

Are Top-down Approaches of Transitional Justice Enough to Deliver Justice?

To what extent can transitional justice from below tackle the contemporary problems of doing justice after mass violence?

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Abstract: The aim of the article is to shed light on the values of transitional justice from below: this peculiar approach fits in the whole process of transition towards democracy, peace, and reconciliation and constitutes a praiseworthy course of action to deliver justice after mass atrocities have been perpetrated during a conflict. To begin with, the "bottom-up approach" will be analyzed. Secondly, the article will consider the specular "top-down approach" by pointing out its deficiencies. The call for an enriched transitional process that considers the needs and the will of the affected communities comes from civil society itself; if not, it is feared that the whole process might be perceived as illegitimate, compromising the entire transition. In fact, civil society, in its various forms, is a key player that can benefit the transitional process. After these introductory remarks, the article tries to investigate the ideal role that civil society should play when governmental institutions of a particular country obstruct, or at least, do not undertake, initiatives of transitional justice. It goes without saying that not even bottom-up initiatives are free from criticism.

Keywords: Transitional justice; justice "from below"; conflicts and mass atrocities; civil society; reconciliation.

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1. Introduction

Post-conflict peace is very fragile: societies that have recently experienced mass atrocities are much more likely to return amid a conflict¹. More than 40% of post-conflict societies will be experiencing a new conflict within a span of ten years². In these scenarios, transitional justice constitutes a necessary discipline to ensure peace. The processes of delivering justice after violence are often examined in a "top-down" perspective that focuses on the role of states and international actors, while the contribution made by civil society remains largely uninvestigated³. Indeed, over the years, civil society has played a crucial role in the protection of human rights and in the fulfillment

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1. See Paul Collier, V. L. Elliott, Håvard Hegre, Anke Hoeffler, Marta Reynal-Querol and Nicholas Sambanis, *Breaking the Conflict Trap: Civil War and Development Policy*, *World Bank Policy Research Report* at 150-151 (World Bank and Oxford University Press 2003), available at <https://openknowledge.worldbank.org/handle/10986/13938> (last visited November 2, 2022).

2. See Patricia Lundy and Mark McGovern, *Whose Justice? Rethinking Transitional Justice from the Bottom up*, vol 35, no 2, *Journal of Law and Society* 265, 279 (2008).

3. According to Ruti G. Teitel, *Transitional Justice Genealogy*, 16 *Harvard Human Rights Journal* 69 (Symposium: Human Rights in Transition 2003), transitional justice "can be defined as the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes". For an in-depth analysis of transitional justice, see also Ruti G.

of transitional justice processes⁴. This article will focus on transitional justice "from below"⁵. It will examine how the "bottom-up approach" can fit into the transitional process to deliver justice after periods of conflict and mass atrocities. At first, the bottom-up approach will be analyzed. Secondly, transitional justice "from the top" will be considered by highlighting its weaknesses. It will also be exposed how initiatives from below can enrich the transitional process. In addition, a few cases will be presented to demonstrate that communities must be taken into consideration when trying to do justice, otherwise, the risk is that they will perceive the whole process as illegitimate, compromising the entire transition⁶. Civil society, in its various forms, in fact, is a key player that can benefit the transitional process. Sometimes, however, it may happen that governmental institutions of a particular country obstruct, or at least do not undertake, any initiatives of transitional justice. Therefore, the ideal role that civil society should play on those occasions will be investigated. In this regard, two examples will be identified that successfully summarize the consequences deriving from the intervention of civil society. Moreover, it will be clarified that not every bottom-up initiative is free from criticism. Finally, although the common goal of any transitional justice initiative is to promote

Teitel, *Transitional Justice* (Oxford University Press, 2000) and Neil J. Kritz, *Transitional Justice: how emerging societies reckon with former regimes* (1997).

4. See Hugo van de Merwe and Maya Schkolne, *The role of local civil society in transitional justice* in Cheryl Lawther, Luke Moffett and Dov Jacobs (ed.), *Research Handbook on Transitional Justice* at 221 (Edward Elgar Publishing 2019).

5. For further in-depth analysis on the subject, see Aaron P. Boesenecker and Leslie Vinjamuri, *Lost in Translation? Civil Society, Faith-based Organizations and the Negotiation of International Norms*, 5 *International Journal of Transitional Justice* (2011); Audrey R Chapman and Hugo van der Merwe, *Truth and Reconciliation in South Africa: Did the TRC Deliver?*, Pennsylvania University Press (2008); Heidi Rombouts, *Victim Organizations and the Politics of reparation: A Case-study on Rwanda*, Intersentia (2004); Jonah S Rubin, *Transitional Justice Against the State: Lessons from Spanish Civil Society-led Forensic Exhumations*, *International Journal of Transitional Justice* (2014); Reem Abou-El-Fadl, *Beyond Conventional Transitional Justice: Egypt's 2011 Revolution and the Absence of Political Will*, *International Journal of Transitional Justice* (2012). For an academic and almost comprehensively deal of transitional justice "from below" see Hugo van der Merwe and Maya Sckolme, *The role of local civil society in transitional justice* in Cheryl Lawther, Luke Moffett and Dov Jacobs (ed.), *Research Handbook on Transitional Justice* (Edward Elgar 2019).

6. See Dustin N. Sharp, *Transitional Justice and "Local" Justice* in Dov Jacobs (ed.) *Research Handbook on Transitional Justice* at 142-3 (Edward Elgar Publishing 2017).

peace, democracy, and reconciliation, it is not possible to provide "a priori" a right combination of transitional tools that can guarantee the success of the transitional process. This is indeed a very open debate.

2. *Transitional Justice "from below"*

As a report of the UN Secretary-General designated in 2004, transitional justice "comprises the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation"⁷. Usually, it's done through state-led initiatives (i.e., prosecutions, truth commissions and/or amnesties); however, transitional justice can also derive from local communities themselves⁸. In fact, they have at times been involved in truth recovery, ex-combatants' demobilization, and in the challenging of cultures of violence (e.g., through community restorative justice). It is of the utmost importance to highlight that these initiatives do not involve any participation of the state or any governmental organization, and it goes without saying that bottom-up initiatives have great chances of success as civil society shares a common interest: to put an end to a very often destructive and ruinous conflict⁹. Civil society, as defined in an excellent way by Paul Gready and Simon Robins, is constituted from "all public spheres, separate from the apparatus of the state and the economic market, which serve as locations of political participation and discursive interaction. It is a site of political and social action and contestation, characterized by a diverse range of actors with different, sometimes competing, agendas and repertoires of actions"¹⁰.

7. UN Security Council Doc S/2004/616, *The rule of law and transitional justice in conflict and post-conflict societies - Report of the Secretary General* at 4, available at <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/PCS%20S%202004%20616.pdf> (last visited November 2, 2022).

8. See Lundy and McGovern, *Whose Justice? Rethinking Transitional Justice from the Bottom up* at 271 (cited in note 2).

9. Kieran McEvoy and Lorna McGregor, *Transitional Justice from Below: Grassroots Activism and the Struggle for Change* at 2 (Bloomsbury Publishing 2008).

10. Paul Gready and Simon Robins, *Rethinking civil society and transitional justice: lessons from social movements and "new" civil society*, *The International Journal of*

It follows that the involvement of communities is increasingly taken into consideration given their inherent character of resilience and mobilization against the several political and economic forces that enter the field¹¹. Additionally, the standard transitional justice mechanisms are often corrupt, inefficient, or otherwise unable to respond to the needs of the transitional process¹². Thus, non-governmental organizations, groups of victims, or survivors organize themselves independently in order to give the necessary impetus to a process that aims at healing old wounds. Needless to say, communities act with the awareness of not being able to cancel the horrors previously committed by authoritarian regimes or deriving from conflicts between multiple factions¹³. Frequently, civil society's initiatives are undertaken precisely because the state has failed to implement sufficiently effective transitional justice mechanisms, or none at all, that lead to accountability, truth, healing, and so on¹⁴.

3. *The Evolution of Transitional Justice and the Contribution of Civil Society*

Transitional justice practices "from the top" have never been conceived as being malleable and adaptable to peculiar situations. In view of this, the international community has always tried to impose solutions from the outside according to the "one-size-fits-all" paradigm¹⁵. It has to be admitted that attempts have been made to modify the praxis and to take into account the preferences or suggestions of local communities and constituencies; however, these attempts have been characterized by superficiality and little accuracy¹⁶. Inevitably, some

Human Rights (2017) 958, available at <https://doi.org/10.1080/13642987.2017.1313237> (last visited November 2, 2022).

11. See van de Merwe and Schkolne, *The role of local civil society in transitional justice* at 221 (cited in note 4).

12. Kieran McEvoy, *Beyond Legalism: Towards a Thicker Understanding of Transitional Justice*, 34(4) *Journal of Law and Society* 411 (2007) 413-414.

13. See van de Merwe and Schkolne, *The role of local civil society in transitional justice* at 221 (cited in note 4).

14. See *id.*, at 5.

15. See Sharp, *Transitional Justice and "Local" Justice* at 142 (cited in note 6).

16. See *ibid.*

argue that this participatory approach arose from the underdeveloped world because North-inspired transitional justice mechanisms "from the top" failed to serve justice¹⁷. Nowadays, there is a growing sentiment that pushes towards considering more civil society as it is believed that peacebuilding and justice initiatives "from the top" and not adapted to a precise socio-political context fear to be seen as illegitimate by the local communities and therefore will not bring benefits in the long term¹⁸. This conclusion has also been reached in the report of the UN Secretary-General of 2004¹⁹. It follows that not only should local communities be involved in the implementation stage, but they should also take part in every stage of the transitional process (i.e., conception, design, decision making, and management)²⁰. The theoretical benefits that derive from the implementation of grassroots practices are many: in particular, one can well imagine that these appear to be closer to civil society, thus ensuring a more widespread participation. Not only a higher level of physical participation, but it is reported that these techniques are more welcomed by the affected communities both from a social and cultural point of view²¹. To reiterate, it has not been argued that the integration of the bottom-up approach with the traditional top-down one would grant success to the transitional process but it can surely increase possibilities of non-recurrence of the conflict.

4. *The Limits of Top-down Approaches deriving from the Inevitable Peculiarities of each National Legal System*

17. See Lundy and McGovern, *Whose Justice? Rethinking Transitional Justice from the Bottom up* at 279 (cited in note 2). Transitional justice was born after World War I but started to be conceived as extraordinary in 1945 when the international community came to terms with the cruelties of the Nazi regime. State-led initiatives of transitional justice were then employed soon after the collapse of the Soviet Union in 1989. Bottom-up participatory approaches stem (in South America, Sub-Saharan Africa and the Asian sub-continent) from the awareness that these top-down tools - inspired from transitional processes that took place in the Northern countries of the world - failed (at least partially) to meet their scope.

18. See Sharp, *Transitional Justice and "Local" Justice* at 142-3 (cited in note 6).

19. See UN Doc S/2004/616, at 7 (cited in note 8).

20. See Lundy and McGovern, *Whose Justice? Rethinking Transitional Justice from the Bottom up* at 266 (cited in note 2).

21. See Sharp, *Transitional Justice and "Local" Justice* at 145 (cited in note 6).

Another aspect that deserves to be considered is that every legal system is "sui generis". Justice is a concept that is declined differently according to the legal tradition on which one intends to dwell: it is definitely linked to the historical and cultural context. For this reason, the way in which justice is done necessarily varies in time and space. In the past, attempts have been made to "consult" with civil society but the confrontations with these realities have always been carried out in a very superficial way²². That is the reason why some feel the need for a "turn to local": there needs to implement the use of "non-Western" tools of dispute resolutions, truth-telling and reconciliation²³. By way of illustration, African legal systems present multiple and overlapping systems of justice. It follows that claiming to take mainstream mechanisms and simply to bring them into a legal system is risky. Indeed, the danger is that they might be useless and/or inaccessible to many²⁴. Evidently, a number of practices from the top have recently been considered both remote and inaccessible. Let us consider, for instance, the most famous international tribunals delivering justice in Rwanda and Yugoslavia. These mechanisms have proven to be very expensive and were placed far away from the communities they had to serve. Moreover, they have also been deeply criticized by their own national governments²⁵. One of the most used mechanisms of transitional justice is the one of truth commissions: these seem to promise to solve the aforementioned problems. Yet, their simple export without taking into account the historical and cultural context ought once again to be rejected²⁶. It can be argued that not every post-conflict society is willing to deal with the past. Therefore, the establishment of truth commissions might be viewed negatively as it necessarily leads to "the re-opening of old wounds from which further polarizations may arise"²⁷. Furthermore, it is quite possible that the truth sought by the

22. See Sandra Rubli, *Transitional Justice: Justice by Bureaucratic Means?* at 12 (Swiss Peace Working Paper 4/2012).

23. See Martien Schotsmans, *International Actors and Traditional Justice in Sub-Saharan Africa; Policies and Interventions in Transitional Justice and Justice Sector Aid* (Intersentia 2015).

24. See Sharp, *Transitional Justice and "Local" Justice* at 145 (cited in note 6).

25. See *ibid.*

26. See *id.*, at 146.

27. See *id.*, at 146-7.

commission is partial and limited. Indeed, the very fact that it is imposed by state policies can result in the marginalization of the victims and in the exclusion of some socio-economic injustices. An example can be the one offered by the transition of Sierra Leone: there the words "revealing is healing" were rejected as this practice was not in tune with the local tradition of "social forgetting" and ritual cleansing. In short, the *modus operandi* of truth commissions can sometimes lead to a re-traumatization of civil society and be against indigenous traditions relating to reconciliation²⁸.

5. *Benefits of Transitional Justice from below*

As it can be deduced, the favored thesis is that the "from below" perspective can certainly give benefits to the normal top-down approach: for instance, the participation of social movements and grassroots organizations can make sure that economic crimes and/or corruption are included in the list of crimes to be investigated. In fact, these crimes are not generally considered in transitions mainly characterized by practices from the top²⁹. Furthermore, one of the purposes of the bottom-up approach is to ensure that local actors continue to pursue ideals of justice and the development of the transitional process also, and above all, from the moment in which foreign donors leave³⁰. As argued previously, there is no mathematical rule that can establish with absolute certainty what the perfect balance between the different practices of transitional justice is: the evaluation must take into account the socio-economic and political situation as well as suggestions and opinions of civil society. This is the only course of action: in this way, the chances of a return to conflict are minimal.

28. See *id.*, at 147.

29. See McEvoy and McGregor, *Transitional Justice from Below* at 6 (cited in note 9).

30. See Lundy and McGovern, *Whose Justice? Rethinking Transitional Justice from the Bottom up* at 280 (cited in note 2).

6. *The Various Roles of Civil Society in Transitional Justice*

The contributions of civil society to transitional justice are numerous. In one of his writings³¹, Backer tries to outline some fundamental functions that civil society can fulfill in the context of the transitional justice processes. Human rights organizations and associations are well-known for their work in collecting data and testimony on human rights abuses. Certainly, it is a valuable contribution to international justice processes for several reasons. First, it creates accurate and specific historical documentation indispensable for obtaining the truth about the past³². Given that judicial processes and formal transitional justice processes often start several years after the conflict, there is a risk that necessary evidence would no longer be accessible. For this reason, the collection of testimonies and evidence from civil society in some cases has proved essential to bringing out the events, causes, and relationships between the various abuses and events during the conflict. For example, during the Pinochet dictatorship, some religious organizations collected thousands of judicial transcripts and other proof regarding the disappearances which later proved crucial to the investigation of the National Commission for Truth and Reconciliation whose extremely short term of 18 months would not have allowed it to achieve such work of collection³³. Additionally, the mechanisms of transitional justice may sometimes not find a uniform application and therefore would be destined to fail to fulfill their mandates. Consequently, civil society is also often involved in monitoring the implementation of these tools and verifying their transparency. Indeed, when there is room for discretionary decisions, civil society has the task of paying attention and acting so that governmental institutions operate transparently³⁴. Another key function of civil society is to feed the public debate on its past and on the issue of human rights, especially in those situations where local politics is prone to denial and

31. David Backer, *Civil Society and Transitional Justice: Possibilities, Patterns and Prospects*, 3 *Journal of Human Rights* 297, 302 (2003).

32. See *ibid.*

33. See *ibid.*

34. See van de Merwe and Schkolne, *The role of local civil society in transitional justice* at 235 (cited in note 4).

amnesia about the events that have occurred³⁵. With regard to support for victims in many areas, such as medical and legal assistance, associations and civil society groups often come into play and fill the gaps left by state institutions. Activities of this type are aimed to reduce the effects of trauma to victims of torture, rape, and other forms of abuse, preventing the transgenerational transmission of trauma and facilitating the reintegration of victims into the community³⁶. Overall, these activities make an important contribution to reconciliation and development of those societies that have recently emerged from civil wars or ethnic-religious conflicts.

7. The Need for Collaboration between Governmental Institutions and Civil Society to Achieve Proper Justice

The scenarios outlined above can constitute a theoretical reference framework within which to insert the activities of civil society and describe the different types of collaboration that are established between it and governments, and the implications in the transitional justice process and in the political development landscape³⁷. The ideal situation is undoubtedly the one in which civil society is already present and organized at the moment of transition, and a relationship of collaboration with the government has already been established. In this scenario, the most favorable one designated by Backer, civil society can make an effective contribution from the beginning or perhaps even before the issue of transitional justice is raised on the political agenda³⁸. Secondly, in this ideal circumstance, the government is open to new proposals and makes itself available to establish new partnerships with associations and non-governmental organizations present in the area³⁹. This type of orientation, however, does not imply that the entire work must be carried out on a collaborative basis, but that there is also a clear division of tasks that avoids the overlapping of activities and dispersion of economic resources. It is an aspect that should

35. See Backer, *Civil Society and Transitional Justice* at 303 (cited in note 31).

36. See *id.*, at 304.

37. See *id.*, at 306.

38. See *id.*, at 306-7.

39. See *ibid.*

not be underestimated since countries facing transitions are often in severe conditions of deficit⁴⁰. Yet, it is very difficult for transitional justice processes to establish this ideal type of collaboration: the other scenarios presented by Becker, on the other hand, highlight a series of phenomena that have been encountered in numerous post-conflict situations⁴¹. In transitional scenarios, civil society is often in an embryonic phase. It is unrealistic to expect it to play an indicative role in the political landscape of countries that have just emerged from a conflict; consequently, despite governments or the international community starting transitional justice processes, it is unlikely that these are followed by an active involvement of society. Frequently, it tends to be very limited besides still being an essential ingredient for the success of the entire transitional process⁴². However, as already mentioned, the risk incurred when civil society is not involved is that the real needs of the community are neglected and that at a certain point the process is abandoned and falls into oblivion, thus decreeing the failure of the whole operation⁴³.

8. (follows) *The Spanish Case: no collaboration between Governmental Institutions and Civil Society*

When the government, for various reasons, has no intention of dealing with the past, it can resort to instruments such as amnesties and decide not to legally prosecute the guilty. This type of decision, however, is hazardous for the government itself, whose legitimacy risks being strongly questioned by civil society, which, just out of a conflict, expects change and a democratic transition⁴⁴. In Spain, after the death of the dictator Francisco Franco (1975), almost all political forces agreed to grant immunity to all individuals who had committed crimes to defend or to go against the regime⁴⁵. It was a conscious

40. See *ibid.*

41. See *id.*, at. 306-10.

42. See *id.*, at. 307 (table 2 - Theoretical framework).

43. See Sharp, *Transitional Justice and "Local" Justice* at 142-3 (cited in note 6).

44. See *id.*, at 310.

45. Josep Maria Tamarit Sumalla, *Transition, Historical Memory and Criminal Justice in Spain*, *Journal of International Criminal Justice* 9 729-730 (2011).

decision to forgive unconditionally and no longer look at the past; the focus was on the future. According to many, it is not a passive process but one that deliberately aims to ignore the events that were known and remembered very well⁴⁶. Precisely for this reason, Spain is a very interesting case as it is the only country in which it has been chosen to avoid transitional justice: this decision has often been praised but never copied and today this path no longer seems to be viable⁴⁷. However, with the gradual appearance of democracy, numerous non-governmental associations made up of victims and their descendants have emerged⁴⁸. In particular, in 2000 the first association was created for the recovery of historical memory after the discovery of a mass grave. Some of these associations have begun to promote further excavations and identification through the use of DNA⁴⁹. Thanks to the contribution of civil society, the desire to deal with the past has also been forming in Spain: successive governments have begun to enact laws with the aim of granting economic compensation to the victims, condemning Francoism (and the relative symbols and public monuments) to identify and possibly exhume the victims⁵⁰. Despite the non-homogeneity of the implementation of the "Ley de la Memoria Històrica" (2007) throughout Spain, some autonomous communities have pushed themselves much further and promoted other measures aimed to heal old wounds⁵¹.

9. *Criticism of Transitional Justice "from below". The "Participatory Action Research" (PAR)*

As has been noted, the "bottom-up" perspective is particularly relevant in those environments where politics and institutions are obstacles to transitional justice initiatives. In these scenarios, civil society plays a critical role in promoting initiatives aimed at establishing reconciliation and/or accountability for crimes by subjecting official

46. See *id.*, at 730.

47. See *ibid.*

48. See *id.*, at 737.

49. See *ibid.*

50. See *id.*, at 737-743.

51. See *id.*, at 744-745.

authorities to relentless criticism of state inaction. Thus, civil society drives transitional justice as a prime actor, as it normally should be⁵². However, the role of civil society should not be romanticized: the pluralism inherent in the concept itself also denotes the presence and support of different NGOs, some of which follow extremist and illiberal ideas and interests. Just as there can be seen initiatives that promote reconciliation, other segments of civil society might work in the opposite direction. This aspect raises a question: what are the criteria through which transitional justice policies establish what agendas to follow between the ones pushed by certain CSOs rather than others⁵³? However, precisely in these cases, a community-based truth-telling and research approach should be organized in, with and by members of the community and should be guided by the PAR (Participatory Action Research) paradigm⁵⁴. This approach was devised to challenge the dominant paradigm of liberal knowledge, control and development as North-inspired transitional justice mechanisms "from the top" failed to deliver proper justice⁵⁵. This approach sees those who are "research objects" directly involved in all phases of the research, from problem definition to dissemination and action - "it is action research that is participatory and participatory research that unites with action"⁵⁶. The PAR is innovative: it is an "internal" research that actively involves people, triggers the truth-seeking and awareness of their conditions and, in accordance with these, of how change can be initiated⁵⁷. The goal is to bring people to be able, through the sharing of knowledge-experiences, to transform their environment. In this process, other actors can play a catalytic and supportive role, but they will not do so from a dominant point of view as it remains driven by the local community (e.g., the transition of Northern Ireland). In other words, this approach seeks to solve the problems that arise in a region through the

52. Lundy and McGovern, *Whose Justice? Rethinking Transitional Justice from the Bottom up* at 289 (cited in note 2).

53. See van de Merwe and Schkolne, *The role of local civil society in transitional justice* at 234-5 (cited in note 4).

54. Lundy and McGovern, *Whose Justice? Rethinking Transitional Justice from the Bottom up* at 286 (cited in note 2).

55. See *id.*, at 279.

56. See *id.*, at 286.

57. See *ibid.*

involvement of endogenous resources and not through the imposition of an externally conceived and designed model⁵⁸.

10. (follows) *An example of the "Participatory Action Research" (PAR): the Ardoyne Commemoration Project (ACP).*

The Ardoyne Commemoration Project (ACP) aimed to seek truth in the Ardoyne area, north of Belfast⁵⁹. We know that in 1998 the Good Friday Agreement created a partial and not simple peace. This frail diplomatic achievement gave way to a widespread popular process of reflection on the events they experienced during the conflict⁶⁰. However, no transitional justice mechanisms have been established⁶¹. In a context of uncertainty and inertia on the part of the government to implement practices to deal with the past, an "ad hoc" group of victims, relatives of victims, interested individuals and civil society activists was set up with the aim of producing a book in which to insert testimonies of events of the conflict⁶². This is an original idea as they wanted to identify and honor those who were killed in the conflict regardless of their faction: no one was prevented from testifying on an ethnic, religious or political basis⁶³. This is recognized as one of the many positive elements of the project that facilitated its success⁶⁴. A very interesting aspect about the PAR is that participation implies the development of solidarity and empathy among the various participants who, although they may have different positions on the issue under consideration, must identify common problems and work together on social change. The ACP is also studied today as it is seen as a project in which individuals and communities have been able to express themselves and tell about events hitherto unknown to most⁶⁵. A particular aspect of the project is that, in order to participate, the victims had to

58. See *ibid.*

59. See *id.*, at 284.

60. See *ibid.*

61. See *id.*, at 285.

62. See *ibid.*

63. See *id.*, at 287.

64. See *ibid.*

65. See *id.*, at 289.

have lived for a period of their life in Ardoyne⁶⁶. Some studies have been conducted to investigate the ACP's strengths and limitations: recognition and acknowledgment have been included in the reports as positive results⁶⁷. A limitation that deserves to be mentioned is the inability of the project to disclose information from outside agencies in order to obtain some official recognition or any form of accountability⁶⁸. Furthermore, for some respondents, the mere fact of revealing hidden truths is not enough; they would have preferred the state to take legal action against those who committed crimes during the conflict⁶⁹. In any case, at the same time, idealizing participatory approaches should be avoided, as these have limits too: for example, the selection of individuals who will be entitled to give testimonies can lead to substantively marginalizing some minority groups just as in top-down practices⁷⁰. That is why grassroots approaches must also be handled with care. Furthermore, it is quite likely that in post-conflict societies, those who decide to seek the truth and deal with the past will soon run out of resources and/or authority to investigate all crimes. As previously discussed, it is believed that corruption and economic crimes would be the most neglected and therefore the risk is to create inequality of treatment⁷¹.

11. Conclusion

In conclusion, transitional justice is nowadays characterized by a dominance of legalism⁷²: some argue that there is a logical relationship between the dominance of legalism in the transitional doctrine/practice and the trend to intend justice and justice delivery as a matter of "state-like" institutions⁷³. Probably, this tendency comes from the

66. See *id.*, at 287.

67. See *id.*, at 289.

68. See *id.*, at 290.

69. See *id.*, at 291.

70. See *id.*, at 292.

71. See McEvoy and McGregor, *Transitional Justice from Below* at 6 (cited in note 9).

72. Kieran McEvoy, *Beyond Legalism: Towards a Thicker Understanding of Transitional Justice* at 411 (cited in note 12).

73. See *id.*, at 424.

fact that the goals of transitional justice are so complex to achieve that some contribution of the state is needed to "render such objectives legible"⁷⁴. Conceived in this way, it leaves little room for new interpretations and alternatives of transitional justice. What emerges is that to make space for new ways of justice that better respond to local needs is a necessary course of action to expand the idea of transitional justice. In addition to the state level, civil society, understood as the vast range of actors that constitute a country, exists and must absolutely be taken into account. Therefore, the support and legitimation of initiatives such as that of ACP, even at an international level, lead not only to the recognition of civil society as the protagonist of transitional justice, but also encourages domestic pressure that can finally induce a change in political and social orientations. Finally, the creation of a truth commission or an international court will never solve all the problems related to the past: any initiative must be accompanied and followed by a widespread diffusion of the truth that will be revealed by projects of reconciliation, commemoration and many other initiatives "from below" aimed at reminding of previous harder times.

74. See *ibid.*