
Patricia Lundy

Abstract

There is a growing recognition of the need for home-grown solutions to transitional justice issues rather than a one-size-fits-all approach. In part, this reflects the commonsense view that without local ownership of transitional justice processes, there is unlikely to be domestic buy-in and sustainability. Despite its growing popularity, the concept of local or home-grown transitional justice is ambiguously defined. It is frequently insufficiently spelt out, used interchangeably and applied uncritically. This article uses a case study of the Historical Enquiries Team (HET) to explore the concept of home-grown transitional justice and posit preliminary questions. The HET is a bespoke unit set up by the Police Service of Northern Ireland (PSNI) to re-examine deaths attributable to the conflict in Northern Ireland and answer the unresolved questions of families of conflict victims. The work of the HET is unique and innovative in the world of policing. In transitional justice terms, it breaks new ground as a micro-level information-recovery mechanism. This article argues that the current euphoria for 'all that is local' may be in danger of overlooking important considerations, such as who are 'the locals' and whose interests are being served. It raises further questions about issues of ownership, trust and legitimacy. The article concludes that there needs to be clarification of concepts, as well as more careful evidence-based analysis of what constitutes home-grown transitional justice and what such a process might conceal.

Introduction

There is an emerging multidisciplinary literature that gives recognition and a prominent role to home-grown or local approaches to transitional justice. It is increasingly recognised that each society in transition is so different that a...
combination of transitional justice measures and innovative instruments, rather than a standardised template, are likely to be needed. As Diane Orentlicher points out, ‘given the extraordinary range of national experiences and cultures, how could anyone imagine there to be a universally relevant formula for transitional justice?’ This paradigm shift is also apparent within the international community, where there is an increasing recognition of the need to rethink the justice enterprise conceptually and operationally. The UN Secretary-General’s 2004 report, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, acknowledges that local ownership of conflict transformation is a sensitive and overlooked issue and advises against prepackaged formulas and foreign-conceived solutions. The report argues that the international community needs to ‘learn how to respect’ and ‘better assist national stakeholders to develop their own agenda and their own approaches to transitional justice.’ The principle of local ownership also appears in official policy documents issued by other international donors, such as the Organisation for Economic Co-operation and Development (OECD) and the UK Department for International Development (DFID). The overall result has been the move to multiple conceptions of justice and reconciliation – state and nonstate instruments; legal, semijudicial and nonjudicial techniques. This shift has prompted debate about the conceptualisation of transitional justice ‘as a praxis-based interdisciplinary field.’ Rooted in the discipline of sociology, I am in favour of a multidisciplinary praxis-based approach to dealing with outstanding issues resulting from conflict. As correctly argued, ‘transitional justice is and should be a contested space.’

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7 Luc Huyse, ‘Introduction: Tradition-Based Approaches in Peacemaking, Transitional Justice and Reconciliation,’ in Huyse and Salter, supra n 2.


9 McEvoy and McGregor, supra n 2 at 2.
Nevertheless, in this article I raise a number of questions about what constitutes home-grown transitional justice. I consider whether the transitional justice net is being cast too widely, and whether this may raise certain dilemmas. I query if state-based efforts can be regarded as local, home-grown or even bottom-up, or whether these terms apply only to initiatives that operate outside the structures of the state and are rooted in ‘the community.’ I argue that these concepts are frequently insufficiently defined, used interchangeably, confused and applied uncritically. There are examples that illustrate that these concepts are perhaps being applied too loosely. Bert Ingelaere, for instance, points out that the highly celebrated bottom-up tradition-based Gacaca courts in Rwanda are in fact a co-opted reformulated ‘state-owned and top-down’ process. This article is not meant to be a tour of terminology for the sake of it. The lack of clarification is problematic. What comes to be labelled as home-grown or bottom-up transitional justice – and by whom – is a deeply political issue that raises a whole series of concerns.

In this article I argue that home-grown transitional justice is not necessarily bottom-up; the latter is a very distinct process and methodology, or a particular way of doing things. It is defined by a participatory approach. The desired goal is to cultivate agency and empower the least powerful in society from below. Superficial understandings and interchangeable and confused use of concepts could undermine this radical potential. The different meanings attached to concepts will produce different practices, outcomes and possibilities. If concepts such as home-grown, local and bottom-up transitional justice are not clearly defined, they could be co-opted, misappropriated, manipulated and abused. It is possible that such concepts could be inserted into any context without having organic linkages to society in an attempt to sell preconceived proposals, legitimise agendas and serve the purposes of elites. The abuse and misuse of participatory approaches by governments and elites has been well documented in development and social science literature. However, in this article I am not advocating standardisation or blueprints. As Louis Bickford points out, an exciting element about these developments in transitional justice is that there is no one formula – no

10 Laura Piancentini, ‘Burden or Benefits? Paradoxes of Penal Transition in Russia,’ in McEvoy and McGregor, supra n 2.
11 Perhaps an indication of the confusion is that the author was unsure what label ‘fitted’ the title of this article – ‘local,’ ‘locally owned,’ or ‘home-grown’; the title changed several times.
12 Bert Ingelaere, ‘The Gacaca Courts in Rwanda,’ in Huyse and Salter, supra n 2; Piancentini, supra n 10.
13 Ingelaere, supra n 10 at 54.
one-size-fits-all model – and initiatives are characterised by the context-driven specificity and creativity of each effort. Likewise, other commentators have questioned whether local-level, spontaneous, culturally specific initiatives lose their value if programmed or even encouraged by governments or international actors. Their strength lies in the fact they are insider-driven and a product of local initiative, and are not formalised in Western systems of aid and consultation.

While I would agree, I argue that clearer theoretical, conceptual and methodological frameworks should be developed. These should be based on common values, principles, approaches and purpose, similar to the fields of participatory development, oral history and action research. Otherwise, concepts become meaningless.

In this article I seek to offer some preliminary thoughts on what constitutes home-grown transitional justice and what such processes might conceal. I begin with a discussion of the emerging literature and an overview of the various theoretical concepts. This is followed by a critical examination of the strengths and limitations of these concepts, and a working definition of home-grown is explored. The working definition is applied to understand and evaluate a case study of the Historical Enquiries Team (HET). The HET is then described and its methodology discussed. The findings are presented and a number of issues – including the role of insiders/outiders, trust, ownership and legitimacy – are critically explored, followed by conclusions.

Theoretical Context: Neocolonialism to Home-Grown

The international community, and specifically the UN, has increasingly embraced and employed transitional justice discourses and mechanisms in its interventions in postconflict situations. Former UN Secretary-General Kofi Annan, in his report to the Security Council in August 2004, acknowledged that there had been an increased focus by the UN on questions of justice, transitional justice and the rule of law in conflict and postconflict societies.

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16 Bickford, supra n 2.
21 This article considers a range of concepts that are often used interchangeably, such as community-level, bottom-up, local ownership and home-grown.
22 Report of the Secretary-General, supra n 4.
proliferation in rule of law, human rights and justice packages as part of interna-
tional postconflict peace-building strategies. 23 This has been described as the
postconflict agenda, and it has tended to be donor-driven rather than responsive
to local people's needs. 24 The emergence of the home-grown movement is in re-
sponse to the criticisms provoked by top-down processes such as the International
Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for
the former Yugoslavia (ICTY). Within this framework, top-down justice models
have been analysed as Western-based impositions that are remote and have lim-
ited relevance to the needs and interests of local communities. 25 This realisation
forced the international community to address internationally applied justice. In-
deed, as we will see, the postconflict agenda has generated considerable debate and
prompted calls for local approaches based on local needs. The practice of excluding
local communities or traditionally disenfranchised groups as active participants in
transitional justice and peace-building measures has raised questions of legitimacy,
local ownership and sustainability. As noted above, this has given rise to a growing
body of literature that gives recognition and a prominent role to local transitional
justice approaches. At the same time, within the international community there
has been a policy shift and an appreciation of the need for local authorship and
ownership if peace processes are to bed down and become sustainable. 26

Timothy Donais suggests there are two competing forms of peace-building inter-
vvention: liberal and communitarian. These perspectives contain markedly different
assumptions concerning the role of local actors and local ownership. 27 Proponents
of a liberal perspective make claims to universality of (Western) liberal norms,
practices and institutions. These are regarded as a universal template applicable
to and desirable in all societies. Where permitted, 'local ownership unfolds under
the careful supervision of responsible outsiders, who set the broad parameters of
what is permissible.' 28 Theorists have argued that this hegemonic international
approach, driven by Western aid, is a tool of political and social engineering. It
is a means to reconstitute poverty-stricken postconflict societies in the image of
Western liberal democracies. 29 The justification for paternalistic external interven-
tion is rooted in a discourse that pathologises war-torn societies as traumatised,
irrational and dysfunctional, unable to make decisions about what the future

23 Julie Hearn, 'Aiding Democracy? Donors and Civil Society in South Africa,' *Third World Quarterly*
21 (2000): 815–830; Barbara Oomen, 'Donor-Driven Justice and Its Discontents: The Case of
24 Lundy and McGovern, supra n 2.
25 Ingelaere, supra n 12; Oomen, supra n 23; *Report of the International Tribunal for the Prosecution
of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the
26 *Report of the Secretary-General*, supra n 4.
27 Timothy Donais, 'Empowerment or Imposition? Dilemmas of Local Ownership in Postconflict
28 Ibid., 8.
60–74; Peter Uvin, 'Difficult Choices in the New Postconflict Agenda: The International Community
in Rwanda after Genocide,' *Third World Quarterly* 22 (2002): 177–189; Hearn, supra n 23; Oomen,
supra n 23.
holds in store.\textsuperscript{30} This has resulted in international interventions being constituted as neocolonialist and in unfavourable comparisons with former European colonial enterprises in which outsiders set the agenda and defined the field of permissible action.\textsuperscript{31} While the attempt to apply universal or Western values and definitions of justice across cultures and societies can certainly be viewed as, at the very least, ethnocentric, Lorna McGregor cautions against the debate regressing into ‘a stark neo-colonialist versus cultural relativism stand-off.’\textsuperscript{32} She argues that because of its constant internal and external struggle and evolution, international law may be a vehicle for social transformation and change; it has the ability to work alongside localised approaches to dealing with the impact of conflict and is capable of asserting the rights of victims. Thus, choices between local and international approaches should not be viewed as exclusive.

In contrast, communitarian forms of peace building stress the importance of traditions of actual people and social context in determining the legitimacy and appropriateness of particular visions of political order, justice or ethics.\textsuperscript{33} Underpinning this perspective is the right of societies to make their own choices and a rejection of the imposition of largely predetermined, universally applicable projects. Thus, the communitarian approach envisages a very different role of insiders and outsiders and the nature of local ownership. It is argued:

\begin{quote}
[\textit{I}nsiders possess the historical, cultural, and linguistic resources that outsiders lack and that are essential not only to understanding the root causes of any conflict but also in the search for sustainable solutions.\textsuperscript{34}}
\end{quote}

Three critical factors underpin the legitimacy of a communitarian process: who the locals are, their memory and, importantly, who they are perceived to represent. This is often a site of struggle for sections of the community.

**Exploring Concepts and Critiques**

**Recipient or Agency**

On the face of it, the transitional justice paradigm shift appears to represent progress for those arguing for a more bottom-up and participatory approach. Local transitional justice is intuitively understood to be a worthy objective and a positive and progressive process. It is based on the assumption that those who have been excluded will be included; that the voiceless will be heard and empowered; and that locals will inform policy and practice appropriate to their local needs.

\begin{itemize}
\item \textsuperscript{32} McEvoy and McGregor, supra n 2 at 72.
\item \textsuperscript{33} Donais, supra n 28.
\item \textsuperscript{34} Ibid., 11.
\end{itemize}
Exploring Home-Grown Transitional Justice and Its Dilemmas

The concept is based on the notion that in order for peace-building measures to remain sustainable they must be embedded within the affected conflicting communities and driven by local people who have lived through and are most affected by the conflict. This reorientation of approach denotes the need for changes to unequal structures and relationships between international donors and recipients. However, despite this apparent shift, a clear definition of local or home-grown transitional justice and what it means in practical terms remains ambiguous. General theoretical work in the social sciences has shown that there is the presumption that because a process is local and frequently decentralised it will automatically generate inclusion, empowerment and agency. This is not the case. Such initiatives may be misrepresenting the social processes of participation.\textsuperscript{35} Despite limited knowledge of how local/home-grown processes work in practice and their successes and limitations, the international community is touting them as a more inclusive approach. For this reason it is imperative that concepts are clarified, processes are rigorously assessed and the future direction of policy and practice is informed by evidence-based research.

Issues of Representation, Power and Legitimacy

Social scientists have highlighted that the idyllic imagery and superficial depictions of homogenous and cooperative ‘communities’ can overlook divisions and conflict. Frequently the literature conceals power struggles and networks, exclusionary tactics by local elites, processes of co-option or ideological conflicts.\textsuperscript{36} Indeed, not everyone’s voice may be equally heard or everyone’s interests addressed, and some may even be silenced or controlled in what appears to be a community-based response.\textsuperscript{37} Sarah White argues that participation is likely to be political and not neutral, as ‘there are always tensions underlying issues such as who is involved, how, and on whose terms,’ and power differentials will more than likely have to be negotiated in any group in which individuals participate.\textsuperscript{38} Frequently it is the most visible and vocal and more articulate and educated groups that participate. These are often self-appointed people, and they may not represent or reflect the views and perspectives of the wider community. In such circumstances there is always the danger that decision making becomes entrenched in the hands of a small and self-perpetuating, self-serving clique.\textsuperscript{39} This raises questions about legitimacy, accountability and disempowerment of weaker groups in society that are pertinent to the promotion of local transitional justice. As Christine Chinkin and others note, community leaders do not necessarily speak for ‘the community,’ and certainly not for women within the community in many instances.\textsuperscript{40} Research


\textsuperscript{36} Ibid.

\textsuperscript{37} Uvin, supra n 29.

\textsuperscript{38} White, supra n 15 at 6.

\textsuperscript{39} Botes and Van Rensburg, supra n 15.

\textsuperscript{40} Christine Chinkin, \textit{Peace Agreements as a Means for Promoting Gender Equality and Ensuring Participation of Women}, UN Division for the Advancement of Women, UN Doc. EGM/PEACE/2003/BP.1
P. Lundy has indicated that ‘traditional’ justice systems can be patriarchal and exclusionary towards women and minority groups, which reinforces existing power structures.\(^{41}\) This further entrenchment of structural inequalities has led one commentator to question whether ground-up initiatives might create more harm than good for significant groups of people.\(^{42}\)

Then there is the issue of how to identify ‘the locals,’ who (if any) they represent and whether there are more dominant, persuasive, compelling voices that are given, or demand by their status, credence over others. As one commentator put it, ‘there is a need to accept that locals can mean the very people that the interveners do not necessarily like or want to cooperate with, but who are viewed differently by the population and may have legitimacy among local communities.’\(^{43}\) On the other hand, the locals may represent a particular group (or interest) that is not trusted or not viewed as having legitimacy within sections of society (or their own community). These concerns are generally historic and rooted in the conflict. It is important to remember that local shortfalls necessitated an intervention in the first place. Additionally, there is a danger in assuming that local actors share the same agenda.

**Misrepresentation, Expropriation and Co-option**

One automatically assumes that local means grassroots or community-based. But in practice a local justice initiative does not necessarily mean that it will be bottom-up, grassroots or participatory, which is often how the concept of local is understood. A local initiative may well be driven by the state and/or local agents appropriating transitional justice discourse to serve their own interests. In places such as Uganda, Timor Leste and Colombia, mainstreamed transitional justice discourse and initiatives have been co-opted or embraced by governments to fit their own agenda as part of self-serving conflict-management strategies.\(^{44}\) As noted earlier, Gacaca was initially perceived as a bottom-up or local transitional justice process. It has in fact become a co-opted state-generated top-down process, in which participants are constrained by predetermined state-led principles, mechanisms and discourse laid out for them. As Bert Ingelaere notes, its legitimacy was supposed to derive from popular participation, but fines and coercion – ‘unpopular participatory justice’ – have replaced this initial intention.\(^{45}\) There are valuable lessons to be learned from experiences in the field of development that show how

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\(^{44}\) McEvoy and McGregor, supra n 2.

\(^{45}\) Ingelaere, supra n 12.
exploring home-grown transitional justice and its dilemmas

46 In other words, the concept of local/home-grown transitional justice is capable of being expropriated and manipulated to mask or serve other interests and ‘unjust’ practices that are not necessarily meeting the needs of victims and those most affected by the conflict. Such expropriation and manipulation may give a cloak of local respectability and make outcomes more difficult to challenge. This goes to the heart of the issue: it is of fundamental importance to clarify what is meant by ‘local’ and ‘home-grown’ in the context of justice discourse.

A Working Definition of Local/Home-Grown Transitional Justice

Central to the definition of local/home-grown transitional justice is the notion of place, people and process. A narrow definition refers simply to a process that has emerged within a particular society and which is different or unique to that place. I argue that the definition should be much broader. In addition to geographical boundaries or place, local/home-grown justice must include local ownership and engagement of those most affected by the conflict. At a basic level, local ownership is generally understood as locals having a say in formulating processes and initiatives that reflect the culture and values of the jurisdiction in question. Ownership could be viewed as anything from meetings with a few select groups and/or a chosen few to in-depth consultations and participation with a wide base of locals in the conceptualisation, planning and delivery of initiatives. I maintain that the concept means far more than a consulting or participatory role given to the local actors on behalf of donors or external parties. Local people must have the final, decision-making power over a project’s authorship, design, implementation and outcome. Further, the concept of local/home-grown transitional justice means emerging from the grassroots, or bottom-up, and empowering those most affected by the conflict; at the very least, it should mean attaining community buy-in of the process. In the absence of local ownership, local/home-grown would refer simply to a process that is particular to a place. If a broader definition is used, a power shift is implied. 47 These goals may not, however, be understood in the same way by local implementers and international actors. Essentially, the crux of the matter is how local populations are conceptualised – as active agents of change, stakeholders, sources of knowledge and expertise, or as passive victims and mere recipients. However, I would caution against viewing local/home-grown questions in simplistic binary terms. With these preliminary thoughts on what constitutes local/home-grown transitional justice in mind, I now turn to a case study of the HET.


The Historical Enquiries Team
This case study draws on empirical research of a process that is unique to Northern Ireland. The author was ‘embedded’ in the HET for over two and a half years and given unfettered access to the team and its documents. In the context of Northern Ireland, this was unprecedented access to policing. The research commenced in August 2005, and direct day-to-day observation of the HET ended in December 2007; meetings with senior management continue and other aspects of the research are ongoing. The HET is an unprecedented attempt by a police service in a society undergoing transition to police the past. My central focus in this article is to explore whether the HET can be conceptualised as home-grown transitional justice. In the following sections I critically examine the HET and aspects of its work, as well as various structural issues that relate specifically to the theme of the article. The final section assesses what kinds of lessons and insights can be drawn.

Background: Policing, Reform and Legitimacy
The HET is one of a number of state-led processes which exist alongside a range of unofficial truth-recovery initiatives in Northern Ireland. This fragmented approach and the absence of a comprehensive mechanism to deal with the past remains highly contentious. In June 2007 the British government established the Consultative Group on the Past to develop proposals on how best to deal with this issue. The panel published its proposals in January 2009 and, among these, recommended the establishment of a Legacy Commission. The emergence of the HET should be understood in the context of this policy gap.

Policing reform has dominated the political agenda in Northern Ireland and a lack of perceived progress has had a destabilising influence on the peace process. Historically the question of police legitimacy and its role in the conflict has been contested. Through more than 30 years of conflict the Catholic/nationalist community viewed the Protestant/unionist-dominated Royal Ulster Constabulary (RUC) with deep suspicion and mistrust. The force was regarded by some sections of the community as shoring up a sectarian state through implementation

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48 Access included attendance at a wide range of internal management meetings and observation of the day-to-day functioning of the HET. I observed first-contact meetings between HET, families and NGOs. I had access to all staff members and, in addition to the countless informal discussions, more than 50 in-depth interviews were carried out with all levels of staff. In-depth interviews were also conducted with a wide range of stakeholders. Mapping and analysis of HET documents formed a key part of the research.

49 In addition to continuing meetings with HET senior management, interviews with relatives and NGOs, as well as analysis of HET output, remain ongoing.


51 Healing through Remembering, Making Peace with the Past – Options for Truth Recovery Regarding Conflict in and about Northern Ireland (Belfast, October 2006).

of its counter-insurgency measures. There have been serious allegations of human rights abuses by the police and well-documented cases of collusion between the RUC and loyalist non-state armed groups during the conflict.\(^{53}\) The Good Friday Agreement in 1998 (which was part of the peace negotiations) provided for the establishment of an independent commission chaired by Chris Patten to make recommendations for future policing arrangements.\(^{54}\) Despite significant police reforms and notable progress in building public confidence, the rebranded Police Service of Northern Ireland (PSNI) has not been able to successfully shake off aspects of its past. In particular, the inability of the police to acknowledge its role in the conflict presents lingering legitimacy challenges. Chief Constable Sir Hugh Orde has stated numerous times that the past has the potential to undermine all the progress that has been made in current policing. He thus took the lead and established the HET as the police contribution to dealing with the past.\(^{55}\) The HET is described as a free-standing unit of the PSNI, which reports directly to the Chief Constable. It is against this backdrop that police-led justice processes have to be viewed and analysed.

I suggest the HET is a strategy (arguably a valid one) to ‘manufacture legitimacy’ in policing.\(^{56}\) The strategy relies heavily on discourse borrowed from the transitional justice lexicon.\(^{57}\) Therapeutic language and concepts such as ‘resolution,’ ‘answering unanswered questions,’ ‘storyboard,’ ‘storytelling’ and ‘family centred’ are reflected in HET documents and discourse.\(^{58}\) The strategy addresses the interrelated problems of dealing with the past, which is a huge and growing resource burden on the PSNI, and building public confidence in policing, particularly within the nationalist community. Nationalists have consistently and vigorously campaigned for disclosure, accountability and justice. The HET is a mechanism for the PSNI to be regarded as addressing these persistent and outstanding historic issues. The following quote from an NGO representative reflects these views:

I think that Orde was driven probably by a genuine commitment, selfishly, to move policing forward, which is his job. But the issue of the past was looming over that. So the minimalist approach to that was to push people in the NIO [Northern Ireland Office] to deal with the issue in the absence of a political process that allows him to get

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53 See, for example, Peter Cory, Cory Collusion Inquiry Report into the Cases of Finucane, Nelson, Hamill, Wright (2004); Police Ombudsman Public Statement and Report on Operation Ballast – RUC/PSNI Collusion with the UVF in North Belfast (2007), http://www.patfinucanecentre.org/collusion/ballast.html.


55 Hugh Orde, ‘War Is Easy to Declare, Peace Is an Elusive Prize’ (paper presented at the School of Religions and Theology and the Irish School of Ecumenics at Trinity College Dublin, 2005).


58 Lundy, supra n 50.
on with the job of policing and that is his primary objective. He has then removed the blockage and the HET is a consequence of that.\(^59\)

An interrelated issue in a number of the unresolved cases was the engagement of the Committee of Ministers of the European Court of Human Rights, given that the cases involved issues under Article 2 of the European Convention on Human Rights (Right to Life):

I think it [HET] was set up for a number of reasons because Orde realised he was still under considerable pressure because of the Article 2 cases, which clearly could not be done within the RUC and subsequently the Serious Crimes Review Team of the PSNI. They were under severe pressure because of being approached by so many different groups and he wanted to basically get it off his desk and give it to a dedicated unit. It makes sense in many ways if you are getting demands from a large number of groups and individual families and campaigning groups and NGOs and the human rights community and the European Court of Human Rights that you would set up a dedicated unit.\(^60\)

The HET is a vehicle to assist in the transition from a past that is tainted to one that is viewed as accountable, transparent and reformed. Put another way, the HET is addressing a ‘crisis of legitimacy’ and restoring the ‘fractured image’ of an institution.\(^61\) Richard Wilson has described this as occupying a ‘liminal’ space, denoting a process of ‘becoming,’ which is ‘interstructural’ and transitional between two types of status.\(^62\) It is not an end in itself, but a means to an end.

**Defining a Transitional Justice Mechanism**

The HET deals specifically with ‘the past’ and seeks to answer unresolved questions and/or reveal ‘truths.’ It has three overarching objectives:

- to assist in bringing a measure of resolution to those families of victims affected by deaths attributable to ‘The Troubles’ in the years 1968 to 1998 (pre-Good Friday agreement);
- to re-examine all deaths attributable to ‘The Troubles’ and ensure that all investigative and evidential opportunities are examined and exploited; to do so in a way that commands the confidence of the wider community.\(^63\)

The HET aims to provide a family-centred approach by identifying and addressing unresolved issues and concerns from the perspective of victims’ relatives, working to the principle of maximum permissible disclosure.\(^64\) The focus is on a

\(^{59}\) Personal interview, NGO representative, Belfast, March 2007. Representatives from a total of 10 NGOs were interviewed for the research and additional interviews are ongoing.

\(^{60}\) Personal interview, NGO representative, Derry, March 2007.


\(^{62}\) Wilson argues that truth commissions are one of the main ways in which a bureaucratic elite seeks to manufacture legitimacy for state institutions, and especially the legal system. See, Wilson, supra n 56.

\(^{63}\) HET, Standard Operating Procedures, 2006.

\(^{64}\) HET, Six Monthly Report, October 2005.
specific period of time in the recent past: 1968 to 1998. The scope of the task is
to re-examine all 3,268 deaths attributed to the Northern Ireland conflict. The
HET has a fixed timescale of six years to complete its work and is not envisaged as
a permanent mechanism. The process is voluntary and participants can opt out at
any time (with the exception of cases which are part of a linked series). As a general
rule, cases are reviewed on a strict chronological basis, starting with the earliest
cases in 1968 and working forward to 1998. The questions relatives bring to the
attention of the HET are said to ‘drive’ the re-examination of cases. Given these
characteristics, the HET may be conceptualised as a transitional justice micro-level
truth-recovery mechanism unique to Northern Ireland.

In brief, the process consists of five core sequential phases. This is referred to as the
CARIR process and includes the following phases: Collection, Assessment, Review,
Investigation and Resolution.66 If there are realistic evidential opportunities, a case
will be submitted to the Public Prosecution Service (PPS) for consideration. This
broadly legalistic approach appears to be at odds with the HET’s more dominant
cathartic truth-recovery ethos. At the end of the process a Review Summary Report
(RSR) is given to each family that has engaged in the process. The RSR is an
individualised document that details the extent of the re-examination undertaken
by the HET and, in varying quality and depth of analysis, attempts to answer
questions. The RSR appears to be unique in policing in general and is breaking
new ground in transitional justice practice. In many significant ways the HET
departs from traditional policing, particularly in the development of the RSR
and the scope of questions it attempts to answer, many of which are not related
to typical investigations. One notable omission which sets it apart from other
truth-recovery processes is that it does not address the ‘bigger story’ or thematic
issues and analysis, and therefore does not produce a common narrative typical of
most truth commissions; its key distinguishing feature is a focus on micro-level
information recovery.

The UN Office of the High Commissioner for Human Rights, in its *Rule-of-Law
Tools for Post-Conflict States*, points out that it is very rare for a truth commission to
have the time and resources to investigate all individual cases.67 It further notes that
victims usually demand a case-by-case individual ‘truth’ and are often let down and
their grief exacerbated when they learn commissions can only investigate a
small number of ‘window cases.’68 Thus unresolved cases and victims’ desire for
information often remain unfinished business in many postconflict societies. The
HET concept has the potential to address this gap which many truth commissions
fail to meet. In international terms it is an imaginative experiment in micro-level

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65 All cases indicating police involvement are referred to the Police Ombudsman’s Office.
66 For a more detailed analysis of the process see, Lundy, supra n 50.
67 UN Office of the High Commissioner for Human Rights (OHCHR), *Rule-of-Law Tools for Post-
Conflict States: Truth Commissions* (HR/PUB/06/1) (2006); Audrey Chapman and Patrick Ball,
‘The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa and Guatemala,’
68 OHCHR, supra n 67.
information recovery. If one applies a narrow definition of local/home-grown – that is, ‘unique to a particular place’ – then the HET can be conceptualised as a home-grown transitional justice mechanism.

**Dilemmas of ‘Home-Grown’ Transitional Justice**

As mentioned earlier, the HET is an officially sanctioned top-down process, conceived and initiated by the PSNI Chief Constable Sir Hugh Orde\(^6\) in consultation with the Northern Ireland Office (NIO).\(^7\) There is a view that because the HET has official status it commands greater legitimacy and its findings carry special authority. However, as we will see, there is a strong counter-argument that a process initiated by a police force itself involved in the conflict raises questions of legitimacy, trust and integrity.

**Local Ownership**

Outsiders have played a pivotal role in the design, planning, implementation and decision making of the HET. The Command Team and most of its senior management are drawn from police services outside Northern Ireland (possibly by necessity because of the issue of ‘independence’). The Director and Deputy Director are retired officers from police services in England, but with experience of Northern Ireland gained from working on the Stevens Inquiries.\(^7\) The HET states that ultimately it is accountable to the victim’s families. However, the level of participation of victims and/or their representatives in the conception, implementation and decision making of the HET process has been limited. Families are essentially recipients of a process. The HET has consulted with numerous statutory bodies and NGOs, listened to their views and sought advice on aspects of process, but this does not amount to genuine consultation, participation and a sense of ownership.

NGOs acting on behalf of their clients have carved out an informal inquisitorial role which can challenge the HET account and impacts on the process. A consortium of groups has organised periodic meetings with HET senior management to raise concerns and receive updates on the progress of cases. The aim is to share good practice and lessons learned in the hope that it will lead to changes and improvement in the overall quality of the service. This idea was initiated by NGOs from the bottom up. To its credit the HET has demonstrated willingness to listen to criticisms and concerns, and on occasion it has taken decisive responsive action. To date, however, its approach has been largely reactive.

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\(^6\) Hugh Orde, supra n 55. The HET is widely regarded as the ‘brainchild’ of Sir Hugh Orde; he has described it as one of his achievements during his tenure as Chief Constable of the PSNI.

\(^7\) The NIO funds the HET to the tune of £32 million. Most nationalists would not perceive the NIO as a neutral observer; there appears to be a conflict of interest for those families seeking answers from the state about its role in the conflict.

\(^7\) The Stevens Inquiries were set up by the British government to investigate the killing of solicitor Patrick Finucane and allegations of collusion between the RUC and loyalist paramilitaries. In total there were three inquiries headed up by Sir John Stevens.
Had there been more meaningful consultation in the conceptualisation, design and implementation of the HET, many subsequent problems may have been avoided. This in turn could have resulted in a greater sense of ownership in the process, with the consequential benefits of local acceptance and improved prospects of success. However, the HET’s legitimacy has been in question since its inception. Some victims and NGOs have refused to engage because it does not have sufficient independence. NGOs that critically engage have also expressed disquiet that it is ‘the police investigating the police.’ But the reality is that the HET remains ‘the only show in town.’ Thus there appears to be ‘pragmatic participation’ in the absence of any viable alternative. The HET maintains that its legitimacy is based on the level of engagement in the process.

**Insiders versus Outsiders**

The importance of local agency in processes requires thinking through not only the definitions of ownership but also the characteristics of the locals. The HET has been an evolving process. In brief, the original structure included two Review and Investigation Teams, known as the Red and Purple Teams. The Red Team was designed to be ‘ring-fenced’ and staffed entirely by external personnel (mainly retired police officers from forces outside Northern Ireland – England, Scotland and Wales – who commute weekly) and was set up to deal exclusively with cases that required ‘independence.’ The Purple Team was to consist mainly of former retired local RUC officers. Two additional independent teams were established: the White Team and the Complex Enquiries Team. The following sections explore three broad themes related to the problematic nature of a police-led truth-recovery process: the role of insider/outsider, independence and corporate memory.

The research found that each phase of the HET process included the involvement of former long-serving local RUC officers, some of whom have from its inception held key positions in senior management. As such, aspects of the process cannot be described as having the requisite degree of independence. Importantly, former RUC and Special Branch officers manage all aspects of intelligence and perform a censoring role in respect of disclosure. This raises questions of perceived impartiality and conflict of interest, especially for those families seeking answers to questions about the role of the state and its institutions. In this instance, ‘who the locals are’ is of fundamental importance, undermining the simplistic notion that locals invariably know best. It emerged through the research that very few, if any, individuals or families engaging in the process were fully aware of the structures and the extent of the involvement of personnel detailed above. These structural issues have obvious implications for claims of independence and issues of trust.

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72 Donais, supra n 27.
73 The HET have recently made changes to its structure and personnel. The author has been invited to meet with senior management to discuss these changes.
74 Special Branch was an elite, highly unaccountable and powerful section of the RUC. It had responsibility for counter-insurgency activities and was widely viewed as a ‘force within a force.’
legitimacy and buy-in for sections of the population. As one NGO representative put it:

There are huge issues of independence and trust. And there are huge issues of trust because of former RUC investigations and cooperation and loyalty issues... People would be very concerned in a lot of cases that anybody that was involved in Special Branch is involved in any shape or form in the HET and people have good reason to have anxieties about that.75

Despite the recent focus on questions of local ownership, ‘analysis of the specific identity of the relevant locals remains surprisingly thin in the literature in general.’76 The fact that local actors are often the cause of a breakdown in the rule of law in the first place is an important complicating factor in efforts to implement the principle of locally owned transitional justice.

The relationship between insiders and outsiders discussed in this article indicates that such relationships are far from straightforward and are more complex than is often portrayed. The retired police officers from outside Northern Ireland were brought in to provide the necessary supervision and create a measure of independence – ‘the neutral arbiters.’ The domestic social reality in Northern Ireland is that certain sections of the population perceive these outsiders and their role in a truth-recovery process as far from being benevolent, neutral and unproblematic. One NGO representative explained it this way:

The reality is that it is the police investigating the police and the British police are not neutral to this conflict. They are also, for many, the perpetrators to this conflict... There is no neutrality in this; they [the HET] are still representing a government who played a very big part in this conflict and continues to play a very big part.77

In view of the nature of the conflict in Ireland and its colonial history, the characteristics of outsiders are a matter of concern for some. What this discussion illustrates is that the simplistic binary terms ‘outsider/imposition’ versus ‘insider/agency’ is in reality much more nuanced. Naive or overly simplistic prescriptions for local/home-grown initiatives may miss or obscure important social complexities and local dynamics that are deeply rooted in the conflict. There are additional questions that arise in violently divided societies, specifically that of how local ownership might overcome and successfully function alongside enduring divisions, mistrust and suspicions. I would agree with Timothy Donais that the characteristics of insiders and outsiders and their motives and intentions demand much closer scrutiny and evidence-based research. Such scrutiny raises questions about whose voices should be heard, and what happens ‘if the priorities of significant local actors run counter to broader society’78 or significant sections within it.

75 Personal interview, NGO representative, Belfast, December 2006.
76 Donais, supra n 27 at 11.
77 Personal interview, NGO representative, Belfast, November 2006.
78 Donais, supra n 27 at 12.

Policing Memories

It is frequently suggested in the literature that locals possess the historical understanding, local knowledge and cultural capital needed to inform transitional justice or conflict-resolution processes, and this is what outsiders lack.\(^79\) However, who ‘the locals’ are and their characteristics require particular attention if the process is about the construction of historical memory. The concept of competing memories, or competing ‘truth claims,’ is a common critique in the transitional justice literature.\(^80\) As I have argued elsewhere,\(^81\) the reliance on RUC corporate memory and the absence of a counter-discourse or counter-memory is a fundamental weakness in the work of the HET. There is an obvious absence of a broadly nationalist perspective or memory informing its work. The importance of corporate memory was a central theme to the core work of the HET. It was constantly referred to as an important resource in the interviews I carried out with all levels of staff. The newly recruited outsiders were inducted by locals (retired former RUC and Special Branch members) and encouraged to tap into the wealth of collective knowledge gained by former RUC colleagues from decades serving on the front line in the conflict. Corporate memory was reflected in the RSRs that I examined, and in the sample of case files that I analysed. Significant space is given to a self-serving set piece that in many ways attempts to manage public memory. It comments on the historical context of the time from a policing perspective and the overwhelming pressures encountered by the security forces. The following abstract from an RSR is indicative:

West Belfast, where the incident occurred, was unfortunately the scene of too numerous terrorist murders, and the Security Forces (consisting of the Royal Ulster Constabulary (RUC) and the British Army) often bore the brunt. During 1971 Security Forces came under almost daily attack and witnesses to those attacks did not often come forward for fear of reprisal by paramilitaries or the community in general. The Police were often over stretched and unable to cope effectively... Due to the volume of incidents occurring at the time, and the heightened security situation, some of the crime scenes may not have been visited at all.

That the security forces were under tremendous pressure and that resources were stretched are not in question. But what is frequently ignored in reports is the local context from the community’s perspective. Interestingly, the RSR quoted above eulogises the authorities, but fails to mention that 11 unarmed civilians were killed in the same incident and avoids issues around the culpability of the security forces in these deaths. In order to deal with relatives’ questions or illuminate facts, this institution-focused contextualisation is superfluous and appears to serve no


\(^81\) Lundy, supra n 52.
purpose other than to reinforce an institutional script. Additionally, repeated use of selective memories impacts on partiality and combines to create a nonneutral tone. Some NGOs have requested the set piece be removed from RSRs. It is worth repeating that these are official documents and historical records of the conflict. The problematic nature of relying on corporate memory is self-evident. One way of avoiding this problem in a local/home-grown truth-recovery process is to provide a multidisciplinary team of insiders and outsiders that reflects perspective from ‘all sides,’ with no one vantage point privileged.

**Individualising Truth**

The HET describes itself as having a family-focused approach and families are said to be at the heart of the process. It is widely recognised that the process in itself can be important for victims’ healing. The first contact meeting between the HET and families is designed to be a safe space for victims to give their account or tell their side of the story and to raise questions they wish to have answered. The meeting is usually conducted as an intimate face-to-face meeting in the privacy of the victim’s home or some other preferred venue. The process has the potential to provide a platform where victims are given space to formally recount their stories to someone from officialdom that has come to listen and document their concerns. The process was hugely significant and symbolic for many of the victims that I interviewed. The following quote reflects this view:

> The feedback to date that I have had from our members is that it is a sea change to have a police officer come to your home as a human being and ask details about the case that were never asked before; that has been great for some people that they are getting some kind of recognition that things hadn’t been handled correctly in the past and that they were made to feel powerless by the police ... Then again, why are we saying that it’s a great thing that they are nice and they are friendly, this is what you should expect of people in any field when you are going into someone’s home who has suffered such a tragic loss.

For many nationalists and republicans, in particular, there has traditionally been suspicion and lack of trust in the police force. For these families, engaging with the HET has been a profoundly challenging experience. Many had never previously engaged with the police, and this was the first time many had spoken about the death of their loved one to the authorities, in some cases over a 30-year period. This formal process of ‘telling’ and ‘listening’ was for some families official recognition and acknowledgement which served to restore a sense of dignity. In many ways the process appears to be an ideal format to ‘empower’ or enable victims to voice their experiences. As one NGO representative noted, ‘I think it’s a first attempt to empower families, certainly to give them the space to question how the case of their loved one has been investigated and in a sense it is empowering them ...’

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82 Personal interview, NGO representative, Belfast, November 2006.
It is, however, not without problems and limitations. From interviews that I have conducted with families, there are numerous examples of dissatisfaction with the re-examination of cases and content of RSR; in particular with the level of disclosure and HET’s apparent unwillingness to address culpability issues. In these circumstances, the process has the potential to retraumatise victims. In many ways the HET process privatises storytelling, puts it behind closed doors and individualises the truth. This may suit the needs of some families. However, in other cases victims seek public acknowledgement, recognition and validation of their experiences.

Likewise, it is beyond the HET remit to provide a broader social narrative or macro-level analysis based on thematic issues. Some families and sections of the population desire a process that can deliver the bigger picture. The HET can analyse patterns based on evidence drawn from individual cases and comment on issues such as collusion or the chain of command, but this is not the same as thematic examinations of issues that are a legacy of the conflict. Thematic issues are not necessarily related to deaths but instead require examination of institutions or practices that go to the heart of the causes, context and consequences of the conflict. The HET’s contribution and the potential of such a concept rest on the capacity to deliver micro-level information and to meet the needs of victims for a case-by-case individual truth. This is often missing from truth commission processes. But it is what victims frequently want – that is, to hear about their own individual case.

Conclusion

Considerable importance has been attached to local/home-grown solutions in transitional justice policy and practice. This article uses a case study of the HET to explore the concept of home-grown transitional justice and pose preliminary questions. The HET operates as a centralised top-down policy mechanism, initiated at a higher level by a statutory organisation, in collaboration with the state. I am not convinced that this can be defined as a local/home-grown initiative. In addition, issues of independence, legitimacy, the characteristics of the locals involved and competing ‘truth’ claims were identified as limitations in a police-led truth-recovery process. This in turn raises important questions about viewing processes in simplistic insider/outsider binary terms. Notwithstanding these concerns, I argue that the HET as a concept has potential and could offer a model to other countries seeking to meet the needs of victims for a case-by-case individual ‘truth.’ It is breaking new ground as a micro-level information-recovery transitional justice mechanism that is unique to Northern Ireland. Drawing on the lessons learned, to gain the widest possible acceptance a police-led truth-recovery process should contain a multidisciplinary team of insiders and outsiders in a

83 It should be pointed out that the outcome of this private process can be, and has been, made public in a number of instances by NGOs and/or solicitors representing families.
partnership of equals. The transferability of such a process should be viewed in the context of policing reform, cost and scope of the particular conflict.

To conclude, further in-depth empirically based research is called for on a number of the issues raised in this article. The rhetoric of local/home-grown can give a gloss to a variety of processes that may not necessarily be participatory or bottom-up. For these reasons it is important to clarify what we mean by such concepts. The flip side of this is that in seeking clarification there may be danger in creating templates or blueprints. This article is not meant to be a definitive exposition of the concept of local/home-grown transitional justice. It is a starting point that seeks to open further discussion and debate.