Opening the Books: Transitional Justice in the Turkish-Kurdish Conflict

By

Kemal Büyükyüksel

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Supervisor: Nenad Dimitrijevic

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ABSTRACT

This thesis aims to tackle the question of transitional justice in the Turkish-Kurdish conflict that has been going on in the Republic of Turkey for over 30 years. Transitional justice in Turkey has not been discussed enough, but the field holds great relevance for Turkey's troubled past and present. This includes the Kurdish issue, which is one of the biggest problems Turkey has faced and is facing. Both the Turkish and the Kurdish communities have suffered throughout the conflict. But members of both communities have also committed atrocities that have to be addressed if there is to be an end to the enmities between these communities. Without facing the past in some way, a reconciliation process is not possible and Turkey is no exception. In order to answer the question of how to address past wrongdoings, this thesis assesses the applicability of different mechanisms of transitional justice in the Turkish-Kurdish context. It focuses specifically on the tension between the concepts of "justice" and "truth" and how they relate to the Turkish-Kurdish context.

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TABLE OF CONTENTS

INTRODUCTION

Turkish society is home to many different cleavages, the main one's being the secular/religious and Turkish-Kurdish ethnic divide (Kalaycioglu, 2011). The still ongoing struggles to come up with a solution for the Kurdish issue, both on a societal and political level, seek a reconciliation to the ethnic division in Turkey that has torn the society into different camps for so long. There are different political, social and economic demands and expectations from both sides. In order to initiate a process of reconciliation, it is necessary to engage with the questions of truth and justice, and address both sides' grievances and expectations. The main actors in the reconciliation process that was initiated in 2009, include the Turkish government composed by the Justice and Development Party (AKP) and the Kurdish political representatives including independent MP's who have sided with the Kurdish groups advocating for their cause. The process includes the main Kurdish rebel organization, *Partiya Karkerên Kurdistanê* (Kurdistan Workers Party, PKK), and its leader Abdullah Öcalan. Kurdish political representatives have been allowed with some caution by the Turkish state to have meetings with Öcalan and also mediate in between the PKK and the Turkish state. There has also been an initiative to carry the attempts for reconciliation on the political sphere to the societal sphere by the Turkish government in the form a "wise men commission" (Anadolu Agency, 2013, 3 April), set up by the government to communicate with the public to explain and increase support for the ongoing reconciliation process. The newly formed (2012) HDP (Peoples' Democratic Party) is also engaged in the reconciliation process, attempting to bring together people from both sides of the Kurdish conflict to create a common political understanding of the crisis and just ways out of it.

The conflict between the PKK and the Turkish state has been the main division line in the Kurdish issue. Both sides have had historically strong support from large segments of their

1

societies (Turkish vs. Kurdish). The more conservative and religious segments of Kurdish society (specifically Sunni Kurds) have been closer to the Turkish state while the more leftist and religiously diverse segment has been closer to the PKK (Çiçek, 2015). The PKK has been able to gather amongst its ranks many Kurdish people who had become disillusioned with the regime's political, cultural and socio-economic discrimination against the Kurds. By framing their struggle against the Turkish state in terms of the combination of radical leftist ideology and the claim of national liberation from an oppressive regime, the PKK has been able to mobilize a large portion of the Kurdish population in the southeastern regions. For the PKK, the Turkish state is not only undemocratic but also imperialist and exploitative towards their approach to the Kurdish population. The Turkish state, on the other hand, has viewed this conflict as a battle against terrorism, emphasizing the violent nature of the PKK. While historically, the policy towards the Kurdish population was one of denial and assimilation, since the beginning of the 2000s there has been growing recognition of the Kurdish population and its troubles from both the Turkish state and civil society.

Although there have been strong moves towards ending the conflict, there is still not much discussion in Turkey about the direction and mechanisms of change. This raises the question of how the topic of transitional justice can be relevant. Turkey does not fit the traditional case for transitional justice (from dictatorship to democracy), because it is not categorized as a dictatorship. But transitional justice theory also provides to be a useful field in addressing past human rights violations during armed internal conflict (Budak, 2015:11), in regimes other than dictatorships. Budak (2015:2) claims that Turkey can be perceived as a democracy with flaws and shortcomings. She suggests that an understanding of transitional justice which focuses on the wrongdoings committed in an internal conflict, with the support of a thorough reform process, can help define a certain form of transition to nonviolence that can be useful for the Turkish context. Even if there can be no regime change in Turkey, a

transition to an internally peaceful democratic regime is both possible and necessary. Because traditional justice mechanisms will fall short of providing a solution to violence, in the face of the complexities of the internal conflict in Turkey, the application of transitional justice mechanisms become necessary and fitting for the Turkish context.

Since the start of the armed conflict in 1984 between the PKK and the Turkish state, there have been an immense number of human rights violations committed from both sides. To initiate a proper process of reconciliation and democratic stabilization, the wrongdoings committed from both sides have to be tackled.

In light of this, this thesis will focus on the following main research question:

Which transitional justice mechanisms are the most fitting to initiate a process of reconciliation in the Turkish-Kurdish conflict?

The claim of the thesis will be that, since wrongdoings were committed by both sides of the conflict and that these wrongdoings cannot be easily linked to certain individuals but rather larger groups, it is not viable to rely on criminal justice (the negative argument). The thesis will then make the point that the reconciliation process can best be built on the mechanisms of truth seeking, taking into account the factors that surround the conflict (the positive argument). Within the general question, the research will further ask: What are the political and social factors that affect the dynamics of a reconciliation process in Turkey? Why is criminal justice not a viable solution to the reconciliation process? Why is truth seeking a preferable strategy for Turkey? Which kinds of truths are relevant? Which mechanisms of transitional justice are appropriate to tackle the conflict? The core positive argument of the thesis is that a truth commission is an appropriate mechanism for dealing with the past in Turkey.

This introduction is followed by three chapters.

Chapter one will first present the historical background of the conflict. Second, it will discuss the wrongdoings on both sides of the conflict. Third, it will discuss the narratives that

hold sway on both sides of the conflict. These narratives will serve as an important factor in understanding how the perspectives of the different sides, on the Kurdish issue, can be reconciled.

Chapter two opens with a section that discusses the application of the arguments for criminal justice as a transitional justice mechanism in the Turkish-Kurdish context. It will discuss different arguments to point towards the possible shortcomings of the viability of criminal justice procedures in initiating a reconciliation process in Turkey. It proceeds with Section Two, which presents and explores the theoretical concepts and tools that I find appropriate for the Turkish context. It will focus on a clarification of the idea of reconciliation the thesis will rely on. It will also elucidate the concepts of perpetrators and victims.

Second, Third, Fourth, it will discuss different mechanisms of truth seeking that are relevant for transitional justice.

Chapter three focuses on the truth. First two sections explore the concept of the right to truth and different meanings of the truth in the context of transitional justice, followed by an identification of the reading of the truth that is most suitable in the Turkish context. The third section discusses the relevance of the truth in Turkey. Section four will focus on the prospects of forming a truth commission and its possible implementation. It will make references to both theoretical analysis of truth commissions and comparative empirical knowledge of the application of this mechanism in different countries. It will also discuss the kinds of reparations that can be provided to the victims of the conflict. This chapter will also discuss the possible institutional setup of a truth commission in Turkey, and the possible reform suggestions it can make.

1. THE CONFLICT: HISTORICAL BACKGROUND AND COMPETING NARRATIVES

This chapter will introduce the Turkish-Kurdish conflict. Section one will deal with its historical background, by explaining the relationship of the ideological formation of the Turkish state and its democratic deficits with the Kurdish question. Section two will then discuss the historical development of the Kurdish issue. The chapter will also present wrongdoings committed on both sides during the conflict in section three before going into a larger discussion of the competing narratives on the conflict that exist on the two sides in section four. Understanding the difference between the narratives and the content of the wrongdoings is crucial to the discussion of which transitional justice mechanisms can best initiate a reconciliation process. These narratives provide the social context in which different actors are embedded in.

1.1 The Founding Ideology of the Turkish State and Its Democratic Deficits

The historical reasons for the Kurdish conflict go all the way back to the establishment of the Turkish Republic and its founding principles. For the leaders and the elites of the newly formed Turkish Republic in 1923, the building of a new "Turkish nation" rested upon the construction of a "mono-lingual, mono-ethnic, and (as much as possible) mono-religious society" (Barkey, 2012:26). The basic ideological discourse of the newly built nation shifted from the old Ottoman understanding of accommodating and managing diversity through the *millet* system (Barkey, 2012:21) to a "project of national unity, a fairly homogeneous nation, and a single modernity, as well as a single political culture with a dominant national identity" (Barkey, 2012:25). This ideology was driven by western and secular ideals, putting modernity as the highest ideal for the newly built homogeneous nation. The three pillars of the founding

philosophy of the republic are: "Turkish nationalism, secularism, and a unitary highly centralized state" (Ozbudun, 2012:150). These goals lead to the assimilationist policies towards ethnic and religious minorities in order to ensure the homogeneity of Turkish society.

Religious minorities such as Christians, Jews and Alevis were denied recognition of their identities. The newly set up religious administration of the Turkish state, because of the founding party's mono-religious aspirations, did not institutionally entrench the identities and practices of these religiously minority communities. An emphasis was rather given on Sunni Islam. The Directorate of Religious Affairs which is the institution with the highest say on religious affairs, set up by the state and connected to it, solely included Sunni Muslims in its administration. Turkey engaged in a campaign of homogenization in its aim to create a national unitary state which led to "the removal, relocation and extermination of Kurdish rebels in Dersim and other regions" (University of Arkansas, DADM Project, 2016) (Barkey, 2012:26). The Turkish state also neglected the provision of linguistic rights for large minorities such as the Kurds which were stated in the Lausanne Peace Treaty of 1923 in which Turkey was recognized as a sovereign state.

The first Constitution in 1924 stated in Article 2 that "the religion of the Turkish state is Islam; the official language is Turkish" (Earle, 1925:89). Article 88 states that "the name Turk, as a political term, shall be understood to include all citizens, without distinction of, or reference to, race or religion". There is no reference to any other identity group, be it religious or ethnic. And while the term "Turk" was suggested as an umbrella term, it promoted a certain cultural and linguistic identity above others by blurring the lines between ethnic identity and citizenship. This shows how it is not necessary to openly discriminate a certain ethnic or religious group in order to establish practices of discrimination against them. But with the 1980 coup d'état and the Constitution of 1982, which was written by the appointment of military

6

figures, the discriminatory stance of the Turkish state became even clearer, as the nationalistic statements within the constitution became more radical.

In the Preamble to the current Constitution of 1982 (Government of the Republic of Turkey, 1982) (enacted after the 1980 military coup d'état), Turkey is defined as "the Sublime Turkish State" which is deemed indivisible "in line with the concept of nationalism introduced by the founder of the Republic of Turkey, Atatürk". It is further stated that "no protection shall be accorded to an activity contrary to Turkish national interests, Turkish existence and the principle of its indivisibility with its State and territory, historical and moral values of Turkishness". Such radical remarks about Turkishness had not existed at all in the Constitution of 1924. Turkishness was defined by the courts "in terms of ethnic origin" in further trials after the 1982 Constitution was enacted (Ozbudun, 2012:68). The largest ethnic/linguistic minority (Kurds with 15-20% of the population) group, and the largest religious minority (Alevis) group are not officially recognized as minority groups and as having separate cultural identities as of yet (Ozbudun, 2012:69). The Constitution further strengthened this discriminatory stance by stating in Article 81 that political parties cannot claim that there are minorities in Turkey, and forbidding them to promote cultures and languages other than the Turkish (Ozbudun, 2012:151). This formed the legal basis for discrimination and the repression against the Kurds, which led to an armed rebellion.

1.2 The Kurdish Issue

1.2.1 The PKK and the Events That Led Up To Its Formation

The rise of the armed guerilla organization PKK (Workers' Party of Kurdistan) is also linked to the futility of the non-violent struggles against the assimilationist policies. Non-violent political organizations formed in the 1960s - the Kurdistan Democratic Party of Turkey (KDPT), Workers Party of Turkey (TIP) and Revolutionary Culture Centers of the East

7

(DDKO) - encountered repressive reactions from the Turkish regime, as many of their leaders and activists were imprisoned, tortured or assassinated (Kutschera, 1994). These organizations tried to advance the Kurdish agenda in a non-violent way, publishing both Kurdish and Turkish journals, books and dictionaries emphasizing the right to speak in their mother tongue.

The strength of the PKK emanates from "the refusal of successive Turkish nationalist regimes to accommodate Kurdish aspirations for cultural and political autonomy" (Kutschera, 1994:12; van Bruinessen, 1988:41). "Prison conditions in the Kurdish provinces have been even worse than elsewhere in the country, the trials against Kurdish organizations more in contravention of legal rules than others" (van Bruinessen, 1988:45). Kutschera (1994:13) also confirms this, including the hunger strikes, extensive torture and suicides in harsh prison conditions into the picture as well, especially after 1980. "In Kurdistan, the extent and ferocity of the repression decimated the Kurdish parties, some of which decided to disband. The regime thus cleared the way for the PKK" (Kutschera, 1994:13). Also, from 1987 until 2001, the southeastern region (with 8 provinces and 13 cities) in Turkey has been under the state of emergency. This is analyzed below, in section 1.2.3.

1.2.2 Crimes and Atrocities

The conflict between the Turkish state and the PKK has left close to 40,000 people dead (International Crisis Group, 2012). The Kurdish issue in the earlier stages of the Republic could be understood as a problem of democratic deficit concerning the Turkish state. But after the violent conflict arose between the PKK and the Turkish state, it also became a problem concerning grave atrocities and human rights violations committed for an extended period of time. Çandar (2012:17) claims that "it is clear that it is impossible to resolve the Kurdish Question without addressing the PKK Question" and he finds it necessary to identify "the PKK as an important part of the Kurdish Question, and hence the solution". The PKK, with good or

8

bad intentions, has become a prominent figure in the eyes of a large segment of the Kurdish population in Turkey, due to its insistence on fighting for the recognition of the Kurdish existence. How the PKK is integral to the Kurdish issue and hence its solution will be further explicated in the part where the Kurdish narrative will be presented. In this light, the time period in focus will be from 1984, the year which the PKK started its violent activities, up until today.

1.2.2.1 The Killings and Wrongdoings Committed by the Turkish State

The Turkish state has been responsible for an excessively large amount of human rights violations and wrongdoings in the analyzed period. As eight Kurdish provinces have been under state of emergency since 1987 (up to 2002), the Turkish state gained the capacity to exercise ruthless authority over the Kurdish population. Article 15 of the 1982 Consitution states that:

> "In times of war, mobilization, martial law, or a state of emergency, the exercise of fundamental rights and freedoms may be partially or entirely suspended, or measures derogating the guarantees embodied in the Constitution may be taken to the extent required by the exigencies of the situation, as long as obligations under international law are not violated."[1]

The state of emergency gave the regional governors wide discretionary powers and the legal framework for the police and military forces and the legal authorities to prevent independent investigations of human rights violations in the Kurdish regions (HRFT Report, 1998:Preface). According to Article 7 of the Decree on the state of emergency, no lawsuits can be filed against the actions of the Regional Governor and law enforcement members acting in the region, granting them impunity (HRFT Report, 1998:100). In 1991, a decree was introduced by the state to extend the powers given to authorities ruling under the emergency to allow for the closure of printing press, the banning of publications and the forcible resettlement of individuals who harmed public order and general security (Amnesty Report, 1991:229). This

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[1] See Articles 119-120-121 of the 1982 Turkish Constitution for an extended explanation of the State of Emergency rules in Turkey

has further diminished the chances of both keeping an account of and preventing such wrongdoings in the region, while providing the state officials with a legal background to commit violations and wrongdoings in these regions.

The constitution was amended in 2004 to state that any individual's fundamental rights are inviolable under state of emergency. But the Cabinet Decree 285, which was passed as an emergency legislation in 1987[2], formed a "state of emergency region" (OHAL in Turkish) and gave special powers to security forces and governing bodies in the region to tackle anti-state activities (Hurriyet Daily News, 2001, 1 October) for over 15 years, adding to the violent nature of the repressive practices engaged by the Turkish state. Gemalmaz (1989-1990:117) states that decrees such as these issued by the Council of Ministers have expanded and amended the scope of state of emergency laws to the point where its legality and constitutionality in practice became questionable.

Budak (2015:10) says that a common strategy used by the Turkish forces was to sever the ties between the PKK militia and the civilian population in the Kurdish regions. This was done through the creation of a "village-guard system" in which local civilian population was provided with arms by the Turkish state to engage in conflict with and protect its lands from the PKK. Budak further explains that a secret counter-guerilla organization named Gendarmerie Intelligence and Counter-Terrorism Unit (JITEM), which involved village-guards, informants, army and police forces and intelligence units was set up by the state. JITEM was involved in extra-judicial killings, forced disappearances and forced resettlement of a very large amount of people. The existence of this organization is still denied by the state (Sabah News, 2009, 29 December), although hard evidence proves it otherwise (Hurriyet Daily News, 2011, 8 May), which leads to further questions on the perversion of the rule of law in the region during the

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[2] See Link: http://www.mevzuat.gov.tr/MevzuatMetin/4.5.285.pdf for a full text of the Cabinet Decree 285 in Turkish

period of conflict. Recently in November 2015, 8 suspects, part of the gendarmerie forces, accused of conducting tortures and extra-judicial killings in the 1990s in the Kurdish regions, have all been acquitted in a trial concerning these atrocities, furthering the cycle of impunity (Cihan News Agency, 2015, 6 November).

Different annual reports of Amnesty International (1991, 1992, 1996, 1997, 2000) have reported the tortures of both militants of the PKK and Kurdish civilians which sometimes resulted in the death of the victims. The most common methods included sexual abuse and rape, suspension from the wrists and the arms in a naked and blindfolded position, electrical shocks, attacks by highly pressurized water and severe beatings (HRW, 1993:25). The practice of torture in some cases even included children who were allegedly linked to the PKK (HRW, 1993:315).

Extra-judicial killings and forced disappearances in the southeastern region of Turkey, have been reported by both Amnesty International, Human Rights Foundation of Turkey (2001) and Human Rights Watch (1993) reports. The approximate number of extra-judicial killings from 1991 up to 2001 have been 1300. The victims include both civilians and political figures supportive of the Kurdish insurgency. The Human Rights Association (2008) has figured the number of forced disappearances concerning southeastern regions between the years 1984 and 2006 to be around 1230 (Radikal Newspaper, 2008, 6 December). The case of forced disappearances has been highly publicized in Turkish society due to the initiative called "Saturday Mothers", a group of Kurdish women which regularly protested in Istanbul to uncover the truth about the whereabouts of their children who disappeared and were never heard of again (Amnesty International, 1998, 1 November).

Forced relocation of villagers has also been a common practice in the region. The Norwegian Refugee Council and the Global IDF Project (2002:165) have reported the numbers of people who have fled their homes due to the conflict in the southeastern regions of Turkey

11

to be around 1 million, while the total number of internally displaced people were reported to be around 2-3 million. The Turkish state authorities announced to have evacuated around 350,000 people from their homes and around 3500 villages were emptied. Some of these villages were burnt by the Turkish state forces to force people to evacuate (Human Rights Watch, 1996, June). The practice of village evacuations still continues and the Turkish state has explicitly stated that the reason for these evacuations stems from the violent activities the PKK has engaged in, which negatively affected the social and economic lives of the citizens living in the region. The state has further stated through its local government organ that it is necessary to take any precautions to protect the life and property of citizens in the region, to reinstate peace and trust, and to protect the state and its elements from terrorism (Welayet News, 2015, 6 August).

According to the commission set up by the Turkish Grand National Assembly to investigate incidents related to terrorism or violence involving the Kurdish issue, more than 20,000 PKK members were killed during direct confrontation with the Turkish Armed Forces since 1984 (T24 News, 2013, 28 January). The casualties in this direct engagement may not be categorized necessarily as human rights violations or atrocities as the Turkish Armed Forces was acting, most of the times, under legitimate circumstances, either fighting against militant groups engaging in direct terrorist activities or as retaliation to a certain ambush or raid against the armed forces. It is important to differentiate between the wrongdoings committed by the Turkish state and legitimate acts in combatting terrorist activities, when assessing the responsibility of the Turkish state. Indeed, the PKK has also relied on terrorism to fuel its cause, being responsible for a large amount of wrongdoings and human rights violations, which will be presented in the next section.

1.2.2.2 The Killings and Wrongdoings Committed by the PKK

The PKK, has been labeled as a terrorist organization not only by the Turkish state, but also by many other democratic states such as the USA, the UK, France, and other EU countries (Cihan News Agency, 2015, 8 September). The targets of the PKK were deemed by its members as "Turkish extreme nationalist groups and social chauvinist groups (Turkish and Kurdish radical left-wing groups), as well as state collaborators and feudal landlords" (Kirisci/Winrow, 1997:127). But the PKK has not limited their scope of violence to such targets, and who they deemed to be a collaborator or a traitor has been very broad in scope.

The PKK has used violence against civilians in the Kurdish regions to secure its authority and they have been involved in raiding and burning villages, although the decision to do so was criticized even by the supporters of the PKK (Kirisci/Winrow, 1997:127). A common practice of the PKK was to hang those deemed as traitors or informants in public spaces (HRW, 1993:11). The torture and execution of prisoners and "traitors" through other means was also common (Amnesty Report, 1993:257, 1997:317). Van Bruinessen (1988:44-45) claims that the PKK's paranoia in seeing traitors and enemies everywhere has been one of the main reasons explaining their inclination to rely on violence. He tells that even members of the PKK have been killed by the PKK for criticizing the party. Many attacks were done against villages which rejected PKK authority (HRW, 1993:12; Amnesty Report 1996:303), with the aim to rid them of these village guards which were deemed as "collaborators" with the state. But the extent of violence practiced in these raids were immense, as women and children in these villages were also executed. An example of such a raid in 22nd of June 1993 in the Bitlis province shows how 9 of the 14 persons killed in the attack were children. Other civilian targets included teachers, politicians and doctors. These people were considered as representatives of the central Turkish state and hence were deemed as enemies to the Kurdish people by the PKK. Between 1984 and 1994, 128 teachers were killed by the PKK (Kirisci/Winrow, 1997:128). Some of these attacks

also ended in the death of the teachers' other family members as well. Schools have also been targets by the PKK, as only between 1992 and 1994, 192 schools have been burned down. These schools were perceived as institutions of "assimilation" by Kurdish militants. As of 2015, the PKK still threatens teachers in the region, spreading terror amongst them to force them to flee from the area (Milliyet News, 2015, 30 October).

Captured Turkish soldiers also have been the victims of torture and arbitrary executions (Amnesty Report, 1997:316). One of such massacres of Turkish soldiers happened in 24th of May 1993 (Cihan News Agency, 2012, 9 April). 36 off-duty Turkish soldiers who were doing their mandatory military service and had only been in training for a month were travelling in civilian outfits on a bus in the Bingöl province. They were kidnapped by the PKK who stopped the bus and checked the IDs of travelers. Out of the 36 soldiers, 33 of them were lined up and executed one by one the following night. There have been a very large number of raids to gendarmerie stations and ambushes to Turkish units on patrol by the PKK (Kirisci/Winrow, 1997:126).

Approximately 7000 security forces belonging to the Turkish state have been killed by PKK militia in different encounters since the beginning of the conflict. There is a large number of civilians who were either killed or who became victims of the ruthless tactics engaged by the PKK.

1.2.3 Moves Towards Democratization

After years of armed conflict the leader of the PKK, Abdullah Öcalan was caught in Kenya by the Turkish government in 1999 (Marcus, 2007). After his capture, he switched from a secessionist stance to a more accommodative stance on the Kurdish issue, ordering the PKK troops to disarm. The new strategy argues "instead of struggling for autonomy, a federation, or independence, Kurds would now fight for a truly democratic Turkey, in which Kurds and Turks

14

would be unified" (Marcus, 2007:79). There is still ambiguity concerning why Öcalan's stance changed after he was captured. This change led to confusion and disbelief amongst the PKK (Marcus, 2007:77-78). The elites of the guerilla forces were "ill-prepared to challenge Öcalan" (Marcus, 2007:78). In the end they could not challenge the party elite out of fear that they would be labelled as disloyal and be dealt with in a harsh manner (which may have meant death).

The Crisis Group's recent report points out that the Turkish government was slow to take advantage of this new stance (2014:1). Although the ban on Kurdish language was revoked in 2001, the government would not make serious efforts to end the conflict up until 2009. The peace process was initiated by the AKP government at first through the use of the National Intelligence Agency (MIT), whose officials engaged in secret talks with senior PKK members in Oslo (Uras, 2013, 10 January). In the next step, the Justice and Development Party openly recognized the Kurdish problem and started tackling it through deliberations with PKK officials and Öcalan himself. They also set up a state TV channel in Kurdish and allowed for the forming of Kurdish private education institutions (Crisis Group, 2014:2). Prime Minister Erdoğan stated the necessity of a new constitution to provide cultural rights to Kurds and change the structure of the regime (Efegil, 2008:60). He openly apologized on national television for the Dersim bombings done in the 1930s which were aimed to suppress Kurdish dissent, killing thousands of Kurdish people (BBC News, 2011, 23 November). A "Wise Men's Commission" was set up. The commission's basic aim was to reshape the social and political perceptions of the public towards the Kurdish conflict to create an atmosphere ripe for a reconciliation process. It was comprised of intellectuals, artists, academics and businessmen (in general well-known public figures). But there have been serious doubts about the commission's capability in creating an atmosphere of reconciliation, first because of its small size, and second, because the members of the commission were chosen by the ruling party rather than through the decision of different parties together (Hurriyet Daily News, 2013, 20 March).

The Pro-Kurdish party leaders mediated between Öcalan, the PKK and state officials during the process. Ceasefires were declared by the PKK and then broken when they became disillusioned by the peace process (Crisis Group, 2014). The PKK's re-radicalization during a time in which prospects for peace were high is connected to the need of the PKK to protect its survival. As the conflict moves to a more democratic area, the PKK finds itself in a situation in which it has to compete against other political organizations to earn the loyalty of its constituents. Tezcür (2010:776) claims that the PKK faced strong competition by the AKP which also advocated an accommodative stance on the Kurdish question. Tezcür (2010:783) shows that this can observed through the analysis of voting behavior in the southeastern regions during the AKP's opening up towards the Kurds. The AKP constantly increased its votes in area, in comparison to the pro-Kurdish party BDP (Peace and Democracy Party) and the PKK constantly lost followers who preferred civil rather than guerilla life. According to Tezcür, the PKK, in order to consolidate its political hegemony over its ethnic constituents and stay as the true representatives of the Kurdish nation, radicalized its activities, in hopes of retaliation by the Turkish state in the Kurdish regions, which would draw back the Kurdish population and pull the voters back to the pro-Kurdish party.

Although the roadmap for peace is not still clearly defined, demands for legislative and judicial reform to provide amnesty to ex-PKK members, a new constitution that would recognize minorities and accommodate the Kurdish population and disarmament/withdrawal of PKK groups, have been voiced. In March 2015, Öcalan addressed the Kurdish population through a letter which was read out by senior HDP members in front of a large crowd in Diyarbakir, urging for the solution to the Kurdish issue by democratic means (ABC News, 2015, 21 March). The preference to switch to a democratic means of struggle immensely increases the importance of the activities of Pro-Kurdish political groups, and puts the HDP in the spotlight of the peace process as the main Pro-Kurdish political party which is active.

1.2.4 Pro-Kurdish Political Parties in Turkey

The existence of Pro-Kurdish parties was always a hot topic in Turkish politics. These parties especially emerged in the 1990s and were systematically banned by the regime (Watts, 1999). For the purpose of this thesis, Pro-Kurdish political parties are those whose constituency and members are largely formed by the Kurdish population, and which have moderate views on the PKK if not personal contacts with PKK members. These parties actively seek to advance a solution to the Kurdish issue and make this their main political agenda, although their agenda may not be limited to such issues. In 2005, then Turkish Prime Minister Erdoğan, during a trip to Diyarbakır, recognized the existence of a Kurdish problem (Lagendijk, 2012:182). This led to an increase in the hopes of finding a solution and for the first time a Pro-Kurdish party, the Democratic Society Party (DTP) was represented in the parliament through independently elected candidates. DTP party members would participate in elections as independent candidates, and then form the party once they were inside the parliament again, in order to bypass the election threshold. The DTP was disbanded in December 2009 on the order of the constitutional court under articles 68 and 69 of the Constitution about political parties. The constitutional court stated that the statements of the DTP members were pro-PKK and that they threatened the integrity of the state (Hurriyet Daily News, 2009, 12 November).

Another pro-Kurdish party, Peace and Democracy Party (BDP), was established after this ban, with the members of the previous party. HDP (Peoples' Democratic Party) is the latest in the line of pro-Kurdish party. The HDP was formed mainly by the members of the former pro-Kurdish party (BDP) but also includes many different small leftist organizations, LGBTI groups, women's rights organizations and worker organizations. There is a breakaway with the past ideals of the pro-Kurdish parties in the HDP case as it presents itself as a social democratic party which has an agenda beyond ethnic strife. What is new with the HDP is the opening up of the traditional leftist pro-Kurdish party towards disadvantaged groups in a wider Turkish

society. By the pro-Kurdish community's willingness to ally itself with different groups which includes many different ethnic, religious, linguistic and cultural backgrounds, the HDP can offer a politics of reconciliation within Turkish society. The party claims that: "Our democratic nation is made up of Turks, Kurds, Alevis, Armenians, Greeks, Yezidis, Suryanis, Keldanis, Arabs, Circassians, Laz, Pomaks, and Romanies. We will move away from every form of imposed uniformity to a pluralist democratic model for the nation."[3]. In the Turkish parliamentary elections in June 2015, the party achieved a breakthrough by gaining 13% of the votes nationwide. The HDP has nominated varying candidates from different ethnic and religious minorities (emphasis on the Alevis) to LGBT groups and from pious Muslims to socialists, in the aim of bringing together different segments of society under one banner, promoting an atmosphere of reconciliation (Hurriyet Daily News, 2015, 7 April). It is also the only party which tries to build a bridge between the Turkish state and the PKK (Dag, 2014, 25 December). It supports an accommodative stance towards the Kurdish problem. The HDP is a party that goes beyond the normal political divisions in Turkish society but is a party which also has its roots in the Kurdish ethnic party tradition. The formation of such a party is also a new and refreshing attempt in engaging with reconciliatory politics within Turkey.

1.3 The Tale of the Two Sides: Narratives of the Conflict

Many perpetrators have committed many wrongdoings on both sides. The victimization of individuals in Turkish and Kurdish society due to torture, death of relatives etc. has been influential in both sides' insistence on having just claims and objections against the violence committed by the other. This has led these two sides to own up their perception of the conflict,

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[3] See the official English website of the Peoples' Democratic Party, "Call for a new life" section for a full version of the text. URL: https://hdpenglish.wordpress.com/call-for-a-new-life/

staying faithful to the truthfulness of their own narrative. The next part of this chapter will examine these narratives on both sides of the conflict.

1.3.1 The Turkish Narrative

Large portions of Turkish society and politicians have approached if not the Kurdish issue, then the PKK, as a matter of terrorism, according to a survey done by Heinrich Boll Stiftung (The Green Political Foundation) (Yilmaz, 2014, 13 November).

Mainstream Turkish nationalism and its proponents - mainstream Turkish political parties, media, cultural elites - have had shifting attitudes towards the Kurdish issue in different periods of the Republic's history (Yegen, 2007). In the beginning of the Republic the Kurds were perceived as "future Turks" and problems regarding the Kurdish region as issues of backwardness and the legacy of the feudal society. Later, in the 1950s-60s, Kurdish unrest was approached through the lens of economic underdevelopment and lack of market integration of the region. The issue has also been framed by relying on suspicions towards foreign actors' involvement and support for Kurdish dissent, especially the Soviet Union during the cold war period. In the 1990s, although the conflict between the Turkish state and the PKK was at its worst level, mainstream Turkish nationalism started recognizing the existence of Kurdish society and culture as a separate identity within Turkey while staying distanced towards the idea of democratization that could tackle the Kurdish issue.

Yegen (2007:137) states that the Kurdish population did not actually face massive discrimination in terms of citizenship rights. As long as individuals complied with the rules set in society and accepted the Turkish cultural identity, the Kurdish population and other minorities could enjoy equal citizenship rights as any others. Indeed, there have been many politicians of Kurdish dissent, even prime ministers such as Bülent Ecevit and presidents such as Turgut Özal, businessmen, artists such as İbrahim Tatlıses and members of other professions

19

which could have a high value of status attached to them in society. This fact has also influenced the dominantly hostile perception of Turkish society towards the Kurdish issue. The 2014 survey of Heinrich Böll Stiftung which was mentioned above found that 57% of the public think that the biggest political reason for the Kurdish issue is the violent acts of the PKK and its support by foreign powers, while only 31% thinks that the reason stems from problems concerning democracy and discrimination. Since the Turkish state has not implemented an official policy of discrimination towards the Kurds, differing largely from a system of apartheid which existed in South Africa, it becomes easier to defend this claim.

Political parties in government, throughout the years have had different stances on the Kurdish issue, although the common discourse on security has remained. After the 1980 coup d'état, the center-right Motherland Party (ANAP) which was in government from 1983 till 1991 and its leader Turgut Özal, had a moderate stance on the Kurdish issue, considering it in terms of cultural rights and expressing the need for democratization (Balci, 2008). Özal emphasized the necessity of a dialogue and introduced legislation which lifted the ban on Kurdish language. But even during this period, the increasing terrorist activities of the PKK led to the introduction of a new anti-terror law by the same party. The reformist policies were slowly abandoned in the 1990s through a renewed emphasis on "security". Pro-Kurdish political parties on the other hand, did not accept reducing the Kurdish issue to a security problem and emphasized the ethnic and political dimensions of the issue (Balci, 2008:196).

The AKP, which has been in power since 2002 up until now, similar to ANAP, had a moderate stance on the issue (Updegraff, 2012). They emphasized the socioeconomic aspect of the Kurdish issue, pointing towards unemployment as being a driving factor for the mobilization of young Kurds by the PKK, and defended cultural rights for the Kurdish population while trying to create a common narrative under the identity of Islam rather than ethnicity. Still, the security dimension of the issue has not been rendered irrelevant. In the summer of 2015, as the

20

AKP government supported an all-out war against the PKK, it became one of the most important aspects surrounding the Kurdish issue once again (Al-Monitor, 2015, 8 November).

Although there are some divergences, for the most part, Turkish media has presented the PKK by using labels such as "terrorists", "separatists" and defined it as a terrorist organization with separatist aims (Pehlivan/Dixon, 2010). There were two different kinds of actions by the PKK which caused grievance within the Turkish public, and both were portrayed by the media regularly.

The first aspect was the death of Turkish soldiers serving in the region during the conflict. These deaths were highly publicized and those killed were mourned nationwide. It has become common to observe nationwide protests following the news of Turkish soldiers getting killed day after day (Hurriyet Daily News, 2015, 17 September). The dominant discourse involved condemning the PKK as a terrorist group, stating strongly the indivisibility of the Turkish state and the immortality of the soldiers who were killed in action (HaberTurk News, 2011, 17 July). One of the most important figures of victimhood in Turkish society have been the mothers of these "martyrs" (Gedik, 2013). The media captured the suffering the PKK's actions have inflicted on individuals within Turkish society by relying on the depiction of these mothers. In some cases, soldiers of Kurdish origin were killed as well, leading to outrage amongst Kurdish mothers who also condemned the PKK as terrorists. In one case a Kurdish mother's outcry was captured by the words: "I am from Diyarbakır, I am a Kurd as well. Why are these mothers weeping? I have never even hurt a fly. What are they [the PKK] trying to achieve?" (Yildirim, 2015, 5 August).

The second focus of the media was on the executions and killings of the civilian population in the Kurdish regions, conducted by the PKK. The most controversial was the murdering of children. Turkish media regularly published photographs of the dead bodies of babies in cradles and children in bed who were shot by the PKK. The fact that such incidents

happened multiple times has earned the leader of the PKK, Abdullah Öcalan, the nickname "baby-killer", coined by the media (Sabah News, 2011, 28 September).

The violent methods the PKK has used in the Kurdish regions to further its aims, have largely been the reason why Turkish society in general has found their actions unjustifiable. Most of the soldiers have been killed by the PKK's ambushes, raids and landmines, furthering the image of the "martyr" to be innocent and unjustly murdered. Barkey & Fuller (1998:28) states that the PKK, "by killing Turkish schoolteachers and civil servants, and by burning public schools and other public institutions, has particularly enraged the Turkish public, which has seen innocent functionaries, who have no say in where they are assigned, made victim to the struggle". The victimization of the relatives and friends of Turkish soldiers and civilians killed by the PKK has time and again fueled the Turkish narrative, further contributing to re-creating the cycle of violence. The anger and the outrage towards the PKK, even by people with moderate views towards the Kurdish issue, has made it hard for people to differentiate between the violence of the PKK and the problems of the Kurdish minority. Only gradually, people have started separating the issue of "terrorism" from the issue of the Kurdish question. Through the public discussion of the issue, initiated by politicians in the last decade, people have started to recognize that there are problems regarding the rights of the Kurdish minority, while still keeping their stance against the violent activities of the PKK. In a nation-wide survey done in 2013, 83.7% of the people agreed with the statement: "The obstruction against peace, fraternity, growth and development is not the Kurdish issue, but the issue of terrorism" (T24 News, 2013, 6 May).

1.3.2 The Kurdish Narrative

Since its founding, the PKK has done a lot to define the discourse of the Kurdish movement. In the 1970-80s, before the PKK's rise and hegemony over the Kurdish issue,

different Kurdish organizations had converged on a leftist national liberation discourse already (Gunes, 2013:247). The Kurds were presented as "colonized" people, both internationally and within the Turkish state. The national liberation struggle's supposed aim was to end the economic and social exploitation brought on by both the Turkish state and the Kurdish feudal elites. The PKK was also built on these ideological foundations, as it defined its goal as the founding of an independent Kurdish state. The PKK framed this "national liberation" struggle to be against both the exploitation and imperialism brought on by the Turkish state, and against the feudal structure of Kurdish society, aiming for a social and political revolution (Barkey & Fuller, 1998:23).

The PKK's perspectives on the struggle have changed over time, from a strictly radical leftist viewpoint to a more democratic one (since the 1990s), which recognizes the cultural, linguistic and social existence of Kurds within the Turkish borders, rather than promoting an independent Kurdistan. It has opened up its rhetoric towards Islam, while before defining itself as against religion and it has been stated that the main reasons behind this shift was the end of the cold war and the decline in radical leftist ideology, the realization of the power of the Turkish state by the PKK, and a lack of open support by the Kurds for separation and independence (Barkey & Fuller, 1998:25-26).

The excessive violence of the Turkish state and the PKK's political discourse have given the PKK an appeal within the Kurds. Interviews with PKK members express their perception of the issue (Goerzig, 2010:97), as many of its members think the main reason for the conflict is the total denial of the Kurds. The harsh violence and prison conditions also play a strong factor in increasing people's hostility towards the state. The PKK has been able to exist through the never-ending recruits that came from within Kurdish society, leading to the view that "the PKK is not something out of people" (Goerzig, 2010:98). A survey done in the Kurdish regions

has shown that 42% of the people claimed to have relatives within the PKK (Barkey & Fuller, 1998:47).

Barkey & Fuller (1998:26) claim that the PKK should not only be considered as a military/guerilla organization but also as a political organization. It acts socially and politically, through the dissemination of different magazines, newspapers such as *Serxwebun* and *Berxwedan*, pamphlets, TV channels and cultural activities domestically and internationally, which adds to its appeal, earning many sympathizers (Gunes, 2013:248).

The PKK justifies violence as the most effective way to bring about national liberation (Gunes, 2013:255). The struggle was defined as a "people's war", and military activities were seen as a tool to mobilize people politically. Öcalan himself has stated that violence, though not preferable, brings "results" (Barkey & Fuller, 1998:28). News of the raids to villages were published regularly in their "official" newspaper Serxwebun[4]. Some of these news included acts in which children and babies were killed, but this was not openly expressed. They were just called "relatives of the village guards". From the PKK's perspective, those Kurdish villagers and village guards including their families were defined as "collaborators" or "traitors".

Members of the PKK killed in the insurgency, similar to the Turkish narrative, were declared as "martyrs" and "national heroes" (Gunes, 2013:261). These people are celebrated as figures of the Kurdish struggle, and their funerals have become rituals of nationhood in their own right. These funerals have attracted massive crowds and have also worked as political demonstrations, where people would express their sorrow and anger at the Turkish state and their hopes for peace and freedom in their land (Hayatsever, 2013, 18 January). Again, similar to the Turkish case, the mothers of "martyrs" has been a special concern for the Kurdish movement. These mothers embodied the victimization and suffering of the Kurds. Many of

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[4] See the official website of 'Serxwebun' in the link: http://serxwebun.org/index.php?sys=ana

these mothers stand proud of their children, who, in their perception, fought for their and others'
freedom (Barbarani, 2015, 27 October).

According to Gunes, the PKK was successful in constructing, a "myth of resistance"
and a revival of Kurdish culture, as it tries to carry the struggle to the wider Kurdish public,
penetrating the consciousness of people living everyday lives in the Kurdish regions and the
diaspora. "From 1990 onwards, the popular expression of Kurdish identity demands and open
support for the PKK became much more commonplace in Turkey as Kurdish political activism
evolved into a vocal social movement" (Gunes, 2013:258).

Guvenc (2011) explains how, in the de-facto Kurdish capital of Turkey, Diyarbakır, the
Kurdish national movement is institutionalized culturally and politically in its streets, and
claims that it has penetrated the everyday practices of the city's residents. The city has been
filled with monuments showcasing the struggle of the Kurds, banners and posters of different
figures of the movement, including the PKK's leader Öcalan. A large portion of the Kurdish
population in different towns in the region have also internalized this culture of resistance
(Orhan, 2015:189). Even the Kurds which are distanced towards the PKK, recognize it as the
only organization which opened up a space for the Kurds' voice to be heard (Barkey & Fuller,
1998:46). The PKK's struggle, good or bad, has helped the Kurds define themselves as Kurds
and provided them with a sense of honor (Marcus, 2007:83). In this light, criticism towards the
PKK is hard to come by in the Kurdish regions, as critics can be branded easily as "traitors",
which also shows the despotic side of the PKK's influence.

Women have also had a special place within the movement. Many female guerilla
fighters have joined the PKK because of its support for women's emancipation (West, 2015, 31
July). For them the PKK is a symbol of both national and sexual liberation, as they sought
refuge in it from their own conservative families and social environments. (Gunes, 2013:261).
Kurdish political parties have always had strong support for women's emancipation, in line

with the PKK's own discourse. These political parties have also had similar stances to the PKK on other issues, leading to the conception that these parties are linked to the PKK. Pro-Kurdish parties have had members in their ranks related to the PKK (Hurriyet Daily News, 2015, 21 November), and they have, contrary to other political parties in Turkey, even made remarks supporting the PKK's struggle from time to time (Watts, 1999). These parties have preferred to call the PKK as "guerillas", strongly refraining from using the words "terrorists" and "seperatists".

It is important not to leave out the Öcalan factor in defining the Kurdish political movement. "There is no question that he [Öcalan] has a genuine following among rank-and-file Kurds, even those who do not belong to the PKK" (Barkey & Fuller, 1998:40). Öcalan has become a charismatic, cult-like, larger than life figure for the Kurdish struggle, and his imprisonment has increased this appeal even more. His jailing was seen by one influential Kurdish newspaper as to be the sentencing of Kurdistan all together (Marcus, 2007:81). It is possible to see in a Newroz (Kurdish national celebration) gathering of thousands in Diyarbakır, hundreds of Öcalan flags carried by civilians alongside PKK flags (Hurriyet Daily News, 2015, March 21). In these celebrations the most important event is the annual speech written by Öcalan, read by his representatives or Pro-Kurdish MPs. His message to the public defines the road-map for the future actions of the Kurdish movement, and his calls for peace and ceasefire, during the peace process have been of utmost importance to the development of events. Whatever his image may be in the eyes of the Turkish public, Öcalan has become the embodiment of the struggle for freedom for the Kurdish movement, by both militants and civilians.

2. CHOOSING THE APPROPRIATE MECHANISMS OF TRANSITIONAL JUSTICE

In this chapter, I examine the viability of criminal justice mechanisms in promoting a reconciliation process in Turkey. The most common arguments for criminal justice found within the transitional justice literature will be explored. The discussion will make use of the information on the wrongdoings and crimes committed on both sides, and the narratives of each side. The basic objective will be to see whether these arguments hold in the context of the Turkish-Kurdish conflict. It is important to state in the beginning that, this text does not wish to question the normative value of criminal justice. It rather seeks to assess whether such normatively valuable mechanisms can support reconciliation in the specific context of Turkey.

The second part of this chapter will engage in a theoretical discussion of the core concepts in transitional justice literature, laying down the important concepts that will be of use in the following chapter to make a positive argument for truth-seeking measures.

2.1 The Role and the Constraints of Criminal Justice in the Turkish-Kurdish Context

Criminal trials are not nonexistent in Turkey, as people from both sides of the conflict have been put on trial in the past, although the Kurdish side has been the target of prosecutions much more (Head, 2010, 17 June). The achievements of these trials are questionable as there has never been a systematic effort to capture and put perpetrators of the conflict on both sides on fair trials. From time to time, individual cases of torture by Turkish state officials have been brought to court (Morris, 2001, 31 January), but these trials only address a very small portion of the atrocities committed by the Turkish side. But the extent of trials against the Kurdish side have gone considerably over the line of criminal responsibility, as journalists, lawyers (Butler & Cakan, 2015, 20 October) and politicians have unfairly been put on trial due to "political"

crimes (Letsch & Harding, 2012, 11 September), under the accusations of alleged links to "terrorist" groups or engaging in "terrorist" propaganda. Such trials go beyond criminal responsibility in the sense that those who are accused neither engaged in violent activities nor were they necessarily linked to the PKK in the first place. Then, there have been high profile trials against PKK members including its leader Abdullah Öcalan (The Economist, 1999, 3 June). Justice may have been served in the eyes of the Turkish public, but it has not really been served in the eyes of a large portion of the Kurdish public. Such trials cannot be considered totally impartial, as the European Court of Human Rights has concluded. The ECHR claimed that, "Ocalan had not been tried by an independent and impartial tribunal. It held unanimously that he was not brought before a judge promptly after his arrest, and that his lawyers had not been given adequate time to prepare his defence" (Sturcke, 2005, 12 May). Skaar (2013:69) claims that "punishment of wrongdoers can transform these people into scapegoats or victims in order to perpetuate the political mythology of a particular social group". The trial of Öcalan has increased his importance for the Kurdish side even more.

2.1.1 The Argument of the Rule of Law

The first and the most general argument for criminal justice claims that trials uphold the rule of law, and they strengthen the democratic identity of the new regime (Teitel 2004; Bloomfield *et al.* 2003; Sarkin/Daly 2004). Grave crimes which have been committed in different conflicts have often breached the law, leading to the collapse of the rule of law in the country. Trials in this case can reinstate the rule of law as the primary principle of a constitutional democracy.

The argument for the rule of law runs into obstacles because of many factors in the Turkish context. First of all, many of the violations committed by the Turkish state happened in the regions where the state of emergency was declared. The Turkish state has undermined

28

the rule of law by committing actions, not only against international law, but against its own laws and constitution through violating fundamental human rights. But even if it committed atrocities, it has been hard to keep track of them because the normal day to day practicing of the rule of law did not apply to these regions. It is also important to separate the actions by Turkish forces that violated the rule of law from that of the actions of the Turkish armed forces which were acting under the rule of law in cases of direct conflict and battle with the PKK forces. In the case of armed clashes, the Turkish army had all the right to perceive the PKK as a terrorist organization on the basis of its actions. On the other hand, the PKK's actions have largely violated the rule of law in the country, through systematic attacks against military personnel and civilians. This does not mean that while Turkish crimes could be considered legal, the Kurdish crimes were illegal, but that crimes from both sides cannot be addressed equally because of the way the laws have been structured.

Further, and following above discussions, holding actors accountable according to the prior understandings on the rule of law in Turkey neglects the influence of the narratives of the different sides in shaping the perception towards these crimes. It is not possible to convince the Kurdish side that their actions amounted to the violation of the rule of law, as they had not recognized there to be a fair system of laws in Turkey in the first place. What can be seen is that the legal system in Turkey has been ill-fit to address problems related to the conflict.

Thus, new democratic laws have to be implemented, through reforms, before it can be possible to establish a will to uphold it in Turkey. In order for the rule of law to be valid, the law has to apply to everyone equally. But there are shortcomings on the rule of law in Turkey because the law is made in such a way that although not explicitly, it discriminates some groups (Kurds) and gives precedence (Turks) to others. If the law does not treat everyone equally, it is impossible to claim that criminal trials can be considered as fair when it comes to people who have not been recognized by the law. Those who are discriminated will also not recognize these

trials as fair hence they will not care for the rule of law. In order for there to be fair trials, the laws have to be changed so that everyone is on an equal standing in front of the law. The laws cannot be changed without a democratization process. A democratization process cannot be initiated without a reconciliation process, as some sort of understanding on both sides have to be created to come up with a democratization program. Hence, the application of criminal justice to the Turkish case before initiating a reconciliation process becomes problematic.

2.1.2 The Argument of Retributive Justice

The second argument for criminal justice is that it provides retribution in the face of grave crimes. Retributive justice requires punishing perpetrators proportionally to the harm they inflicted (Domingo, 2012:2). The question that needs to be asked here, however, is whether retributive justice is fitting for transitional contexts. Bloomfield *et al.* (2003:103) claim that retributive justice can have destabilizing effects on a peace settlement or a fragile shift to democracy and state that the threat of prosecution may push actors such as military officials to reverse a peace process through a coup or a rebellion. Neier and Mendez however defended the idea that "violators of human rights had to be punished because they deserved to be punished, not for some other end" (Arthur, 2009:354). This position was labelled as the "just deserts theory of punishment". Mendez (1991:60) states that the threat of a powerful elite or army does not justify the decision to abort criminal trials and that the matter of peace is not as delicate a situation to disrupt the democratic process in which criminal trials have an important role. In the Turkish-Kurdish context, the threat of prosecution exists both for state officials and former/current PKK members. There are individuals from both sides which have taken part in the atrocities that have been committed. But a proper reconciliation process within Turkey is unthinkable without a peace settlement including the Turkish state and the PKK. The influence the PKK has on a large portion of the Kurdish public, makes it impossible to separate the

Kurdish issue from the fate of the PKK. In conditions of such fragility, where a transition to a more democratic regime has to be made, retributive justice may endanger the stability of a program which will seek to put an end to the Kurdish issue, by discouraging both sides to enter peace talks to end armed clashes because of the fear of prosecutions. In the first step, neither side will see themselves as deserving prosecution. Criminal justice in this case, may not create the momentum necessary to attain peace, which would be the first step in ending the conflict.

2.1.3 The Argument of Deterrence

This argument asserts that prosecuting wrongdoers discourages people from repeating such crimes in the future (Mendez 1997; Kritz 1996; Fischer 2011; Sarkin/Daly 2004; Rigby 2001). In short, criminal trials provide deterrence against future crimes. But there is a general ambiguity concerning whether criminal trials actually deter people from committing atrocities, because these trials may not be able to address the larger societal causes of violence (Bloomfield *et al.*, 2003:105). In the Turkish-Kurdish context, even if the perpetrators of extra-judicial killings, executions and tortures were found and put on trial, it would hardly create a deterrence of violence, since there is a whole large dimension relating to armed conflict which will not die down when these perpetrators are tried. As of now, the Turkish state still perceives the PKK as a terrorist organization, and the PKK still treats the Turkish state as an enemy. Their narratives recreate the conflict regardless whether the actions of each side could be considered legitimate or not. Their ideologies are geared towards violence and confrontation, and excessive human rights violations are a side-effect of the main battle that is raged between the Turkish state and the PKK. In this case, criminal trials would not treat the sickness but the symptoms, falling short of providing a solution.

It is also hard to say that criminal trials can have a deterrent effect in the Turkish-Kurdish context, as guilt and responsibility cannot be established individually, because the narratives on

31

both sides reproduce perpetrators. Sarkin & Daly (2004:60) stress that "the motivation for political crimes is more likely to depend on an idiosyncratic concatenation of social, political and economic factors that are likely to remain unaffected by the trial and punishment of last year's perpetrator".

2.1.4 The Argument of Remedy for Victims

This argument says that criminal justice provides remedy for victims, recognizing their worth and dignity (Kritz 1996; Bloomfield *et al.* 2003; Sarkin/Daly 2004; Mendez 1997). It also helps end resentments on part of the victims, who otherwise may take justice into their own hands if they feel unsatisfied by the lack of judicial procedures. In spite of this claim, if those who are prosecuted and their respective communities feel they have been unfairly treated criminal justice may actually reinvigorate violence. In the Turkish context, both communities have perpetrators and victims amongst them, making the situation more complicated than what it would be when one community would clearly belong to the perpetrators and one community to the victims. And while the Kurdish community has been discriminated against, this kind of victimization has more to do with the democratic deficits of Turkey that cannot be addressed by trials but through reforms which will be discussed in the further chapters. Besides, the possibility of fair trials in the Turkish context is questionable because, a justice system which is ill-fit to handle the complexities of a wide scale conflict, can refuel resentments on different sides which feel like they have not got what they had deserved out of the process. Such trials may harm the dignity of victims, given that both the Turkish and Kurdish sides have different perspectives on who is a victim and who is a perpetrator. Adding to this, the narratives on both sides have created a story of victimization for themselves which perpetuates as the conflict goes on.

Another feature of this argument maintains that criminal justice has therapeutic value (Kritz 1996; Sarkin/Daly 2004). It provides victims with catharsis and a sense that their grievances have been addressed, hence contributing to the healing of society by revealing the truth about past events. However, blurry lines that divide perpetrators and victims in the Turkish context render this argument inefficient. Many among those who have been victimized have become perpetrators in time. Many Kurdish children growing up victimized in the Kurdish regions, joined the struggle against the Turkish state, becoming perpetrators. A criminal trial procedure may solidify the convictions of these people being treated unjustly, pushing them back into the age old story of conflict, rather than promoting reconciliation and addressing their grievances. Sarkin & Daly (2004:62) also claim that "the truth trials produce are limited by the focus of the trial". The natural tendency of criminal procedures to make perpetrators the main focus of a reconciliation process will disregard the narratives of victimization on both sides of the Turkish-Kurdish conflict. Such an approach will not be able to create an atmosphere of understanding, dialogue and reconciliation in the Turkish context.

2.1.5 The Argument of the Re-establishment of Moral Distinctions

The contradictory perceptions of crimes committed during the conflict in Turkey affect the argument that criminal justice draws the line between good and bad, reinstating the key moral principles that should exist in a society that were violated in the preceding period (Sarkin/Daly 2004; Teitel 2004). It is questionable whether criminal trials can establish the distinction between good and bad in the Turkish context, because each side has a different understanding of the good. The PKK militias have been treated as criminals by the Turkish state and, as freedom fighters and representatives of the Kurdish struggle by a large portion of the Kurdish public. Even the trial of Abdullah Öcalan has not been able to establish him as either a good or a bad person. Bloomfield *et al.* (2003:103) claim that another weakness of criminal

33

trials stems from its crude approach to either brand a person guilty or not guilty. "During violent conflict, the behavior of perpetrators often falls into a 'grey area' in which various forms of guilt and innocence are mixed". They state that criminal trials may not handle the sophistication of such scenarios. With two different interpretations of the criminal practices in the Turkish context, and two separate perceptions on the people involved, criminal trials may encounter serious troubles in establishing the right criteria for guilt and innocence that can be recognized and approved by both sides. Without a reconciliation and democratization process, it will not be possible to establish the circumstances for the practice of fair trials in Turkey. This will hinder the possibilities of drawing the line between good and bad.

2.1.6 The Argument of Individualization of Responsibility

In the literature, it is argued that criminal justice in the post-conflict contexts helps differentiate individual and collective responsibility (Kritz 1996; Bloomfield *et al.* 2003; and Fischer 2011), decreasing resentment between different social groups and thus helping to break the cycle of violence. This argument does not seem to work in the Turkish context. The duration of the conflict and of wrongdoings span a very long (30 years) time period. Many among those who started the conflict, and who committed crimes at various stages are no longer alive, including political leaders like Özal, Ecevit, Demirel and İnönü. The same goes for many of the military leaders, but the conflict has ensued regardless of the change in power. This leads to the question of how much it can actually be possible to individualize criminal responsibility in the Turkish-Kurdish case.

Here, it is also important to recall that it is not possible to differentiate the PKK from the Kurdish issue very clearly. The main solution to the Kurdish issue is of course through a democratization process, but-initiating such a process, requires addressing the PKK issue. The strengthening of democracy relies firmly on the Turkish state's ability to address Kurdish

demands. And prosecutions against individual Kurdish wrongdoers may recreate the mistrust they share against the Turkish state, which could hinder the democratization process. This claim does not necessarily mean that the only option is to let bygones be bygones, but that it is important to understand that the timing of criminal justice practices is crucial to its effectiveness. Criminal justice may not serve as the best tool for democratization in Turkey, when the fragility of the peace that is attained in its early phases is taken into consideration. This leads to the problem of the (in)sufficiency of criminal justice.

2.1.7 The Problem of Insufficiency of Criminal Justice

Bloomfield *et al.* (2003:105) claim that a weakness of criminal trials in transitional justice processes, stem from the fact that they identify individual guilt, rather than patterns in atrocities. Criminal courts may not be able to draw the broader patterns of societal/political causes and state practices which led to violence. This is not an argument against criminal justice per se, but rather that it can play a complementary role where it is insufficient in solving issues related to the past. Since it can be observed that the continuity of the conflict in the Turkish-Kurdish case is not necessarily dependent on the actors in power, it points towards deeper underlying societal and political causes to the conflict. The narratives on both sides have provided them with reasons to continue the conflict and stay truthful to their own communities' claims. "Causes of war must be understood and addressed before social repair can be achieved." (Skaar, 2013:69).

2.1.8 The Problem of Selectivity of Criminal Justice

After mass, systemic, long-lasting violence, which has involved the whole groups, criminal justice is faced with problem of selecting who among many perpetrators would be brought to trial. Bloomfield *et al.* (2003:105) claim that penal systems are not made to handle

large-scale atrocities. They warn that there is risk in criminal trials as only a small portion of perpetrators may be punished, leading to the perception that the trial process has been quite arbitrary. This applies to the Turkish context due to the sheer number of wrongdoers and the depth in which people are entrenched into conflicting narratives which keep refueling the conflict. Criminal trials in the Turkish case would leave many perpetrators unpunished, and the question of the criteria of selectivity looms large. This problem cannot be addressed by the exclusive reliance on the mechanism of criminal justice.

2.1.9 The Problem of the Lack of Evidence

In the cases of tortures and extra-judicial killings committed by the Turkish state, it is quite hard to find information on who actually committed these crimes, because of the state of emergency practices that was put in the regions of conflict. It is questionable whether it would be possible to create a strict chain of command on each side, which would show which individuals were responsible for different acts of wrongdoing, because they happened quite regularly and in many cases without being organized or linked to a central decision making body (e.g. raids to villages by the PKK and the Turkish state, raids to military barracks by PKK militia, killing of Turkish soldiers by landmines planted by PKK militia, torture and execution of both sides). In the cases of civilian killings and village raids done by the PKK, it is not possible to uncover information as to which people were involved in these acts, because these people returned to the mountain hideouts of the PKK after committing their actions. These members of the PKK are not regular members of the society in the first place anyway, making it quite hard to, initiate a criminal investigation of those who are responsible for crimes and exactly identify the perpetrators.

2.1.10 The Problem of Unreliability of Criminal Justice in the Context of Democratic Deficit

Sarkin/Daly (2004:63) claim that, in a flawed democratic system in which the impartiality in the selection of judges are questionable, there is not a strong ground for engaging in legitimate prosecutions, convictions or punishment. This is not necessarily an argument against the legitimacy of criminal justice, but its viability in a given conflictual context. One of the main claims from the Kurdish side is that the Turkish democratic system is fundamentally flawed. This is indeed one of the core justifications to engage in a conflict with the Turkish state from the beginning. In such a case, without a transition to a more democratic system that can accommodate Kurdish identity and culture, there is no ground for the Kurdish side to be persuaded to find such criminal trials legitimate. The problems criminal justice faces can be reduced when combined with other mechanisms. In this light, criminal justice can still serve as a complementary role in the Turkish-Kurdish context, and this point will be discussed later on.

2.1.11 Conclusion

This analysis points towards the conclusion that criminal justice measures fall short of being able to provide a primary role in dealing with the past in the Turkish context. This does not mean that criminal trials are not relevant, but that they cannot be the primary focus of the process in such a transitional context. I agree with Neil Kritz (1996:152), who was among the first to suggest a "holistic" approach to transitional justice, which consists and choosing and applying a mix of different approaches and mechanisms, dependent on the context. Criminal trials can serve as an important complementary role in the Turkish case, addressing the gravest crimes committed. But it is highly doubtful that these mechanisms alone can address the root causes of the problem that could put an end to resentments and enmities on both the Turkish and the Kurdish side.

2.2 Reconciliation and Related Concepts in Post-conflict Societies

Reconciliation should be among the primary goals of post-conflict societies as a process that helps establishing peace, stability, and a necessary minimum societal cohesion in societies that are bitterly divided in result of recent conflicts. The transitional justice approach is appropriate in initiating a reconciliation process because societal conflicts have deeper underlying causes that cannot easily be tackled by standard justice mechanisms. In this part I will first provide a general discussion on reconciliation and then discuss the different choice of mechanisms that are appropriate for reconciliation processes.

There is no agreement in the literature on the meaning of reconciliation. One of the core disputes concerns the question whether reconciliation is a process or an outcome. Reconciliation as a process involves the practice of taking steps towards strengthening the bond between different groups in society and facing the past. Reconciliation understood as an outcome is the achievement of ending the estrangement between different communities and answering questions about the past to satisfy the claims of different groups in society. One of the definitive texts in this field is "Reconciliation after Violent Conflict: A Handbook" (2003) edited by Bloomfield *et al.*(2003). The work approaches reconciliation as a process, while also pointing out that it has an end goal (whether ideal or realistic). Broadly, the authors understand reconciliation as "finding a way to live alongside former enemies" (12) and forming cooperation between these sides that is necessary for the life together after conflict. This process includes justice, truth, forgiveness and healing. It is claimed that these different aspects are all vital to produce a desirable outcome to a reconciliation process. Truth seeking or justice alone cannot work and these processes are interdependent and can only work together to produce a viable solution to conflicts in societies. Reconciliation in this way, is understood as an umbrella term which includes separate processes working side by side. Bloomfield (2006) also confirms in another article that he perceives reconciliation as an umbrella term. For the purposes of this

38

thesis, reconciliation will not necessarily be understood as an umbrella term. I will take reconciliation to be a process that can be realized through different ways according to different contexts. I hold the view that not all mechanisms can be useful in each context. Trying to include all these different mechanisms of reconciliation in each different context may be too much to ask and it may hamper the possibilities of initiating a feasible reconciliation process.

Skaar (2013) also finds that it is more useful to study reconciliation as a process rather than an outcome. He differentiates between the "thin" and "thick" understanding on reconciliation. "Thin" reconciliation is understood as "simple coexistence" and end of violence, while "thick" reconciliation also includes elements such as forgiveness, mercy, a shared comprehensive vision, mutual healing and harmony. The work by Bloomfield *et al.* (2003) also shares the opinion that truth, justice, healing and reparation are all necessary concepts for reconciliation, standing on the "thick" side. But they also state that there cannot be a model of reconciliation that will work in every context and that each conflict has to be resolved according to its societal, political, cultural and economic specificities (which the writers term as "home-grown reconciliation") and also the nature/intensity of the conflict and level of division between societies. Reconciliation is understood in this work as both a top-down and bottom-up initiative, as both the political elite and the grassroots organizations have to actively engage in reconciliatory activities. In this light, reconciliation is understood as having different levels which can be basically divided as political, societal and personal/individual reconciliation.

Bhargava (2012) differentiates between reconciliation in the weaker and the stronger sense. This understanding is close to the thick and thin conceptualization of reconciliation. The weaker sense of reconciliation is one in which different parties do not actually end their enmity in between each other but realize the necessity of setting aside their conflict due to the consequences it has for both parties' communities. These parties try to come up with ways of living together despite past grievances (2012:371). Reconciliation in the stronger sense means

a deeper communication between the different sides with the aim of ending old grievances and owning up to the responsibilities of the wrong-doings on both sides leading to a "cancellation of enmity and estrangement" (Bhargava, 2012:371) between these opposing sides. So in the strong sense, there is a real sense of coming together of the opposing sides in order to move onwards, unlike the weaker sense in which compromises are found for peaceful coexistence. Without facing the past, and acknowledging the misdeeds committed on both sides against each other, it is not possible to put a real end to enmities. "Reconciliation involves both owning up to collective responsibility by perpetrators and forgiveness by victims" (Bhargava, 2012:373). The thesis will take the concept of reconciliation to be understood as Bhargava's definition of reconciliation in the stronger sense. So the term "reconciliation" will refer to the conceptual definition put forward by Bhargava. It is possible that forgiveness cannot be achieved in the short run in Turkey, but that does not mean that it is not necessary to achieve reconciliation. With Turks and Kurds living interconnected lives (especially in the metropolises), it is impossible to imagine reconciliation without an ending of enmities and estrangement.

The concept of truth is an integral part of transitional justice. Archbishop Desmond Tutu has explained its importance as "the need to find out the truth about the horrors of the past …to ensure that they never happen again" (Bloomfield *et al.,* 2003). I take the concept of truth to be of utmost importance in any reconciliation process as it has to do with the sufferings of the past that cannot be swept under the carpet or stay unaddressed. In my opinion, a society cannot move forward as a whole without having a shared record on the truth about what happened in the past. Any attempt to move on without seeking truth will leave a society divided and exposed to manipulation by denial. In Chapter 3, I will return to the question of the types of the truth that are required and feasible in a post-conflict situation. Here I only note that the truth following a difficult past requires special mechanisms. Truth telling is understood to support the process of both healing, through giving opportunities for victims and offenders to speak out, and justice,

through uncovering the wrongdoings of the past on the basis of truth to provide reparation, restoration and effective retribution. Bloomfield *et al.* (2003:41) stress the necessity of the right approach, choice of mechanisms, quality, and amount of truth telling in providing a pathway forward for the society under conflict. This involves choosing which stories from the past to emphasize and make public in accordance with how these choices effect the prospects for reconciliation. Too much truth telling can create a hostile atmosphere for reconciliation as it can increase the outrage or the anger of the victim, making them unwilling to engage in reconciliation. Too little truth telling on the other hand, can disappoint victims making them hesitant to enter a reconciliation process which will not be able to satisfy their desire for justice, restoration and healing caused by the wrongdoings of the past. It is hard to measure what can be considered too much or too little truth telling but it is easier to understand which truths can be beneficial or harmful for a reconciliation process in a particular context[5].

Skaar (2013) also agrees that a wrong choice of the type of truth or wrong truth revealing mechanisms can be obstacles for reconciliation, but agrees that this process is necessary to achieve full reconciliation. This means is that a mere discovery of the truth may not be enough for a reconciliation process, and that the way it is searched for and told might have a great effect on the outcome of the process. It is stated in the Handbook (2003) that truth is mainly pursued by "Truth Commissions" which are non-judicial bodies that are given the mandate by the state (and armed opposition groups in some cases) to "investigate patterns of abuses and specific violations committed over a specific period of time" (pg.125) to create a formal record of past human rights and humanitarian norms' violations. Bloomfield *et al.* (2003:123) further state that there are other kinds of truth-focused mechanisms such as "historical commissions" which are not initiated during times of transition but are still assigned by the state to look into the past,

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[5] See the analysis of the normatively right and empirically feasible process of the truth telling in Turkey, Chapter 3

41

in order to clarify wrongdoings committed to different communities by the state or other large groups in society. There are also parliamentary inquiries which are established by political bodies and directly linked to them administratively, having less autonomy and a smaller scope. These were also tasked with investigating past wrongdoings or disappearances. Examples include the inquiries by "the National Commissioner for the Protection of Human Rights in Honduras" (1993) and "Northern Ireland Victims Commissioner" (1990s).

Another reconciliation-related issue concerns the choice between forgetting and remembering. Rigby (2001) states that according to the context, less remembering or more truth seeking may be more beneficial to attain reconciliation in society. Rigby gives the example of Spain as a case of politically orchestrated forgetting. After the fall of the Franco regime and the elite nature of the transition, Spanish society preferred to reconcile through deciding to remain silent about the past wrongdoings and divisions, focusing on a common future instead. This was a political decision agreed by the political elite. It was argued that uncovering the truth would increase the bitterness between groups in society and would obstruct and risk the reconciliation and the democratic transition process. On the opposite side, the example of South Africa points to a different story. The South African reconciliation was a process of truth telling. Attaining truth was seen as a vital step to ensure a common future and a way out of conflict in South Africa. The main body responsible for addressing the past was the "Truth and Reconciliation Commission". The perpetrators of crimes were encouraged to speak out and confess these wrongdoings through the commission in exchange for amnesty. In the South African case, the reconciliation process relied strongly on uncovering the truth, so much that justice had to be sometimes sacrificed for it (Boraine, 2000).

As stated earlier, rather than having a single model of reconciliation, different formulas have to be devised for different contexts. In this case the model for a way out of conflict for Spain and South Africa were total opposites, amnesia/forgetting vs. truth telling. The analysis

offered in Chapter 1 points that in the case of Turkey, it does not seem realistic to actually consider forgetting as an option since the memories of suffering and loss on both sides have become engraved within their identity. Moreover, remembering has become a ritual and a way of expressing sorrow and outrage against the violence for both sides, and past suffering, in this way has been highly visible. With the emphasis on the past being so prominent in the discourse of both sides, it does not seem possible to initiate a reconciliation process that is not based on remembrance.

Bloomfield (2006:9) states that "bringing justice to bear on the past misdeeds is one of the most effective means to build a guarantee against future violence". But a question about how to pursue justice arises in the context of reconciliation. Bloomfield *et al.* (2003) differentiate between different ways of pursuing justice, namely retributive and restorative justice. Retributive justice focuses on formal trials and prosecutions of those blamed to commit wrongdoings while restorative justice focuses more on the victims and finds ways to contribute to their healing and well-being, making right the wrongs that have been inflicted on them. The Handbook (2003) openly states that a restorative understanding of justice with reparation and victim-offender programs supported by truth telling is preferable to a proper reconciliation process. I will stand in line with this restorative understanding of justice, as it seems imperative to address victims on both sides due to the importance victimization has in recreating the conflict.

Rigby (2001) states that the pursuit of justice can both be through trials and prosecutions or compensation and reparations. He also claims (2013:11) that there is an inherent tension between peace and justice, as a too strong pursuit of justice can undermine a peaceful reconciliation process by agitating the different sides and discouraging them from entering the process due to fear of prosecution, imprisonment or may risk a military coup or a return to civil war (Schaap, 2005:11). A widespread perception is that justice can be an obstacle to peace and

reconciliation in divided societies because the law may be insufficient to address the exceptional circumstances that arise during times of transition (Villalba, 2011:5). A good example that demonstrates this tension is the South African case. The South African Truth Commission, created by the South African parliament had the power to provide amnesty to perpetrators who made a "full disclosure" of the extent of their crimes to the commission (Boraine, 2000:148). Bloomfield (2006:18) suggests that pursuing justice unconditionally may prevent important compromises that may be necessary to reestablish societal ties between hostile communities, by pointing towards the South African case. This tension between peace and justice will be discussed further in the next chapter.

Forgiveness is another concept that comes up as an important aspect of reconciliation in the literature. Meierhenrich (2008) takes forgiveness to be an integral part of reconciliation alongside mercy. He defines forgiveness as the act of condoning and, overcoming of hatred or anger towards a person or a group who has committed unjustified and immoral wrongdoings against the other and "connotes the forswearing of resentment" (pg.206). Mercy is understood as an act of compassion towards the perpetrator that has committed a wrongdoing. Skaar (2013) emphasizes the necessity of forgiveness, especially on the individual level of reconciliation and further points out that such acts should be reciprocal as the perpetrator asks for forgiveness and the victim grants it. Bhargava (2012) states that to achieve reconciliation in the strong sense, a morally grounded forgiveness must play an integral role in the building up of new relationships between formerly hostile sides. It may not be possible to expect forgiveness at the start of a reconciliation process as the enmities between the two sides will take time to end. But, in the long run, forgiveness should play its proper part in the process as it will contribute to an even more deepening of the relations of different conflicting sides. Murphy (2007) on the other hand, claims that forgiveness is not necessary to achieve at least political reconciliation. Murphy suggests that political reconciliation can be possible through the establishment of a mutual

respect by opposing groups for the rule of law. If the multiplicity of hostile parties can establish a mutual ground through the respect for the rule of law in which all are willing to communicate and cooperate to a certain extent, then there is also an establishment of political harmony that comes with it. This platform can pave the way for a reconciliation process on other levels afterwards.

Political reconciliation becomes an important issue of focus in the Turkish case as the Turkish-Kurdish conflict is very much related to issues surrounding democratization in Turkey. The concept of forgiveness is relevant for Turkey since reconciliation depends on the deepening of the relationship between the Turkish and Kurdish communities, as they are dependent on each other in order to move on to the future as a peaceful country where they can co-exist. I will explore this in detail in chapter 3.

3. TRUTH-SEEKING AS A CONCEPT AND MECHANISM IN THE TURKISH-KURDISH CONFLICT

This chapter will explore the concepts of the truth, truth-seeking, and mechanisms of seeking, achieving and acknowledging truth in the post-conflict setting. It will focus on the relevance of these concepts and mechanisms for the Turkish-Kurdish reconciliation process. I will argue that the truth should be central to the process of dealing with the violent past and its legacies in Turkey. The first part will discuss the concept of truth as a fundamental right of citizens and communities, establishing its primacy. The second part will discuss the types of the truth after atrocity, and it will proceed to argue which aspect of the truth is the most appropriate for reconciliation in Turkey. The third part will explain why the truth matters in the Turkish-Kurdish context. The fourth part will argue that a truth commission is the appropriate transitional justice mechanism in the context of the Turkish-Kurdish conflict. It will then discuss the possible institutional setup of Truth Commission that can be established in Turkey, and discuss possible reforms suggestions that such a commission can make.

3.1 The Right to Truth

The study done by the UNHCHR (2006:2) "concludes that the right to the truth about gross human rights violations and serious violations of human rights law is an unalienable and autonomous right". The study further states that this right not only has an individual but also a societal and political dimension. UN Sub-Commission for Prevention of Discrimination and Protection on Minorities states that:

> "Every society has the inalienable right to know the truth about past events and about circumstances and reasons which led, through the consistent pattern of gross violations of human rights, to the perpetration of aberrant crimes. Full and effective

exercise of the right to the truth is essential to avoid any recurrence of such acts in the future."[6]

ICTJ's (Gonzalez and Varney, 2013:3) report on truth-seeking also states that while victims and their families are the first focus of the right to truth, "communities and society at large also have a right to know the truth about human rights violations". UNHCHR's report (pg.11) suggests that the term "victim" may be used for collective groups, and that victimization has a societal dimension.

3.2 Types of the Truth Relevant for a Post-Conflict Society

Establishing the primacy of truth and the importance of truth-seeking does not solve the problem of what truth would mean and how it would be sought out in different contexts. "The problem is that the truth neither is or does what all that we expect of it. It is not as monolithic, objective or verifiable as we would like it to be" (Daly, 2008:23). While truth is of the utmost importance for a society to heal its wounds, it is too idealistic to expect that there can ever be a whole single account of truth. "No period of a nation's history can be described by a single, elegant truth narrative" (Daly, 2008:25). There are diverse kinds of "truth" that can be and have been sought out by different countries engaging in transitional justice and reconciliation. Truth-claims can be subjective, partial, and group-specific. Thus, the question concerning truth and reconciliation in Turkey has to look into the social, historical and political context, asking which type of truth is necessary for a viable reconciliation process that can heal the wounds of victims and prevent the same atrocities from happening in the future. This, however, does not imply the relativist "anything goes" stance. The distinction between right and wrong remains pivotal. In the Turkish case, the core contextual demand for both sides is to work together towards

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[6] UN Sub-Commission for Prevention of Discrimination and Protection on Minorities, Annex II at 10 UN Doc. E/CN.4/Sub.2/1996/18 (1996), at 10, principle 1 ("The Inalienable Right to the Truth").

establishing, accepting, and publicly supporting the reading of the past that would denounce crimes as wrongdoings, and affirm life together respectful of differences as the only legitimate way forward.

Out of the different notions of truth, one is "forensic truth", which focuses on finding facts about the atrocities committed and presenting them in an objective manner to the public (Fischer, 2011:411). Second, "narrative truth" focuses on the victims' and the perpetrators' stories about their experiences, through which they communicate these personal narratives in a multi-faceted way to the public (Fischer, 2011:411). The third type is "dialogical truth", which puts an emphasis on establishing truth of experiences through interpersonal dialogue, interaction and debate (Boraine, 2000:152). Finally, "restorative truth" focuses on restoring the dignity of victims through documentation and acknowledgement of atrocities (Boraine, 2000:152). Each notion of truth can only partially deliver demands for a comprehensive truth, and it can be viewed differently by groups in conflict.

These different types of the transitional crime-related truth are in some situations held equally important. For instance, during the South African reconciliation process, no single type of truth was considered more important than the other, and all these different notions were tried to be brought together while engaging in truth-seeking (Cole, 2007). The Final Report of the Truth and Reconciliation Commission in South Africa aimed at establishing a comprehensive account of the truth about the apartheid (Boraine, 2000:151-152). In some other cases, the contextual specificities lead to the political decision to prefer particular types of truth (Lambourne, 2014:28). In the following, I will explore the relative importance of the different reading of the truth in Turkey.

"Forensic truth" has something to offer for the Turkish context, as in most regimes where atrocities have been committed, because many crimes and wrongdoings have been hidden from public eyes. An objective documentary account of informing what really happened

48

in different cases of wrongdoing would reduce significantly the room for both sides to deny the facts. In other words, this type of the truth could be a powerful weapon in the struggle against the dominant politics and culture of silence and denial.

Both "restorative and dialogical truth", with its emphasis on debate and discussion may bear fruitful results in the long run for reconciliation in Turkey. But "dialogical truth" may not be the first step in truth-seeking practices of a reconciliation process, because of the enmities the two sides hold against each other. A hasty dialogue can agitate and offend victims while possibly causing people on both sides to become more defensive about their positions on the issue. Without clearly stating the facts and restoring the dignity of all victims, a reconciliation process cannot be complete, as both sides' claims on victimhood have prevented them from recognizing the suffering of the other. Thus, there is a need for a proper sequencing of steps in order to get the most out of each truth-seeking practice. Starting with a combination of forensic and narrative truth would be an appropriate beginning, because it would lay bare both facts and their dominant perceptions. It would be followed by restorative truth, focusing on the public acknowledgement of victims' suffering on both sides. This would hopefully prepare the two communities to engage in the process of dialogical truth. In the following, I detail some arguments for such sequencing of steps.

The Turkish-Kurdish conflict has an undeniable social aspect, as the narratives on both sides refuel the bloodshed. People come and go but violence persists. Narratives that hold sway on communities tend to assimilate each newcomer within its story. Due to this fact, "narrative truth" has a lot to offer for truth-seeking practices in the Turkish-Kurdish context. A dialogue is not possible without the exposition of narratives. While "forensic truth" may help in reducing denial and increasing the chances for dialogue, "narrative truth" presents a core step through which a bridge can first be formed on both sides. Without communicating the "truths" on both sides to the public, it is not possible to bring together narratives on both sides and help bridge

the gap between the realities of the two communities in Turkey. In other words, it is only through the use of "narrative truth" that the core negative perception that the both sides share – that of the exclusive victimization – can be overcome. As regards to the direction and principal agents of this process, it should start as a top-down, legally-and politically shaped initiative. Given the dominant culture of denial, prejudice, and mistrust, and given the fact that such cultural attitudes have largely created and for decades nourished by the political elites, an authoritative framework of change is necessary. Hence, "narrative truth" with the support of "forensic truth" can provide the conditions to initiate a reconciliation process that will be centered on truth-seeking. This does not mean that each individual on each side will be totally convinced by the truth. It is not realistic to expect that everyone's resentments will be addressed. What is realistic is the hope that Turkey can undergo a reconciliation process involving truth-seeking and democratization through engaging with the largest amount of people possible in society (the majority), that can leave conflict behind.

After these narratives have been opened up to the public, the next step should be incorporating "dialogical truth" in the truth-seeking process, in order to form a dialogue between these narratives and communities that may help in overcoming enmities. After this "restorative truth" can be the next step in the process, since the suffering of each side will be recognized, it will be a possibility to restore the dignity and respect of victims. Without public recognition of everyone's suffering there cannot be reconciliation. So as it can be observed, it is not one form of truth that holds the solution for reconciliation, but a combination of many which are properly sequenced to complement each other.

3.3 Why the Truth about Conflict Matters for Turkey

Victimization is observed both at the individual and societal levels in Turkey. Individuals have become victims directly, as those who suffered different kinds of harm

(killing, torture, harassing, forced relocation, etc.), or indirectly, as those who in different ways suffer consequences of harm they did not directly experience (e.g., mothers and those family members of those killed or tortured)[7]. Finally, in large-scale intergroup conflicts, the whole communities are victimized.

As I explained in the previous chapters, stories of victimization in Turkey have become entrenched in the collective memories of both groups. Discussions on the relevance of truth for conflict-torn societies point towards its social healing aspect through allowing victims to tell their stories, its justice-promoting aspect through the exposition of crimes and perpetrators, its role in establishing an official historical record and in educating the public about what has happened, and the incentives to initiate reforms through exposing institutional flaws that have structurally made the conflict possible (Mendeloff, 2004)[8]. By bringing to the public the suffering of the victims on both sides, truth-telling contributes to preventing the possibility of public denial and resurgence of enmities. Discussing and recognizing the suffering of the victims, helps the community learn about what happened and to get involved in the process of healing (Almeida, 2003:2). The typical post-conflict problem concerns the deep mistrust between communities of victims and perpetrators. In Turkey, this is further complicated by blurred lines: victims and perpetrators can be found on both sides; those who see themselves as victims, are perceived by "other side" as wrongdoers. This is one of the core issues that the truth-seeking process should address. For instance, both Turkish and Kurdish mothers have stories that need to be heard by the "other side", as a way of understanding that so many people suffered regardless of their group affiliation. In this sense, the recognition of the suffering of individuals and groups in Turkey is linked to the whole community's involvement in a

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[7] See Elster (2004), *Closing the Books: Transitional Justice in a Comparative Perspective,* pg.166 for a typology of victims and victimization

[8] For more on the relevance of truth for post-conflict societies, see Gonzalez and Varney 2013, Bloomfield *et al.* 2003

reconciliation process. What is at stake for Turkey, is the public exposition and recognition of the suffering of both sides.

This means that the truth matters for both the Turkish and Kurdish communities because they have been blind towards each other's suffering, and it would be important for them to show to the other side what their actions had amounted to. Furthermore, what should be understood by the causes of abuse is not only the individual dimension of committed crimes and individual motivations for them, but also larger patterns within society which have systematically led to criminal acts in a country. It is not surprising to come to the conclusion that larger patterns lie behind the causes of violence as "most often at issue are the crimes perpetrated in the name of a whole community or in the name of a groups constitutive of that community" (Dimitrijevic 2006:368). These patterns relate to how different communities perceive and interact with the outside world, how they establish their historical identity and how those in power use (and sometimes exploit) these lines. All of these dimensions relate to the conflict in Turkey. The Turkish state has justified its actions numerous times by claiming that they were acting in the best interests of Turkish society, and the country in general. The PKK also justified their violent actions by the claim that they were acting on behalf of the oppressed Kurdish community. The process of truth seeking is a necessary means in any effort aimed at dismantling such heavily ideological exclusionary, and ultimately false, narratives.

In sum, the idea behind arguing for the primacy of the truth-oriented approach may be simple: to break the cycle of violence, the two sides in this long-lasting and devastating conflict have both to abandon the ideology of blaming the "others", and stop seeing themselves as the only victims. Truth-seeking can make it possible to break the wall between different communities, promoting an atmosphere of dialogue which will support the attempts for reconciliation (Bakiner, 2014:12). The contradicting experiences of the Turkish and Kurdish communities surrounding the conflict should be made accessible to both sides, so that each can

52

relate to the others' experience. It is important to create an environment of trust in order for each side to understand that that suffering and injustices are actually shared. Turks and Kurds have a right to truth in order to understand and address the causes of their suffering and victimization, and to be able to form a democratic society in which such conflicts would be left behind.

3.4 The Truth Commission as a Truth-Seeking Mechanism in Turkey

Criminal trials can serve a role in bringing the truth to light, through the exposition of facts related to the crimes and atrocities which are being investigated, and through the statements of the perpetrators and victims in court. But because of the shortcomings of criminal justice in the context of Turkey, which have been pointed out in the previous chapter, there is a need to look for other truth-seeking mechanisms. The most common mechanism of truth-seeking in post-conflict societies is the truth commission.

One standard definition says that "truth commissions are official, non-judicial bodies of a limited duration established to determine the facts, causes and consequences of past human rights violations" (Gonzalez and Varney, 2013:9). ICTJ defines the three most important objectives of the truth commission as, establishing "the facts about violent events that remain disputed or denied", protecting, acknowledging and empowering victims and survivors, and contributing to social and political change through informing policy and encouraging "change in the behavior of groups and institutions" (9). In her widely recognized book on the theory and comparative analysis of truth commissions, Priscilla Hayner (2011:11-12) identifies the following core features of this mechanism: the focus of a truth commission should be on past events; its role is to investigate the pattern of events that happened in a specific time period; it is in direct engagement with the public which is affected and which its gathering information

53

from; it works for a temporary period of time; it completes its work by compiling a final report; it is an independent body typically created and authorized by the state.

Suggestions for a truth commission to be set up in Turkey have come from many different people and organizations. The former director of the Peruvian Truth Commission, Katya Salazar has been one to speak out for the need of a truth commission in Turkey, surrounding the Kurdish issue (Gungor, 2011, 17 April). International Crisis Group's (2014) report also argued that a truth commission is a necessary mechanism for a reconciliation process in Turkey. The Crisis Group (i) suggests that Turkey "will require more openness to offering redress for the state's wrongdoings and reparations for victims", and that the PKK should accept "responsibility for its own abuses, ending and denouncing all violence and illegal activities" in order for there to be sustainable peace. The Pro-Kurdish parties in Turkey have also been staunch supporters of a truth commission, and recently, even the founding party of Turkey, the center-left Kemalist "Republican People's Party" which in the last elections in November 1, 2015 earned 25% of the votes in Turkey, has expressed that there is a need for a truth commission to settle issues related to the Kurdish issue (Gungor, 2011, 17 April). The recent Pro-Kurdish party HDP has suggested that a future Truth Commission in Turkey would investigate human rights violations and incidences of political violence in the near past, meaning since the start of the conflict in the 1980s. They have further suggested that such a commission should include both male and female members from each party in the parliament, respecting proportionality but also gender equality. The commission, they have said, should be able to investigate applications of cases put forward by victims and perpetrators (Kose, 2015, March 23). Request by different parties in Turkey of the setting up of a Truth Commission in Turkey shows that the idea of a Truth Commission as such can be of value for the Turkish case.

With the inability of criminal justice to provide a viable reconciliation process in Turkey, the truth commission can play an important role in both backward-looking and forward-

looking process of coming to terms with the past. Looking back, the commission would gather and make public the facts on what happened; it would also work at revealing the stories and experiences of people on both sides. Looking forward, the commission can contribute to building a minimum consensus on the stakes and direction of democratic normalization, including the necessary institutional reforms required by the legacies of the conflict. "A key performative function of the construction of [transitional] truth is the display of reconciliation, as truth commission hearings bring victims and perpetrators together, through their testimonies, to participate in the state's processes" (Teitel, 2000:88). Teitel further suggests that the formation of an official truth constitutes "a distinct form of narrative" (2000:82). In this way, tackling the problem of truth in Turkey is of utmost importance, as the actions of a truth commission can lead to the creation of new forms of narrative. As narratives make up an important part of the constitution of truth in different communities in Turkey, a body that has the ability to engage in narratives and even build them, could create an atmosphere of dialogue between these narratives can serve as an important tool for reconciliation. So the important issue is to have a body that can combine narrative, dialogical and restorative aspects of the truth in a reconciliation process.

Daly (2008:37-38) states that an important reason for the divisions and enmities in society is that "the people comprehend the truth in different ways", and he claims that those who are committed to a different understanding of the past, may not be convinced by the commission's report and may not be willing to go through a reconciliation process. Bloomfield *et al.* (2003:40) state that there can be "subjective perceptions, beliefs, mythologies and interpretations of…history…It is necessary to understand the past, and also to understand how people interpret their past". In some contexts, it might be a better choice to emphasize the subjective elements of past suffering in a country. The reconciliation process in East Timor, for instance, gave priority to the needs of the victims and reconciliation amongst the different

communities, rather than making attempts to produce an authoritative version of the truth (Cohen and Lipscomb, 2012).

In responding to these and related challenges in Turkey, the truth that will be put forward by the report does not necessarily have to be one and comprehensive. The truth-seeking practices of a Truth Commission that would be set up in Turkey, should include the conflicting Turkish and the Kurdish narratives, in order to incorporate the two sides' victimization and suffering. It is hard to expect that a commission can bridge all the gaps between the different narratives on both sides. What the commission can do however is to expose these narratives and promote reconciliation. "The transitional narratives can be structured or emplotted in a variety of ways so as to tell multiple stories" (Teitel, 2000:87). What is meant here is that truth should not be presented through the eyes of one side (i.e. the state) but the "truth" that matters for each side can have a place in building of transitional narratives. Building transitional narratives is about identifying types of victims. But it is also about identifying wrongdoers who would come to the Truth Commission to tell their stories of why and how they committed their crimes, which will help in understanding the motives and context in which that person had done wrong, providing another side of the narrative on the conflict. Such was the case in South Africa where "perpetrators came forward, not in their scores, not in their hundreds, but in their thousands, to confess their involvement in gross human rights violations" (Boraine, 2000:155). The exposition of these narratives and the emphasis on the common parts of these narratives (mothers of martyrs, village burnings, two brothers on different sides of the armed conflict), which link the stories of the two sides together engaging in a practice of "dialogical truth", can provide the necessary platform for the Turkish and Kurdish communities to engage in a dialogue of reconciliation. It is undeniable that the Turkish and Kurdish communities share common stories, regardless of their conflicting interpretations. The search for the truth is the search for a new, shared interpretation. Turks and Kurds have lived alongside for centuries, and

56

the common bonds are quite strong. It will not come as a surprise that during the conflict there were parts in each sides' narratives that were common with the other as specified above. So it is not that there has to be created a bridge between the two communities which has never been there, but to revive and refurnish the bridge that has been there between the two communities all along.

In a study done by Staub (2006:17) on reconciliation in Rwanda after the genocide, a group discussion focused on re-creating a more positive reading of the shared memory was engaged in with different political leaders. During the discussion, the representatives of the Hutu and Tutsi communities, agreed that there can be different understandings of history, and the attempt to bring these different understanding together would be an important step in reconciliation. These observations apply just as well to the case of Turkey, as the two sides hold conflicting views on the events and their causes. A truth commission would serve as a platform for the creation of a shared history, making people recognize others' perspectives on historical events, and creating incentives for both sides to recognize their own blame in aggravating the conflict.

Hayner (pg.12) claims that "what is special about truth commissions is their intention of affecting the social understanding and acceptance of the country's past, not just to resolve specific facts." A Truth Commission can offer the different communities in Turkey an opportunity to engage in an inquiry about their understandings on the past, leading the members of these communities to slowly change their perceptions on the conflict, and opening up the narratives of the different sides to alternative truths. In cases of reconciliation after civil wars and armed conflict, Teitel (2000:86) suggests that a truth commission can serve to tell "a balanced history", and help in the creation of a narrative by equally incorporating both sides' wrongdoings and sufferings in a single report, like in the cases of El Salvador and Guatemala. Such an approach will be of use for the Turkish and Kurdish communities in order to decrease

the gap between the two perceptions of the past and post-conflict reality. A balanced history which takes into account both the Turkish and the Kurdish narratives can promote a reconciliation process, helping to decrease the communal divide in Turkey as well.

Daly (2008:33) suggests that a well prepared report can also pave the way for constitutional and legislative reforms necessary to prevent conflicts in the future. Hayner (2011:20) states that a Truth Commission can "outline institutional responsibility and recommend reforms". Bakiner (2014:7) states that one of the foremost political impacts of a Truth Commission is its capacity to "to influence policy in the areas of institutional reform…through its findings and recommendations". Hingorani (pg.3) also states that a Truth Commission can recommend reforms and points out that these recommendations can be in the areas of police training, changing discriminatory laws, restructuring the military, establishing civilian oversight mechanisms. Gonzalez and Varney (2013:24) state that Truth Commissions can "support the work of the justice system" and make criminal prosecutions possible "where there is a functioning judicial system, sufficient evidence and political will". Hayner (2011) shows this tense relationship between Truth Commissions and criminal trials by pointing towards different examples such as Liberia (pg.68), Argentina (pg.45) and Morocco (pg.43) where the threat of prosecutions through the work of Truth Commissions has dissuaded perpetrators in power from a peace process. A Truth Commission in Turkey could support the suggested complementary criminal trials on crimes against humanity in Turkey that will have to be dealt with, but with caution so as not to disrupt the peace process and dissuade the two sides from reconciling, because without peace, nothing is attainable in the Turkish context. Crimes which have been unknown to the Turkish-Kurdish public can be exposed, even leading to a demand for prosecution from both sides after an objective judicial system can established through reforms and there is the political will to go through these trials.

3.5 The Institutional Setup of a Truth Commission in Turkey

The discussion on a Truth Commission in Turkey raises the question of its optimal design: by whom the mandate would be given, who will be the commission members and what would be the criteria of their selection, what would be its goals, which competencies it would have, how long would it work, which bodies will it address, what the report would contain, and whether its work would be public or not, to whom would the commission submit its report, and will the report's findings be binding? In the next couples of paragraphs I will shortly explore these questions.

A commission that would be set up in Turkey would need to be composed of representatives of both sides of the conflict, in order to find acceptance by different groups in society. There have been examples of Truth Commissions that have been set up through negotiated peace accords such as El Salvador and Guatemala (Hayner, 2011:211). In this case, a peace accord including both sides can be a good platform for the setting up of a Truth Commission in Turkey. Without a farewell to arms, reconciliation as such would not be a realistic goal in Turkey. As discussed earlier, because of the factors surrounding the issue, the best way to initiate a reconciliation process would be a top-down approach, which shows the necessity of introducing the Truth Commission as a state body but also with the approval of the other side in the peace accord, in this case the Kurdish rebel groups and community supportive of them. A peace accord can pave the way for a Truth Commission that would be established by the state afterwards. There have been examples such as Argentina and Chile in which "passing national legislation in Congress would either take too much time or too many compromises" (Hayner, 2011:210). In this light, the setting up of a Truth Commission through a cabinet decree by the government in power in Turkey can overcome such obstacles. One important element in coming up with a successful truth commission is to gain the acceptance of both sides. While agreeing of the setting up of such a body through a peace accord involving

59

both sides can increase the appeal of the truth commission in the eyes of both communities, such an initiative may need preparatory work before the work of the commission can begin. This can be through raising public awareness about the necessity of such a body through the media, stating what its goals would be and what it would contribute to, and creating an atmosphere of public deliberation surrounding both the body and the issues it will examine.

Due to many problems that might arise from partisanship and clash of ideologies, a Truth Commission in Turkey may perform better under a group of independent experts from human rights organizations, lawyers, academics and people from other different professions who can maintain a stance of impartiality and deliver an objective report. The Crisis Group (2014:2) also stresses the need to establish a truth commission in Turkey, comprised by an agreed panel of independent experts that can listen to the victims and produce a final report which would be made public and be sent to the parliament. One danger however, is that if expertise is not combined with representation while selecting commissioners, the commission may be alienated from the two communities. Hence, there is a need to select commissioners which can represent their own communities, in order to create a bond between the commission and the different communities. Recognizable intellectuals and artists can also serve as a way to connect to the public if chosen as commissioners. What would seem fitting in this condition would be to have a combination of representatives from the different sides and independent experts which would help these representatives within the commission.

Hayner (2011:216) suggests that "it is useful for the report [of a Truth Commission] to come out while still the momentum of transition is under way" and states that a commission's tenure should not be too long, preferably taking a minimum of two and maximum of three years. In this light, considering that during a peace accord, the public will be more interested in the issue, and the media highlighting it more, a Truth Commission in Turkey should preferably be tasked to work for around two years. For the purposes of reconciliation in Turkey it is adamant

60

that the commission holds hearings public rather than private. Public hearings give the victims of the conflict a chance to express their suffering, but furthermore "especially if the hearings are on television…a commission can encourage public understanding and sympathy of victims, reduce the likelihood of continued denial of the truth by large sectors of society" (Hayner, 2011:218). As discussed earlier, the narratives of the different sides and victims of the conflict have to be brought forth in the public eyes in order for a dialogue to emerge during a reconciliation process. Narrative truth shall lead to dialogical truth which shall lead to restorative truth. Publicly televised commission hearings can be a strong platform for conveying these narratives to the larger public while also presenting the suffering of both the Kurdish and the Turkish side, making it harder to deny for larger segments of society as to the reality surrounding the conflict while paving the way for an atmosphere of dialogue.

In terms of the content of such a report that would be produced in Turkey, of course "forensic truth" which holds an account of different incidents and those who have disappeared is an important elements. But the Crisis Group (2014:2) suggests that "one option could be to produce a report that does not make public any names but gives an account of what happened, which institutions or groups were responsible, and in the case of disappearances, where the bodies are". Since there are conflicting views on crimes that have been committed, which have been discussed in Chapter 2, it may not necessarily be the best choice to make the names of the perpetrators public. A report that focuses more on the experience of the victims can better accomplish the goal of bringing out "narrative", "dialogical" and "restorative truth". The public can know the full extent of the crimes that have been committed by members of their community, which will disrupt the culture of denial that may exist on both sides. In light of this, since names would not be made public, the commission does not need to have the power to grant amnesty, and such initiatives can come from other state bodies. The same goes for complementary trials which can make use of incidents that have been included in the report to

61

initiate investigations without the truth commission giving the names of perpetrators as such. The commission can also provide measures for reperation and compenstion to those who have been affected by the conflict, including whole communities.

Lastly, such a commission's report should be accepted by the state body it has been tasked by to produce a report, but also should be accepted by the Kurdish side, in this case, the PKK and the Pro-Kurdish party in order to bear fruitful results. A peace accord that would initiate a reconciliation process means that both sides would accept the conditions of this accord, and the final report of a Truth Commission that is born from such an agreement has to be accepted by the parties involved. In this way the commission's findings should be binding on the parties involved, but the recommendations it can give may not necessarily have to be binding since a reform process that is put forward by a commission may be hard to realize in a short period of time. But this does not mean that the commission should not put forward recommendations in its final report that may be of support to the reconciliation process.

3.6 Possible Reform Suggestions

The commission's report can play an important role in the attempts for democratization through reforms that will tackle the discriminatory practices of the Turkish states towards minorities. Reforms of the police force and the military may provide the support in changing the attitudes of state servants towards prior dissenting views. Also strengthening the accountability procedures for army and police officials would support the objective of ending state violence towards the Kurdish minority. The police and the military forces have not been held accountable for their actions in the SoE regions, which encouraged abusive behavior.

One other important reform the Truth Commission can suggest should be related to the transparency of state practices. The lack of transparency in conflict areas has been one of the main reasons for the violation of human rights and has encouraged the state forces to engage in

violence through the knowledge that their actions would be covered up. Related to institutional reform, one important recommendation would be for implementing reforms to strengthen local governance in order for the local people to have more say in day-to-day decision-making concerning their region. The Turkish state is highly centralized and governors which have control of state forces in their areas are appointed by the central government.

But reform suggestions are not only limited to the Turkish side. Another suggestion that can be crucial for reconciliation is for the PKK to disarm and gradually dismantle or make the transition to a legal political entity. The PKK would also have to face the lack of accountability and transparency relating to their own actions towards both the Turkish and the Kurdish population.

Another reform suggestion, applicable to all groups in society, would be the change of the educational curricula. In order for a proper reconciliation process, there needs to be a revision of how history is told in school textbooks, so that it can reflect more truthfully the problems related to Turkey's past regarding the Kurdish issue. Notwithstanding this, the Truth Commission can suggest for educational reforms that would allow the teaching of Kurdish language and furthermore its culture and history in state schools where required or asked for.

The unfair laws put to practice are one big part of the reasons for the conflict in the first place, and a truth-seeking process in Turkey can work in tandem with a democratization process to bring enmities between the Turkish and the Kurdish sides to an end, and leave conflict behind once and for all. But the point that is important to make is that, it is not always laws which exist that create injustice but sometimes laws that do not exist. The Turkish Constitution does not recognize any other minorities or cultures that exist in Turkey and as stated in the previous chapters prefer to deem everyone a Turk. This points to the necessity to come up with a more inclusive constitution that can satisfy the demands of recognition by different minorities, including the Kurds, in Turkey. Another unfair practice that needs to be changed is the election

threshold, which only allows parties gaining over 10% of the vote to enter the parliament. Pro-Kurdish parties have long tried to enter the parliament as a party but have never gained enough votes until the HDP's rise. Lowering the election threshold will make it easier for the Kurdish minority to be represented in the parliament. One such example of a law that should be considered unfair is Article 8 of the Anti-Terror Law (Law 3713)[9] which "imposes three-year prison sentences for "separatist propaganda." Despite its name, the Anti-Terror Law punishes many non-violent offences. Those imprisoned under Article 8 for their non-violent statements have included pacifists and people who strongly and publicly criticize political violence." (Human Rights Watch, 2002, April). Not only Article 8 but a reform for the whole Anti-Terror Law can be suggested to overcome the discriminatory and harsh practices of imprisonment by the Turkish state. This relates closely to the Kurdish issue, since many people have been detained or imprisoned due to critical remarks about state practices in the southeastern region while these people have not taken part in violent activities themselves.

The commission could also provide recommendations for reperations to victims that have been harmed by the conflict. Such reperations can be financial for those who have had to migrate or whose villages have been destroyed, symbolic for those who have dedicated themselves to the cause of their communities and the martyrs who have lost their lives (through memorials, statues etc.). Democratic reforms in themselves can also serve as reperations as those who were denied their culture would be able to enjoy it. Such democratic practices can involve the changing of the names of places to their Kurdish origin from their newly put "Turkish" names. In light of this discussion, I claim that the most viable transitional justice mechanism that can support a reconciliation process in the case of Turkey is the setting up of a Truth Commission.

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[9] See the link for the complete Turkish Anti-Terror Law: http://www.opbw.org/nat_imp/leg_reg/turkey/anti-terror.pdf

CONCLUSION

This thesis has aimed to explore the question of transitional justice in Turkey in the context of the Turkish-Kurdish conflict. In the introduction, the relevance of transitional justice in the Turkish case has been put forward. It has also been stated that the research will aim to answer which transitional justice mechanisms are viable for a reconciliation process in Turkey surrounding the Kurdish issue. Then in the first chapter, the historical reasons for the development of conflict, including factors related to the founding ideology of the Turkish state were mapped out. This chapter also includes the wrongdoings committed by both the Turkish and Kurdish sides and their subjective narratives of the conflict, which becomes a crucial aspect in the discussions of how to achieve reconciliation. The second chapter has explored the viability of criminal justice in the Turkish context by relying on key arguments for criminal justice, reaching the conclusion that while criminal justice measures can provide a complementary role, they fall short of providing the necessary force for a reconciliation process by themselves in the Turkish context. It has also provided a conceptual discussion of transitional justice, pointing out the key concepts that will be relevant while putting forth the argument for truth-seeking in the further chapters of thesis, while also stating what kind of an understanding of reconciliation the thesis will work with. The last chapter of thesis has discussed the role that truth-seeking measures can play in Turkey and has concluded that truth-seeking in the form of a "Truth Commission" holds a great potential in being the main driving force for a reconciliation process in the Turkish-Kurdish Conflict.

A reconciliation process in Turkey has to have different dimensions and includes many questions, and how to approach the past is just one of them. The scope of this thesis has been this single issue related to the questions about the past in the Turkish-Kurdish conflict. But an inquiry into the past can be the first step of a process which has to also deal with issues related to democratization and institutional reform that can make possible for different communities in

Turkey to live in peace and harmony. A "Truth Commission" is an important element in the attempts for democratization as it will serve the purpose of bringing the two communities closer together, without which a common understanding on what kind of Turkey these communities would like to live in cannot be established. It is important to stress the importance of democratic reforms in the hopes to achieve reconciliation in Turkey, and such research which focuses on democratization surrounding the conflict can complement this thesis.

This thesis hopes to contribute something new to the political science literature through applying the topic of transitional justice to Turkey's own problems. Transitional justice has not been discussed enough in the Turkish context and this thesis has hoped to show that it holds relevance for Turkey as well. While the topic of this thesis was limited to the Turkish-Kurdish conflict, further research which would focus on different issues in Turkey's past such as the military coup d'état's of 1960 and 1980, the Armenian issue and the Cyprus issue, also have the possibility to be studied under the lens of transitional justice, as it is a field that holds immense potential for addressing issues related to Turkey's past.

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