and Kenya to strengthen the arguments advanced. Both countries experienced prolonged and violent periods of colonial rule, albeit with distinct characteristics and nuances specific to each context. These nations continue to contend with the enduring legacies of their colonial histories. In their pursuit of redress for historical injustices, both Namibia and Kenya have mobilised social movements, employing judicial and non-judicial mechanisms, whilst engaging with actors at local, regional and international levels. The article uses these examples as a critical framework to explore the potential efficacy, as well as the limitations, of social movements within the broader discourse of transitional justice. The article is structured into three parts. Part I provides a summary of theorisations of social movements, particularly Global South theories, which this article uses as a frame of reference for the arguments it advances. Specifically, southern theories have been directly shaped by and have contributed to struggles against colonialism and post-independence activism and thus provide a useful frame for focusing on connection between agendas, transition and local participation. Part II investigates the nuanced constellation of agendas, actors and groups across transitional justice and social movements. Particularly, it explores their impact and questions the potential for social movements to radically disturb the rigid edges of the transitional justice landscape. Part III zooms into the contexts of Namibia and Kenya dissecting whether the localisation of agendas and the constellation of actor paradigm has the potential to poke and push the transitional justice boundaries.

## **Part I: Social Movements, Theorisations and Transitional Justice**

### *Social Movement Theories and Colonial Injustices*

Social movements' may commonly be understood as practice-orientated processes of activism and action which are detached from, or have little concern, with theoretical frameworks. However, theorisations can provide understanding and coordinates for how shared agendas and action manifest in attempts to change lived realities, particularly in the context of violent colonial injustices (Byrne and Imma, 2019). There is a vast body of Global North (Europe, North America) social movement theories which often orientate around the civil rights movements in the USA as an origin or catalyst for conceptualising and understanding the development of social movements (Tilly, 2015). Two broad summaries of Global North theorisations are firstly plural interactions based upon a network of groups and/or organisations which have a shared sense of collective identity premised upon a political and cultural struggle (Diani, 1992). Secondly, an agenda founded upon solidarity and common purpose in response to shared challenges, which are in 'sustained interaction with elites, opponents, and authorities' (Tarrow, 1998). However, dominant theories of social movements derived from thinking and understanding within the Global North as a useful and appropriate apparatus for framing movements in the Global South, such as agendas for addressing colonial injustices, have been challenged.

In consideration of the dynamics of Global South social movements and how they have been directly shaped by the histories of colonialism, struggles for independence

and formations of states in the post-colonial era. Nilsen et al. (2017) have argued that there are 'other histories of thinking about what might be called social movements, both academic and activist, which are typically excluded in western scholars' accounts of the development of "social movement studies"' (Nilsen et al., 2017: 3). Focusing on Southern theorisations of social movements cast light upon how dominant concepts (Europe, North America) act to marginalised and/or remove local knowledge systems, paradigms and voices, including their attempts to disrupt and challenge unresolved colonial harms (Cox, 2016). Engaging with these excluded ways of theorising social movements is a crucial frame of reference for this article's attempt to explore the courting's of social movements with transitional justice, and the need for local voices and active participation within processes of transition and agendas for collective action in response to historical injustice of colonialism.

Firstly, it is important to reject any notion of Global South concepts of social movements as a homogenous whole or as singular collective response to colonial social wrongs. Instead, to be understood as more akin to individual fragments of lived realities, which cannot accurately be assembled into a 'Global South' theory for illuminating social change. As Nilsen et al. (2017) argue, 'Latin America, Asia and Africa have very different histories of movement thought and thought about movements, with massive internal differentiation' (ibid: 5). Within the Global South context, there is not commonly direct reference to 'social movement theory', rather knowledge and concepts that have emerged out of anti-colonial movements, rebellions and revolutions, such as the Mau Mau movement in Kenya, which is discussed in the latter part of this article (Wa-Githumo, 1991). More contemporary southern conceptual thought has focused on two connected dynamics of radical critique of dominant epistemic knowledge (colonial, modern and capitalist), and practices and knowledge systems emanating within the Global South (Nilsen et al., 2017: 11).

There also exist an oversimplified understanding that (European, North American) social theories, such as Marxism and Feminism, have been adopted wholesale and uncritically by theorists and activists in the Global South. However, whilst such theories have travelled 'south', they have undergone numerous manifestations via encounters with local knowledge and thought. There is often little resemblance of Southern Marxism and Feminism within 'dominant forms of these approaches in the Global North, even when they seek academic legitimacy by citing Northern authorities' (ibid: 7). For example, whilst northern epistemologies continue to dominant feminist theorisations, however beyond this skewed dominance which at best downplays and at worst excludes contributions of alternative feminist articulations, there is in fact 'a long and august history of feminist thought and activism from the Global South' (Byrne and Imma, 2019). The development of feminist methods has had a significant influence from the southern scholarship which have been directly located within embodied knowledge and autoethnography such as the decolonising work of late Hawaiian scholar-poet Haunani-Kay Trask (Trask, 1999). Also, the embodied and 'Affect' scholarship of southern feminists such as Haitian artist-scholar Gina Athena Ulysse has driven forward thinking on the relationship between performance and the public intellectual, such as in the museum space, as a mode to disrupt and reimagine narratives of western anti-Black representations (Ulysse, 2019). Directly related, there are theories from the Global South which have come about because of the impact and effects of European empire and

colonisation, and which not only articulate localised systems of knowledge but are also able to contribute towards theorising collective action and social change in Europe and North America: A South to North influencing of social movement theory (Comaroff and Comaroff, 2012).

Building upon the above frame of Global South theories, and in order to fully explore social movement's potential to influence periods of transition, there first needs to be a summary of what transitional justice is and its existing encounters with these purposeful movements and their agendas.

### *Transitional Justice and its Cautious Engagement With Social Movements Purposeful Agendas*

A common depiction of transitional justice processes is based on a teleological rationality in which a state and society progress towards a purported known endpoint (Park, 2020) where conflict, repression or massive human rights violations can come to a *telos*. Sustained criticisms of transitional justice's strong and persistent legalistic orientation have seen a shift away from international judicial justice as the panacea for pursuing accountability and justice and instead emphasising the importance of 'locality' (Benyera, 2019). This emphasis underscores the value of local ownership and knowledge as instrumental factors in constructing more impactful and effective justice interventions. Local justice mechanisms are lauded for their proximity to victims, as they transpire within the immediate communities affected by mass atrocities, in contrast to urban centres and distant capitals (Arriaza and Roht-Arriaza, 2008). Thus, whilst the transitional justice terrain has expanded from its strong legalistic 'origins' to include ideas of local ownership and knowledge systems, there is no single configuration or standard processing pattern (Novic, 2021) within the transitional justice repertoire. As Van de Merwe and Lykes have stated, in its most ambitious and idealistic articulation, transitional justice 'lends itself to magical thinking about implausible shortcuts to achieving both' a future without orchestrated violence and to repair individuals, communities and institutions. Simultaneously, it facilitates 'imaginative politicians [and elite stakeholders] to manipulate its discourse to serve narrow interests' (Van der Merwe and Brinton Lykes, 2018: 381).

More recently, transitional justice itself has continued to mutate via focusing on historical injustices and violence legacies of colonialism. However, this continuing expansion of transitional justice into the colonial and its continuing violent legacies has raised concern around the projects difficulty, and possible limits, of navigating temporalities. A foundational, and possibly perpetual, challenge for the transitional justice project is understanding what transition means, both in a philosophical and practical sense. As Mueller-Hirth and Oyola (2018) argue, transitional justice responses are entangled with multiple temporalities and by relation often struggle to fully understand how to navigate the temporal complexities which emerge in a given society, such as what violence is being responded to, what periods of violence and which actors (Mueller-Hirth and Oyola, 2018: 18). These challenges for transitional justice, particularly local remedy, are evident when colonial violence shifts but continues into post-colonial politics and policy. This indicates a disjunction to the common notion of linear temporal change from colonial

violence to post-colonial society, and how transitional justice processes need to understand and engage with the fact that this temporal linearity masks the continuation of oppressive politics and grave social inequalities (Bentley, 2021). To try and draw a clear distinction between the colonial past and post-colonial present, and future, is too simplistic and misses important nuances of transitions and calls for justice in former colonised states, which is further discussed below in the context of post-colonial Kenya and Namibia.

Whilst transitional justice has continued to metamorphosis and to navigate its own knots and tensions, criticism has been made of its continuing resistance to engage with structural social inequities and civil society. As Gready and Robins (2017) have argued, transitional justice suffers from a lack of a robust theorisation of the role civil society has in transitional processes, and points towards lessons that can be learnt from social movements. According to Gready and Robins, two particular attributes of social movements which are compelling to consider in transitional justice processes are the focus on confrontation and to generate alternative social spaces and critical perspectives (ibid: 963). Related, Evans (2016) has argued, in the South African post-apartheid context, that continuing structural violence contributes significantly to producing and reproducing human rights violations, and therefore requires a different way of thinking and set of tools which go beyond the narrow legal or quasi-legal transitional justice processes in order to address structural violations of human rights. According to Evans, the relationship between trade unions, social movements and NGO's has the potential to effectively reshape current transitional justice approaches to structural violence. In particular, it's the numerous actors involved within this relationship and the way that they 'engage in a variety of action and interact with each other in various formal and informal networks' (Evans, 2016: 14). In summary, the existing literature has shown the potential of social movements to contribute to transitional justice processes (Gready and Robins; Evans). However, there has been limited sustained consideration of how social movement's actors and agendas focused on historical injustices of colonialism could contribute to pushing and poking boundaries of transitional justice.

## **Part II – Re-sculpting Transitional Justice: Theories of Change, Contestation and Resistance**

In seeking to re-sculpt the transitional justice boundaries, participation approaches can provide avenues for the voices of victims and (in)directly involved actors to be heard, albeit not without significant challenges. These 'participatory endeavours' need to extend beyond mere consultation and information sharing to give to the 'protagonists' and affected community members a genuine opportunity to be *inter pares* partners and decision-makers. Social movements, as argued in this paper, generate this inclusive communication space by integrating – what in evaluation theory and practice is known – as theories of change into their agendas. Yet, the incorporation of these theories poses its own set of obstacles, particularly as they are often inadequately articulated by those involved in the implementation process. Considering, for instance, international aid projects, it frequently falls upon the evaluator to delineate or reconstruct the theory of change



– often *ex post* – before commencing the evaluation process. A complicating factor, here, is that transitional justice has expanded to encompass a broad range of social justice goals that are usually associated with international development (Mani, 2008). This expansion has significantly multiplied the menu of theories that need to be tested. Given this state of affairs, it becomes critical to ascertain which theory is under scrutiny and who determined its relevance for application in the first place. Consequently, transitional justice projects and mechanisms set in motion should be underpinned by theory based, as such evaluations have the potential to uncover the difficulties or deficiencies in the original theory underpinning the programme's or mechanisms' logic (Weiss, 1997).

A theory of change can be construed as delineating the 'underlying assumptions concerning the connections between desired outcomes and the manner in which proposed interventions are envisioned to facilitate their realisation' (Aragón and Giles Macedo, 2010). As Aragón and Giles Macedo's definition propounds, theories of change offer 'a way to describe the set of assumptions that elucidate both the mini steps that lead to long-term goal and the connections between manifold activities and the outcomes of an intervention' (Anderson, 2004: 2). Hence, formulating a theory of change can be perceived as generating an output that portrays the causal linkages from activities to outcomes, elucidating assumptions, justifications and pathways aimed at 'unpacking the black box of causality' (Valters, 2015: 5).

Transitional justice rather than constituting a special form of justice embodies an adaptation to the often-distinctive circumstances of societies undergoing transformation, transitioning away from a time where past harms may have been a normal state of affairs.<sup>2</sup> Its inherent ambiguity stems from the absence of what development practitioners term the 'theory of change' or 'transformation', complicating effort to determine its purpose and beneficiaries (Arthur, 2009: 359). Cause and consequence of the transitional justice conundrum have been the expansion of the concept towards a diverse spectrum of objectives and claims, spanning from formal prosecutions to broader developmental goals, in the absence of adequate critical reflection—rendering transitional justice an under-conceptualised idea burdened with excessive expectations (Macdonald, 2013).

Transitional justice does not easily lend itself to assessment. According to Duggan's description, the current demand for linear cause–effect linkages is problematic and 'attribution obsession' has led to an unhelpful fixation on 'impact data often at the expense of process' (Duggan, 2010: 323). Whilst challenges in comprehending impact are inherent in all policy interventions, transitional justice seems to grapple with these measurement problems more acutely (Macdonald, 2013). Even when the scorned linear 'cause–effect' approach is set aside and replaced by non-linear, context-sensitive and systems methodologies, the challenge of understanding and attributing effects and experiences persists. This problem is compounded by the fact that transitional justice policy lacks a clear 'theory of change' or what might be termed the 'basket approach' that scholars, campaigners and practitioners commonly adopt (Van der Merwe et al., 2009).

In the transitional justice field, explicit theories of change are rarely employed by non-governmental organisations (NGOs), governments, inter-governmental organisations or donors. In cases where implicit theories of change do exist, they are often quasi-articulated, lacking substantiation by evidence, and frequently mutually contradictory (Millar et al., 2013). Nevertheless, theories of change propelled by social

movements, including victims, or affected populations, can create evaluation approaches that are actor oriented and holistic, diverging from the programme-oriented approach of mechanistic, log-frame-led evaluation (Gready and Robins, 2020).

The fundamental tenets guiding this approach assert that conceptions of justice and human rights derive from the intricacies of daily existence and the political contests therein, not necessarily aligning with national or international legal frameworks (Nyamu-Musembi, 2002). Moreover, the inaugural objectives are delineated by invested actors who themselves formulate theories of change, as part of their agendas, thereby serving as the foundation for subsequent evaluations. These actors may bring unique insights that the transitional justice repertoire and its professionals may lack. This approach markedly deviates from the conventional planning of transitional justice, challenging a purposive approach anchored in fixed goals and targets. Instead, it advocates for a *purposeful* approach based on flexible measures of success, adaptable to changing situations and contributing to a global effect. This perspective regards evaluation as a means of understanding (Reynolds, 2015), deeply rooted in the values of social movements and the transformative change they aspire to achieve. It also crucially aligns with responsive evaluation, implying a renegotiation of the relationships between the production of evaluative knowledge and the constituencies with which it engages (Stake, 2003). For change is inherently non-linear, accountability and attribution cannot strictly adhere to a positivistic cause–effect chain. Instead, the subjective evaluation of various factors contributing to a specific change must be gauged by a constellation of groups, whereby the pivotal role of social movements has been incremental.

Examining social movements provides compelling lessons on how constellations of various actors respond to oppression, historical injustices and the denial of civil rights. These movements stand out from other collective behaviours due to their organised nature, involving meticulous planning and strategic engagement of a number of actors (Locher and Locher, 2002). Operating across multiple scales, including local organisations, national institutes and policymaking bodies, social movements typically emerge on the premise that members must actively engage in effecting social change (Sovacool, 2022) and formulating agendas that right the wrongs of the past. Social movements constitute a form of ‘contentious politics’, wherein participants assume an outsider role to challenge established power structures (Johnston, 2014). Traditionally, these movements aim to raise awareness of specific issues for the collective benefit of society, despite involving only a subset of the population. Their primary objective is to enhance the public good, providing nuanced insights into justice processes, resistance against perceived oppression, mobilisation of concerned constituencies and the identification of alternative ‘spaces’ or ‘zones of civility’ where novel forms of mobilisation or organisation can be piloted (Gready and Robins, 2017).

Nevertheless, there is a greater prospect of favourable outcomes when civil societies are active and governments meaningfully engaged – though this scenario is not always realised. The Namibia case serves as an illustration of governmental reluctance and of a double-edged sword system configured to serve majority interests under the guise of sovereignty whilst limiting community participation to political party representation.<sup>3</sup> In particular, given that the majority of civil society organisations (CSOs) are advocating for accountability from the government, the likelihood of receiving government support

for their activities is minimal. Furthermore, within the context of the participatory bottom-up paradigm, the strict secrecy maintained during the inter-state negotiations between the German and Namibian governments, spanning the period from 2015 to 2021 and resulting in the Joint Declaration in May 2021, not only precluded direct access to information for civil society but also restricted active participation by the affected communities (Theurer, 2023).

How do processes of contestation and resistance, emerging from the constellation of actors, impact the transitional justice landscape? Contestation within the transitional justice field is typically depicted in a dualistic fashion. Firstly, as ‘spoiler behaviour’, wherein political actors, apprehensive of potential power or personal security losses resulting from transitional justice processes, attempt to obstruct or corrupt such processes. Analogous cases, where domestic political actors simultaneously embrace and challenge the transitional justice norm, seeking to adapt it to their interests, have been documented in East Timor (Ottendörfer, 2013) and in Uganda’s interactions with the International Criminal Court (ICC) (Nouwen and Werner, 2010). Secondly, as an ‘act of resistance’, where local communities and victims, feeling alienated from externally imposed transitional justice policies, often partake in acts of resistance or avoidance of these processes, seeking to establish alternative justice approaches. O’Reilly (2016) described how victims in Bosnia sought to redirect internationally imposed transitional justice policies and advocate for alternative forms of justice that could more effectively provide redress and social recognition of their suffering. Such local contestation is generally portrayed as resistance to hegemonic practices and values (McEvoy and Lorna McGregor, 2008). As such, this entails a more positively oriented normative basis compared to contestation framed as spoiler behaviour. In this regard, resistance can lead to the adoption of transitional justice processes that are more attuned to local contexts and responsive to the specific justice needs of the community. Unlike the defensive nature of spoiler behaviour, resistance emerges as an expression of alternative visions of justice and peace (Jones et al., 2013: 10).

In both scenarios, the dynamics of contestation are framed as responses by domestic actors to the externally imposed nature of transitional justice. Yet, adopting a top-down/bottom-up framework to comprehend contestation, where domestic actors are seen in opposition to international actors with only a responsive agency, poses a risk of misdiagnosing the origins of contestation. This approach overlooks the crucial question of how different actors conceptualise ‘justice’. The endorsement or rejection of transitional justice processes is not solely determined by locality (whether these processes are internationally driven or locally owned) but, significantly, by the purposes that actors attribute to transitional justice. The dynamics of contestation within transitional justice agendas are evident in the Democratic Republic of Congo (DRC), where domestic elites, local civil society and international actors have played diverse roles as both promoters and resisters of transitional justice (Arnould, 2016).

Nevertheless, social movements’ incrementalism has propelled the inclusion of diverse agendas, ranging from everyday issues such as land rights, indigenous exclusion and inequality to more profound matters related to reparatory justice, compensation and restoration. Their agendas increasingly mirror those communities that were plundered by the historical crimes of slavery, segregation and colonialism and that continue to be

victimised by the legacies of slavery and apartheid. These agendas have the potential to gradually shape transitional justice by contesting institutional mechanisms steered by elites, advocating for local approaches and broader consultation. They also have the potential to catalyse broader human rights movements and a whole-of-society partnerships creating a space for constructive engagement between the State and its citizens.

At an organisational level, these partnerships can challenge the hierarchical and institutional approaches of transitional justice mechanisms through radical democratic practice, or participatory processes that go beyond mere representation (Durstun, 2008). Intertwined with social movements, they leverage a spectrum of actions, including mobilisation, the implementation of collective actions to both construct and modify collective identity and the use of ‘unruly’ strategies that offer alternatives to traditional transitional justice mechanisms (Gready and Robins, 2017). Pivotal to their potential are two main repertoires: confrontation and the ability to provide critical perspectives, shaping alternative social spaces. The inclination toward confrontational approaches naturally stems from their roots in contentious politics, involving repertoires such as protest, unlawful actions and potentially violence, often considered beyond the reach of NGOs (Neocosmos, 2006). For instance, during Kenya’s Truth, Justice, and Reconciliation Commission process, human rights NGOs endeavoured to boycott the commission, whereas victims’ groups took active measures to impede statement takers from operating in the communities they represented (Robins, 2011). Hence, social movements can spearhead the evolution of confrontational strategies during transition, concurrently fostering radicalisation amongst diverse constituencies.

An inherent risk, however, associated with the organisational structures of social movements is that they might not attenuate conflict-era identities but instead fortify polarised and exclusive perceptions of guilt, innocence and the idea of the ‘other’ (Gready and Robins, 2017). The empowerment of victim agency could potentially stifle the transition, subjecting it to inflexible agendas characterised by competition for scarce political and economic resources. Therefore, although social movements provide a platform for re-envisioning justice, those not rooted in human rights tend to embody discriminatory practices that sustain dominance, simultaneously mirroring and contesting prevailing hierarchies (ibid), as seen in the Namibia case analysed further below. Yet, it seems necessary to acknowledge that the universal human rights agenda can contradictorily discredit social movements’ actions that don’t align with itself even when the movements’ actions are meaningful to the local community. Another potential risk is that, despite the importance of local understandings rooted in everyday needs for justice, it is likely that highly localised perspectives may remain locally confined (Kochanski, 2020). This risk becomes more pronounced when a plethora of agendas dilutes their focus. Thus, globalised discourses, such as human rights, enable the translation of specific issues into a broadly accessible framework, offering national and international avenues for action.

Victims’ groups serve as a potential bridge connecting different actors, social movements and the whole-of-society partnerships. They epitomise mobilisation amongst those affected by violations, operating locally, and employing various repertoires of action. Simultaneously, they actively engage with formal transitional justice processes and collaborate with NGOs. Whilst embodying organisational forms and actions reminiscent of social movements, they also demonstrate the capacity to operate at a national level, akin to human rights NGOs

(Kennedy, 2002). However, their perspective on institutional mechanisms is often shaped by their ties to victim communities, fostering a more critical stance on the scope and limitations of such mechanisms compared to rights NGOs. Over time, they may even develop critiques of these mechanisms and NGOs, as demonstrated by members of the Khulumani Support Group; they persistently endeavour to ensure accountability of the organisation for actions conducted on behalf of their members (Madlingozi, 2010: 221).

Notwithstanding, despite their significance to a discourse emphasising 'victim-centred' approaches, victims' movements have had limited influence on the actual practices of transitional justice. Transitional justice actors often rob victims of their agency in ways that are inimical to victims' empowerment (Lundy and McGovern, 2008). To understand how this 'theft of victims' voice' occurs, Mutua (2002) uses a metaphor termed 'savages-victims-saviours construction' where the victim is sandwiched between 'the ogre' (the state) and the 'redeemer, the good angel' (NGO officials). Another key point is the fact that the whole transitional justice enterprise has become, as per McEvoy, 'overdominated by a narrow legalistic lens', a tendency that has come to see justice and its delivery as the business of State and State-like institutions (McEvoy, 2007: 421). Local communities are, thus, often robbed of agency and merely portray as either victims to be rescued or perpetrators to be prosecuted (Lundy and McGovern, 2008). Within transitional justice, victimhood has a particularly narrow conception. Yet, social movements broaden interpretations of terms such as justice and rights, transcending the confines of civil-political rights and legal frameworks. Their agendas progressively embrace a more inclusive reconceptualisation, challenging the foundational principles of transitional justice from the grassroots. Additionally, these movements tend to reintroduce political dimensions to understandings of transition, critiquing the potential for formalistic legalism to obfuscate the power dynamics inherent in a given context (Gready and Robins, 2017: 964).

Constituting an actor-centric paradigm (Nyamu-Musembi, 2002), social movements have the potential, through their purposeful and non-linear collective actions, to furnish a locally grounded, broadly inclusive and more democratic conception of justice. The critical perspectives fostered through collaborative endeavours are shaped not solely by a constellation of groups but also by a variety of ideologies, change theories and priorities that emphasise matters of paramount importance to the affected population. These elements are intricately interwoven into the fabric of the transitional justice and human rights framework, as elucidated in the subsequent section. Here, a participatory bottom-up approach is articulated, aiming to empower survivors to actively engage as agents in both the design and implementation stages of local transitional justice processes.

### **Part III – Disruptive Voices From the Ground: Localising Transitional Justice in Namibia and Kenya**

To what extent has the 'local' been voiced? Kochanski has used the concept of 'local transitional justice process' to delineate a locally grounded practice characterised by informality, participatory methodologies and a comprehensive orientation, designed to address a legacy of human rights transgressions in the aftermath of a mass atrocity

(Kochanski, 2020: 28). Such endeavours bring together diverse societal actors within an open-ended framework, aiming at achieving justice, reconciliation and the preservation of collective memory. Notably, these endeavours may, albeit not always, draw upon traditional symbols and rituals, introduced either top-down or bottom-up and typically exhibit national and international connections (ibid). Whilst civil society often assumes a crucial role in such processes, achieving a genuinely participatory bottom-up approach requires the empowerment of survivors (Nyseth Brehm and Golden, 2017) to become active agents in both the design and implementation stages of local transitional justice processes (Sharp, 2014). This involves adopting a ‘victim-centred’ approach, wherein the needs of victims are defined by the victims themselves (Robins, 2011: 77).

Questioning how the return to local engagement and localisation agendas can extend the scope of transitional justice beyond mere policy developments at the local, national and international levels, efforts to revitalise or emphasise the ‘local’ in transitional justice (Jones, 2021) have been advanced by growing collective actions of social movements. Zooming into the Namibia and Kenya cases, this article showcases how these collective and non-linear actions become apparent despite the prevailing state-centric, top-down dominance and the intricate web of political hurdles.

Since Namibia’s independence, the ruling party, the South West Africa People’s Organisation (SWAPO), has strengthened its political position by implementing a consensus-oriented governance system perceived as appropriate for local conditions (Kairabeb, 2019). The system’s design aimed to promote widespread participation, emphasising inclusivity over majority rule. Whilst theoretically sound, the system presents a dual challenge for groups considered outsiders. In fact, it serves to exclude certain groups, such as Ovaherero and Nama leaders, preventing direct participation in negotiations between the Namibian and German governments regarding acknowledgement, apology and restorative justice for the victims of the German genocide.<sup>4</sup>

Notwithstanding, contrary to its constitution and international law, the Namibian government established a technical committee, comprising individuals not recognised as leaders but affiliated with the ruling party, to represent victim communities. In Namibia, the observance of customary law and promotion of traditional practices, customs and cultural heritage are regulated by the Traditional Authorities Act.<sup>5</sup> Article 144 of the Namibian constitution provides that international law and agreements are incorporated into Namibian law. However, despite these legal provisions ensuring community rights, their implementation is often obscured by sovereignty concerns and overshadowed by majority party rule (Kairabeb, 2019). Hence, power asymmetries and veiled political agendas play a pivotal role in shaping the implementation and administration of local transitional justice, often determining which communities are afforded participation and which are marginalised from on-the-ground initiatives (Ingelaere, 2009).

### *Namibian Reparations Movement: Voicing the Injustices, Fighting the Forgetfulness*

Claims for reparations emerge as a strategic mechanism for the revival of historical memory (Gewald, 2003) – a means to bring overlooked narratives to the forefront of

public consciousness and political discourse. In Namibia, the dynamics of reparations claims intertwine with the politics of memory production in the post-apartheid memory state, unveiling a symbiotic relationship between justice and memory (Savelsberg and King, 2007). For Nama and Herero reparations activists, the act of remembering serves not only as a conduit for achieving justice but also as a manifestation of justice in its own right (Hamrick and Duschinski, 2018: 442). As Lawrie Balfour's analysis of slavery reparations argues, the efficacy of reparations movements is contingent upon the incorporation of the memory of wrongdoing into the dominant hegemonic memory and historical narrative (Balfour, 2003). Balfour contends that the narrative surrounding reparations is fundamentally linked to the suppression of memory, asserting that public-political engagements over memory are a prerequisite for the pursuit of legal reparations (*ibid*). This connection becomes particularly relevant when significant time lapses exist between historical injustices and the present, as seen in transatlantic slavery and colonial genocide cases.

The targeted historical focus of these reparations claims extends back over a century to the German colonial era in Namibia. In 1884, Germany established control over Namibia as a settler colony, with a concentration of colonial administration and land dispossession in the central and southern regions inhabited by the Nama and Herero (Erichsen and Olusoga, 2010). The outbreak of hostilities in January 1904 between the Herero and the Germans led General Lothar von Trotha to advocate for the annihilation or expulsion of the Herero nation (Zeller, 208: 78), a pivotal episode encapsulating the historical grievances prompting contemporary reparations discourse.

Reparations movements in Namibia strategically navigate historical complexities by underscoring the enduring impact – community's small numbers and lost wealth – of the German genocide on their communities. This strategic emphasis involves a nuanced critique of the narrative put forth by the SWAPO, which asserts the cessation of colonial-era suffering with Namibian independence in 1990 (Kössler, 2012: 290). Despite encountering political challenges, reparations activists have achieved significant, albeit partial, victories. Notably, in 2004, the German Development Aid Minister issued a personal acknowledgment and apology for the genocide. In 2007, the family of General Lothar von Trotha, a pivotal figure in the events, formally apologised to descendants of the survivors.<sup>6</sup> Addressing activists' concerns in 2008, Germany responded by launching the German Special Initiative (GSI) to counter allegations of German development aid being redirected away from Herero and Nama communities. This initiative explicitly designated development aid for predominantly Herero and Nama communities, acknowledging a 'special historical responsibility' owed to these groups (Wurkert, 2017: 758). Nonetheless, the implementation of the GSI has encountered substantial challenges. Communities affected by the genocide voice dissatisfaction, highlighting a lack of consultation in the decision-making process. Furthermore, there is a conspicuous shortfall in the actual disbursement of funds, with minimal, if any, financial resources being allocated for their intended purposes (Reitz and Mannitz, 2021: 11).

Lack of consultation and the non-inclusion of the affected communities' voices were salient issues during the German–Namibia inter-state negotiations. The negotiation process was caught in a tug of war with the asymmetrical power component favouring the configuration of 'saviours' and 'suplicants'. An equation in which the former

exercises a *noblesse oblige*,<sup>7</sup> although characterised by a normatively thin acknowledgment of accountability and a failure to reckon with its colonial legacy and wrongdoings (Habermalz and Wilde, 2021), whilst the latter remains stoically passive in receiving and accepting the ‘saviour’s charities’. To this effect, the Landless People’s Movement leader who has been vocal advocate of land restitution and restorative justice for landless Namibians made a statement in 2020, calling the affected communities to ‘organise themselves on a higher level, set up joint technical negotiation team, to start putting figures together’,<sup>8</sup> rather than simply asserting their demand for involvement in the government negotiations.

Land reform activists often employ ‘the language of the law’, incorporating notions of property rights, national reconciliation and constitutionality, as they pursue formal legal channels for the reformation of land policies (Reitz and Mannitz, 2021: 15). In contrast to the early 2000s, when there was some contention over victimhood status, particularly regarding land expropriation under colonial rule (Melber, 2005: 141), this aspect seems to have diminished in significance over the past decade. On the contrary, Herero and Nama communities have actively sought collaboration with various groups, including those in the diaspora, Jewish individuals or communities receiving reparations from Germany, and CSOs, social movements and politicians in Germany (Reitz and Mannitz, 2021: 16). Thus, in a concerted effort to transform the historical injustices’ landscape, reparations movements, as memory entrepreneurs, call for a commitment to a new geography of law and power, one that traces violence and its legacies and that imbues substance and form to the resilient community. In doing so, not only critique and leverage Namibian law (and the constitution) to bolster their land claims but also increasingly articulate these claims within the global legal terminology of reparations and restorative justice (McEvoy and McGregor, 2010). This approach involves pushing the transitional justice boundaries from within, by employing a communicative model of action (Habermas, 1984) where dialogues over competing rights claims can unfold, power relationships can be identified, and the needs of individuals and communities most impacted by injustices take precedence over the overarching state-centric and top-down dominance (McEvoy, 2007: 417).

Building on this framework, the following section delves into the Kenyan case, illuminating the persistent struggles faced by local activism and social movements as they seek to confront the enduring legacies of colonial violence and land dispossession. This examination reveals the complex dynamics that influence efforts for legal redress and accountability within post-colonial societies.

## **Fertile Kenya: Colonial Violence, Land Grabs, Looting and the Possibilities of Social Movements to Extend Transitional Justice**

Transitional justice and legal (judicial) responses to atrocity and violence has, rightfully so, received sustained criticism in terms of its lofty and over ambitious claims of contributing to societal change and recovery. Notwithstanding this, social movements have encroached within a variety of what is often referred to as transitional justice processes/mechanisms, including judicial modes of resistance to unaddressed colonial injustices. Social movements often state law’s absence or silence relating to historical



injustices; however, this does not mean that they are uninterested or reject the role of law as a potential response to these injustices. Indeed, whilst judicial attempts at remedy are problematic, social movements engagement with them can act as forms of resistance and empowerment as the below discussions on Kenya shows.

Between 1920 and 1963, Kenya was officially under British colonial rule, although their colonial power had been a significant presence in the country for some time before 1920. As with the British Empire more generally, colonial rule in Kenya was responsible for significant acts of violence, land grabs, forced displacements, looting of cultural objects and the repression of the local communities. These acts had sustained and contentious legacy in relation to contemporary Kenyan society. Specifically for the purpose of this article, the British colonial administrators forcibly removed several communities from their fertile land in Kericho County seeing the lucrative potential of it in order to grow tea. The following paragraphs discuss the violence committed in Kenya and critique some of the attempts, led by social movements, for ongoing legalistic transitional justice mechanisms to aid societal transformation. In a second move, the discussion explores the potential of local social movements' agendas for cultural restitution of colonial looted objects to push and poke transitional justice boundaries.

In 2022, a group of Kenyan activists sought to take their case to the European Court of Human Rights (HCHR) (BBC News, 2022). This ongoing action at HCHR's followed community activists filing a complaint with the United Nations for human rights violations committed by the British Army and overseen by the colonial administration. This led to a 2021 investigation by six United Nation Special Rapporteurs whose report concluded that the British administration had committed violent forced displacement of communities from their land, destruction of property including burning of homes and rape of people living there (AI GBR 5/2021).<sup>9</sup> Those who survived the colonial evictions were forcibly moved to *reserves* and their freedom of movement restricted. The current claim at HCHR is, in part, a further demonstration of campaign groups' frustration with the UK government's lack of interest and engagement with the Rapporteurs report and its recommendations. Both the recommendations in the Rapporteurs report and the claim made to the HCHR state that survivors and victims' families seek formal apology from the British Government and reparations. Formal public apology and reparations as potential transitional justice processes in Kenya will be further unpacked and critiqued in the next section of the article.

In varying formations, the social movements and activism in Kenya for formal apology and reparations for colonial violence has been ongoing for several decades (Fahnbulleh, 2006). Alongside social movements for atrocities committed on the Kipsigis and Talia indigenous people in Kericho County (*Blood Plantations*), activists have also been campaigning for redress for the Mau Mau, including land grabs, forced displacement and torture. The British colonial administration response to the *Mau Mau Uprising* was to create camps where the Mau Mau and non-Mau Mau citizens were detained. It was within these camps where some of the worst atrocities took place (Elkins et al., 2021).

Following decades of campaigning, in 2012, the Mau Mau case was heard at the UK High Court. Whilst campaigners and Mau Mau veteran groups had hoped that this would be an opportunity for a public recognition of the violence committed by the British,

alongside meaningful reparations, this was not what transpired (Paulose and Rogo, 2018: 369). The court did conclude that in the *Mutua & Others case (Mau Mau case)*, they could claim damages against the British government, and this was despite claims during the trial brought by government lawyers that too much time had passed since the events and that the veterans' grievances should be directed at the Kenyan government. However, despite the court's ruling, and in 2013 the UK's government's announcement of 2.8 billion Kenyan shillings (£19.9 million pounds) compensation package, the realisation of these reparations remains unfulfilled. As of 2022, compensation has stalled and campaigners for Mau Mau victims argue that the Kenyan government are continually reluctant or deliberately disrupting negotiations for how to distribute compensation.<sup>10</sup>

The ongoing delays and disputes have led to many Mau Mau victims of colonial violence dying, often living in poverty, without seeing and benefitting from these reparations. The *Mau Mau case* and subsequent UK government's responses raise significant questions about the usefulness of legal transitional justice responses for colonial violence in Kenya, and importantly the additional complexities and power politics when former coloniser and colonised elite are required to engage in meaningful and fruitful remedies. Ultimately, it is victims and their communities who get caught up in the legal and political power struggles who often suffer the most.

In the context of the relationship between colonial violence and land, it is necessary to acknowledge and understand the non-linear and fluid interplays of colonial and post-colonial violence, and if and where transitional justice may, or may not, have a role to play. For example, in post 1963 independent Kenya, the issue and politics of land perpetuated the removal of colonial rule. Whilst the fanfare and political rhetoric of the new state prophesied a new, fair, and socially and economically prosperous society, the draw of land and all of its economic and political potency remained constant (Fahnbulleh, 2006).

This use of engrained colonial structures and land control by the post-colonial political elite maintained a hierarchical 'drip down' access to and distribution of land, which the state had promised they would dissemble, but in reality, led to continued repression and violence. The Rift Valley is one area which has directly experienced the continuation of colonial violence, the manifestations of historical grievances and the politics of land (Schilling et al., 2012: 25). This area has seen forced evictions and targeted killings, which is a sad but continued example of the violent politisation's of land rights and ownership in post-colonial Kenya, which despite activists' calls for justice has largely gone without remedy. The plural manifestation of violence and repression around land is also gendered. Prior to 2010, there was not a robust land law system in operation, which had particular implications for woman (Onguny and Gillies, 2019). Often in rural areas, it was fairly common for women to be deliberately absent from family land ownership (*ibid*).

Campaigns had raised attention to the fact that for decades despite woman being the primary workers of land, they had little rights to the deeds of the land upon which they worked, and which bought income to the household. Activists such as Federations of Woman Layers (Kenya) welcomed the 2013 legislation Matrimonial Property Act, which repealed the previous and highly gender discriminatory 1882 Married Women's Property Act with its origins directly connect to the colonial administration. Activist saw the new act as bringing much needed power and agency to woman for them to have greater control and ownership of the land they work. However, despite the initial

hope by activists that the new law would have tangible and long-term benefits for woman, particularly in rural areas, there has been growing concern within social movements, such as the Kenyan Land Alliance, that since the introduction of the new act, only around 10% of woman own land title deeds (Castillejo, 2022; Meroka-Mutua, 2022). The continuing exclusion of women is an additional gendered dynamic of the repressive and political engineered suffering spanning colonial and post-colonial spaces which remains a significant ongoing challenge for activists. As the previous discussion has highlighted the possibility of law to bring about remedy is at best problematic and partial, and thus the article now considers formal public apologies as a non-judicial tool to advance social movements agendas.

Despite social movements and activists' decades long attempts to bring legal remedy in Kenya for (continuing) colonial violence, to date, these remedies have overall been embroiled in refusal, downplaying and power struggles. These issues mirror some of the broader criticisms of transitional justice's legalistic leaning and the need for non-judicial processes particularly those that local communities can directly engage with and feel the tangible benefits of. In the *toolbox* of transitional justice, formal public apology is the process whereby the perpetrator(s) make a public statement recognising the wrongdoing and that this apology goes partway to acknowledge victims suffering and contributes towards redress (Winter, 2015). As discussed above, and further unpacked below, formal apology, both given and requested, has been part of social movements' calls in Kenya for remedy to colonial violence.

Following the 2012 *Mau Mau case* at the UK High Court, the British Government made a formal statement in relation to colonial rule and atrocities committed on the Mau Mau:

'The British Government recognises that Kenyans were subject to torture and other forms of ill treatment at the hands of the colonial administration. The British government sincerely regrets that these abuses took place, and that they marred Kenya's progress towards independence.'

Leader of the Mau Mau veteran group Gitu wa Kahengeri at the time welcomed the apology and encouraged members of the group to also accept it. The statement was made in parliament by then Foreign Secretary William Hague and also in person to Mau Mau veterans in Nairobi by British High Commissioner Christian Turner. Notwithstanding some within the Mau Mau welcoming of the governments public apology, one could question the importance of language in formal public apology, such as the choice of 'regrets' rather than 'sorry', and implications of this for continuing campaigns for justice of colonial violence (Hasian and Muller, 2016: 170). A statement which includes the phrase 'sincerely sorry for...' could be understood as a direct acknowledgement of harm inflicted by the person(s) issuing the apology. Whereas the language of 'sincerely regrets' is (deliberately) vague and slippery (ibid). It can also be suggested that a formally given apology has the intended consequence of removing possibilities of future trials for those who committed crimes that the apology is being made for. Those who committed atrocities to which the British government apology was directed at have not been held legal accountable for their crimes. Related, the carefully crafted language of the apology also deflects attention away from the fact that it was not only the

British Army and colonial administration in Kenya which were aware of the violence and atrocities committed in Kericho County and against the Mau Mau but also this was known and permitted at the highest level of government in London (Elkins, 2011). The British government's apology was clearly a lawyered statement which, in part, used particular language to intentionally avoid future legal action based upon the apology statement.

### *From Looters to Guardians: Cultural Restitution of Colonial Theft as Meaningful Justice for Social Movements?*

In recent years, there has been a consideration of cultural restitution and how this might aid societies transitioning from colonial pasts and contributing to calls for justice. Growing calls for restitution of colonial theft, which builds on direct momentum from broader global social movements such as Black Lives Matters, seem tangibly akin to the purported heartbeat of transitional justice, namely dealing with the past, recognition and social repair. This raises the question as to how restitution might be mobilised as a productive form of transitional justice by social movements?

It is 'one of the most violent spaces in Oxford', a statement made by the Rhodes Must Fall social movement (2015) about the University of Oxford Pitt Rivers Museum, and which the museum curator Prof Dan Hicks concurs with. Hicks argues that Pitt Rivers, and more generally European ethnographic museums, continues into the present the violence committed on colonised societies through their displaying of colonial looted cultural artefacts and objects. Through this violent voyeurism, there is the expression that societies from which the objects were stolen are not capable of caring for their own cultural heritage (Hicks, 2020: 142). Pitt Rivers collection includes hundreds of items from the Maasai in Kenya with questionable acquisition processes of some of the objects. Restitution and unconditional return of objects looted by colonists is an essential attempt at justice, recognition of the continuing harms of colonialism and aiding the righting of past wrongs (ibid).

Following a shocked discovery by a Maasai activist during a visit to Pitt Rivers of grossly inadequate labelling of Maasai objects and the very concerning ways by which the Museum came to acquire some of the objects led to calls for engagement with and return of items to Maasai communities. One concern of the Maasai was the way their cultural items were displayed and narrated which represented the Maasai as a 'dead society'. There were also significant surprise and concern about some Maasai items on display which could not have been sold or gifted and which raised worrying questions about how the Museum acquired them (Koshy, 2018). Maasai from Kenya and Tanzania, along with NGO Insightshare, worked with the Pitt Rivers museum to not only engage and address the Maasai's concerns but also as part of a fundamental pause and recalibration by the museum in how it curates former colonised cultures. This process included unrestricted access to items and the relabelling of problematic descriptions and narratives. This access also showed the important connectivity between cultural objects and the individuals from that culture: '[f]or us, these are things that connect one generation to another and help in the transfer of knowledge' (Adams, 2020).<sup>11</sup>

In the context of Pitt Rivers and the Maasai items, social movements' activism has facilitated notions of restitution, and it has allowed for recognition of the continuing harm caused by the displaying of artefacts, and meaningful attempts at remedy

through active participation of the Maasai and returning of some items. This example of restitution as justice, at least in part, is likely to have happened because of the museum's somewhat radical rethinking of their role in continuing colonial harms and openness to locally led remedies. However, in the broader context of Kenya, cultural restitution is not a widely seen successful approach to legacies of colonial violence.

A collection of glass rectangle boxes with empty plinths in the centre exhibited at the Nairobi National Museum (2021) was arts group Nest Collective (*Invisible Inventories*) attempt to raise awareness and calls for the return of Kenyan cultural artefacts currently held in Global North museums. This activism is not only a powerful visual statement of continued loss and absence caused by colonialism: '[w]hat could these objects have been? What could have been done with these empty display cases?' It also actively seeks visual awareness and engagement of these items through creating an image database (Steffes-Halmer, 2021). As Nest Collective director Jim Chuchu states, 'We felt it was important, because how can you ask for things if you don't know what they look like and where they are'. The *Invisible Inventory* project being based in Nairobi was also an attempt by activists to relocate, or at least refocus, debates on restitution of colonial looted objects away from the context of the Global North and instead ground them within the societies from which the injustices occurred. Whilst arts activism, as shown above, is not in itself restitution, it does create opportunity for agency by those whose cultural was stolen and gives them a *voice* which potentially could lead to future possibilities of justice through restitutions. Notwithstanding this, whether this leads to a combination of justice in terms of returning of stolen objects, recognition of the harm caused and meaningful attempts at remedy currently remain an ongoing question.

Whilst the above discussed examples do provide a mixed picture regarding the potential of restitution as a form of transitional justice in Kenya, beyond the discussed examples, there have been wider global ripples made by social movements' calls for restitution as a remedy for colonial violence. As a result of the 2018 Sarr/Savoy report, *The Restitution of African Cultural Heritage: Towards New Relational Ethics*,<sup>12</sup> there were direct calls for the complete, swift and permanent return of all objects in French museums belonging to Benin, Cameroon, Senegal and Mali (McAuliffe, 2021). The report has encouraged wider action, including from campaigners, for a collective European response and responsibility to create a policy of return of stolen African cultural heritage (Apoth and Andreas Mehler, 2020). For example, French museums have returned 26 statues and thrones to Benin and the El Hadj Oumar Tall's sabre to Senegal. To some extent, Germany has also demonstrated a willingness for return and has facilitated a process whereby effected communities can make claims for objects stolen. McAuliffe argues this is indicative of a potential genuine willingness by some former European colonial states to return cultural heritage and contribute towards justice (McAuliffe, 2021). Notwithstanding the important action that campaigns and activism has brought, the politics and legal implications of calls for restitution and unequivocal return of looted cultural heritage continue to present significant challenges to social movements (Robertson, 2019).

## Conclusion

Catalysing transitional justice through the disruptive momentum of social movements carves out a re-imagined, more inclusive visions of justice, one that resonates with the

evolving demands of those re-voiced protagonists and historically impacted societies. Social movements are more than mere bystanders in the realm of transitional justice; rather, they are active agents who constantly 'court' with transitional justice, reshape its contours and challenge its traditional boundaries. By amplifying the voices of marginalised communities and challenging hegemonic narratives, social movements play a pivotal role in re-sculpting the transitional justice landscape. Through their relentless advocacy and mobilisation efforts, they turn the 'supplicants' from muted into voiced protagonists, demanding accountability, and redress for historical injustices.

The intricate relationship between social movements, theoretical frameworks and transitional justice in addressing historical colonial injustices emphasises the need to transcend Eurocentric perspectives and recognise the diverse nature of movements confronting colonial legacies. These movements, influenced by distinct historical trajectories and post-colonial realities, serve as dynamic catalysts for change, driving transitional justice towards more inclusive mechanisms beyond mere legalistic frameworks. At the heart of this transformative process lie participatory approaches and the empowerment of protagonists, pivotal in reshaping transitional justice to effectively address historical injustices. By prioritising the voices of victims and directly involved actors, these approaches seek to forge genuine partnerships and establish decision-making authority within transitional justice processes. Notably, social movements play a central role in fostering inclusive communication spaces and challenging entrenched norms inherent in transitional justice paradigms. However, navigating the complexities of participatory approaches and integrating diverse agendas demands careful consideration amidst manifold interventions and contested contexts. Moreover, the inherent ambiguity of transitional justice, coupled with the absence of a clear theory of change, complicates efforts to delineate its purpose and beneficiaries. The organisational dynamics of social movements carry risks, including the reinforcement of conflict-era identities and the exclusion of certain perspectives.

In contexts such as Namibia and Kenya, social movements have emerged as leading forces in addressing historical injustices and advocating for reparations. Despite encountering entrenched power dynamics, legal obstacles and state-centric approaches, these movements persistently pursue truth, reparations and reconciliation. Their resilience underscores the transformative potential of collective action in advancing transitional justice goals and reshaping societal norms. The examination of local engagement and localisation agendas within transitional justice frameworks, as illustrated by Namibia and Kenya, emphasises the pivotal role of grassroots activism and social movements in pushing and poking the boundaries of justice processes. Similarly, in Kenya, movements seeking redress for colonial violence and land dispossession have confronted legal hurdles and political resistance. Nonetheless, the pursuit of formal apologies and cultural restitution serves as mechanisms for memory preservation and justice seeking. Moving forward, the intersectionality of social, political and legal strategies must be leveraged to create more inclusive and effective mechanisms for addressing the legacies of colonialism and advancing justice in post-colonial societies. Only through sustained grassroots mobilisation and transnational solidarity can the aspirations of affected communities for truth, reparations and reconciliation be realised.


## Declaration of Conflicting Interests


The authors declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

## Funding

The authors received no financial support for the research, authorship, and/or publication of this article.

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## Notes

1. At the recent Justice Visions conference (2024) keynote lecture discussing victim participation, co-founder of the National Association of Guatemalan Widows Rosalina Tuyuc Velásquez stated that ‘I am not a victim, I am a protagonist’. It is inspired by Velásquez words that here we use the term ‘protagonist’.
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3. European Centre for Constitutional and Human Rights (ECCHR), ‘Colonial Repercussions: Namibia, 115 Years After the Genocide of the Ovaherero and Nama’, (Berlin, 2019), at 33, available at [https://www.ecchr.eu/fileadmin/Publikationen/ECCHR\\_NAMIBIA\\_DS.pdf](https://www.ecchr.eu/fileadmin/Publikationen/ECCHR_NAMIBIA_DS.pdf).
4. European Centre for Constitutional and Human Rights (ECCHR), ‘The “Reconciliation Agreement” – A Lost Opportunity’, June 2021, available at [https://www.ecchr.eu/fileadmin/Hintergrundberichte/ECCHR\\_GER\\_NAM\\_Statement.pdf](https://www.ecchr.eu/fileadmin/Hintergrundberichte/ECCHR_GER_NAM_Statement.pdf)> accessed 26 January 2024.
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8. Andrew Kathindi, ‘Swartbooi Calls for Parallel Genocide Negotiations’, *Windhoek Observer*, available at <https://www.observer24.com.na/swartbooi-calls-for-parallel-genocide-negotiations/> > accessed 25 February 2024.
9. A summary of the Special Rapporteurs findings can be found here – <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26395>.
10. Thursday May 12 2022, “Mau Mau Victims Accuse State of Blocking Sh2.8bn UK Compensation,” *Business Daily*, May 12, 2022, <https://www.businessdailyafrica.com/bd/economy/mau-mau-victims-accuse-state-sh2-8bn-british-compensation-3813238>.
11. Massia representative Yannick Ndoinyo speaking at one of the workshops held at the Pitt Rivers Museum.
12. The report was commissioned by French president Emmanuel Macron.

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