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**Searching for Transitional Justice Mechanisms in the Kurdish
Question in Turkey: addressing violations of social, economic
and cultural rights**

by Zeynep Ardic

PhD

University of Sussex

Law

September 2018

Declaration

I hereby declare that this thesis entitled “Searching for Transitional Justice Mechanisms in the Kurdish Question in Turkey: addressing violations of social, economic and cultural rights” is entirely my own work. This thesis, whether in the same or different form, has not been previously submitted to this or any other University for a degree.

Zeynep Ardic

September 2018

Abstract

Transitional justice has tended to prioritise civil and political rights (CPR) violations over economic, social and cultural rights (ESCR) violations and often left structural violence and root causes of violence un(der)addressed. This thesis advocates that when addressing violations of ESCR, the examination of structural violence and roots causes of violence is critical for transitional justice processes to provide a fully-fledged response to past wrongs. The Kurdish Question (rising from problems regarding the Kurdish identity and the protracted conflict between the Turkish state and a Kurdish separatist organisation) has long troubled Turkey. Although the Kurdish Question is mainly rooted in political and identity-based problems, the Turkish state discourse has framed it as a socioeconomic and terrorism problem. This makes the conflict and solution complex since even if the conflict is based on political problems, there remains a pressing need to deal with socioeconomic issues. Considering that transitional justice contexts are often complex (and they require complex solutions), this thesis advocates an approach to transitional justice which goes beyond pure legalism.

This study examines transitional justice processes of East Timor and Peru to draw lessons from their experiences. East Timor and Peru provide important insights for Turkey as they also faced serious socioeconomic problems (violations of ESCR, and in particular forced displacement) during their transitional processes. This thesis argues that ESCR violations (especially forced displacement) and socioeconomic inequalities need to be addressed through a set of mechanisms which must be designed and implemented through a participatory, holistic, and grassroots approach. The local actors including victims and survivors must have a role in decision-making, design, management and implementation processes of transitional justice mechanisms to ensure that the response to past wrongs really answers the needs and demands of the affected people and communities. It must be noted that this thesis does not draw a roadmap for a future transitional justice process in Turkey as that needs to be done through a thorough consultation process with relevant actors. Given that the conflict is ongoing in Turkey and the country (unlike many transitional countries) has substantial resources (financial and institutional) to allocate to transitional justice efforts, Turkey is a significant case study for the field. The original contribution of this thesis to knowledge is addressing the Kurdish Question from a transitional justice point of view incorporating ESCR.

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Introduction

“We talk and talk from morning to night and then come home and we are still hungry...”¹

(Joao, Alieu - East Timor)

1. Introduction

Transitional justice, a relatively new concept, has become an essential paradigm in societies which transition from authoritarian/totalitarian regimes to democratic ones and from conflicts to peace.² It aims to address grave human rights violations of the past and contribute to peace and reconciliation. This thesis looks at the possibility of pursuing transitional justice in response to the Kurdish Question³ in Turkey. It does so by specifically looking at which transitional justice mechanisms can be adopted to address the violations and promotion of economic, social and cultural rights (ESCR) through a participatory, holistic and grassroots approach. It focuses on ESCR violations because these rights are often sidelined in transitional justice processes, even though they have significant importance to people as the quote above remarks.

2. Background

Transitional justice can simply be defined as a response to wrongdoings of the past.⁴ Transitional justice mechanisms (trials, truth commissions, reparations, institutional reforms, and amnesties) are designed to address widespread human rights violations which are often committed during conflicts and under repressive regimes. Transitional justice has tended to focus on addressing violations of civil and political rights (CPR), often leaving historical inequalities and violations of ESCR un(der)addressed.⁵ Yet, there has been an increasing demand from scholars and

¹ Kent, L. (2004) *Unfulfilled Expectations: Community Views on CAVR's Community Reconciliation Process*, The Judicial System Monitoring Programme (JSMP), p.25.

² Olsen, T. D., Payne, L. A. and Reiter, A. G. (2010) *Transitional justice in balance: Comparing processes, weighing efficacy*, Washington, D.C.: U.S. Institute of Peace Press, pp.1-2.

³ There are various terms in academia and public discourse to refer to the problems regarding the Kurdish identity and the protracted conflict between the Kurdistan Workers' Party (Partiya Karkerên Kurdistanê, PKK), a separatist organisation which was founded in 1978, and the Turkish state: the Kurdish Problem, the Kurdish Issue, the Eastern Problem, the Southeast Problem, the Terror Problem, etc. This thesis is going to use the “Kurdish Question” as the others often imply that the Kurds are ‘the problem’. Therefore, choosing an objective term seems reasonable.

⁴ International Center for Transitional Justice (n.d.) *What is transitional justice*, Fact Sheet. Available at: <https://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf> (access date: 27.08.2018)

⁵ Arbour, L. (2007) Economic and Social Justice for Societies in Transition, *International Law and Politics*, Vol.40, No.1, pp.1-27.; Laplante, L. J. (2008) Transitional Justice and Peace Building: Diagnosing and

practitioners for addressing violations of ESCR and root causes of violence in transitional processes. They suggest that socioeconomic problems, which are often among root causes of conflicts, need to be addressed for a successful transition, and if they remain un(der)addressed, it is difficult to ensure that peace and reconciliation will be sustainable.⁶

Transitional justice has been criticised for being distant from affected communities and lacking participation. Numerous scholars assert that the field has been dominated by legalism and it is often applied through a top-down and one-size-fits-all approach.⁷ It is important to adopt an approach which responds to local needs and expectations. Local people should be integrated into decision-making, designing, management and implementation processes of transitional justice mechanisms. All transitional contexts have their own dynamics and realities. Therefore, transitional justice mechanisms need to be designed relevant to these contexts. It has also been argued that a holistic approach can be more useful in addressing complex problems of post-authoritarian and post-conflict situations.⁸ Moreover, empowering victims and survivors, and ensuring a meaningful participation of locals can contribute to these processes to a great extent.⁹

The Kurdish Question holds a long history and pressing footprint in Turkey, as ethnic groups in general, and the Kurdish people in particular, have been suppressed by the state since the

Addressing the Socioeconomic Roots of Violence through a Human Rights Framework, *International Journal of Transitional Justice*, Vol. 2, No.3, p.333.

⁶ Schmid, E. and Nolan, A. (2014) 'Do No Harm'? Exploring the Scope of Economic and Social Rights in Transitional Justice, *International Journal of Transitional Justice*, Vol.8, No.3, p.363.; Arbour, *Economic and Social Justice*, pp.1-27.; Waldorf, L. (2012) Anticipating the Past: Transitional Justice and Socio-Economic Wrongs, *Social & Legal Studies*, Vol.21, No.2, pp.171-186.; Miller, Z. (2008) Effects of Invisibility: In Search of the 'Economic' in Transitional Justice, *International Journal of Transitional Justice*, Vol.2, No.3, pp.266-291.; Laplante, *Transitional Justice and Peace Building*, pp.331-355.

⁷ McEvoy, K. (2007) Beyond Legalism: Towards a Thicker Understanding of Transitional Justice, *Journal of Law and Society*, Vol.34, No.4, pp.411-440.; McCargo, D. (2015) Transitional Justice and Its Discontents, *Journal of Democracy*, Vol.26, No.2, pp.5-20.; Gready, P. (2006) Analysis: Reconceptualising transitional justice: embedded and distanced justice, *Conflict, Security & Development*, Vol.5, No.1, pp.3-21.; Vinjamuri, L. and Snyder, J. (2004) Advocacy and Scholarship in the Study of International War Crimes Tribunals and Transitional Justice, *Annual Review of Political Science*, Vol.7, No.1, pp.345-362.; Theidon, K. (2009) Editorial Note, *International Journal of Transitional Justice*, Vol.3, No.3, p.296.; Arenhövel, M. (2008) Democratization and Transitional Justice, *Democratisation*, Vol.15, No.3, p.578.; Madlingozi, T. (2010) On Transitional Justice Entrepreneurs and the Production of Victims, *Journal of Human Rights Practice*, Vol.2, No.2, p.225.

⁸ Boraine, A. (2006) Transitional Justice: A Holistic Interpretation, *Journal of International Affairs*, Vol.60, No.1, pp.17-28.

⁹ Lundy, P. (2009) Exploring Home-Grown Transitional Justice and Its Dilemmas: A Case Study of the Historical Enquiries Team, Northern Ireland, *International Journal of Transitional Justice*, Vol.3, No.3, pp.321-340.

foundation of the Turkish Republic.¹⁰ This has caused several insurgencies and unrest in the country. The Kurdistan Workers' Party (Kurdish acronym, PKK) was established in the 1980s, and bloody conflicts between the Turkish army and the PKK have marked the Republic's history since then. There have been gross human rights violations in the country (which particularly victimised the Kurdish people) including enforced disappearances, deaths in detention, burning villages and forcibly evacuating residents since the 1990s.¹¹ Forced displacement has been one of the most wide-spread violations in the Kurdish Question.¹² Moreover, the Kurdish region¹³ has been rife with socioeconomic problems such as poverty and unemployment, and it is the least developed part of Turkey.¹⁴ It is argued that the Kurdish region had been left out of the Turkish economy since the foundation of the Republic, and the marginalisation in economy and society has been exacerbated since the 1980s.¹⁵ The socioeconomic disparities between the Kurdish region and other regions makes socioeconomic issues central to the Kurdish Question. Therefore, to tackle the Kurdish Question successfully and sustainably, economic, social and cultural rights of the Kurds must be recognised as well as their civil and political rights.¹⁶

The violations of ESCR and the underdevelopment of the Kurdish region have been a tricky subject in Turkey. Gardi stated: "Instead of addressing the rights of Kurdish minorities, Turkey's persistent focus on enforcing counter-terrorism policies against the PKK equates to a refusal to address the root causes of the conflict."¹⁷ For quite a long time, political and identity-based demands of the Kurdish people have been ignored, and the Kurdish Question has been framed as a terrorism and an underdevelopment and poverty problem by the state.¹⁸ The true nature of the Kurdish Question must be acknowledged in a future transitional justice process, but this should not mean that socioeconomic dimensions of the problem will be side-lined. Even though

¹⁰ Gunes, C. and Zeydanlioglu, W. (2014) 'Introduction: Turkey and the Kurds' in Gunes, C. and Zeydanlioglu, W. (eds) *The Kurdish Question in Turkey: New perspectives on violence, representation, and reconciliation*, London and New York: Routledge, p.8.

¹¹ *Ibid*, pp.1-5.

¹² Ayata, B. and Yukseker, D. (2005) A belated awakening: National and international responses to the internal displacement of Kurds in Turkey, *New Perspectives on Turkey*, No.32, p.19.

¹³ In this study, the Kurdish region refers to south-eastern and eastern regions in Turkey which are predominantly populated by Kurds.

¹⁴ Somer, M. (2002) Ethnic Kurds, Endogenous Identities, and Turkey's Democratization and Integration with Europe, *The Global Review of Ethnopolitics*, Vol.1, No.4, p.74.; Ensaroglu, Y. and Kurban, D. (2008) *A Roadmap for a Solution to the Kurdish Question: Policy Proposals from the Region for the Government*, Istanbul: TESEV Publications, p.20.

¹⁵ White, P. (2007) Economic marginalization of Turkey's Kurds: the failed promise of modernization and reform, *Journal of Muslim Minority Affairs*, Vol.18, No.1, p.146.

¹⁶ Yildiz, K. (2012) Turkey's Kurdish Conflict: Pathways to Progress, *Insight Turkey*, Vol.14, No.4, p.170.

¹⁷ Gardi, R. (2017) From Suppression to Secession: Kurds, Human Rights and the Right to Self-Determination in Turkey, *ILSA Journal of International & Comparative Law*, Vol.24, No.1, p.74.

¹⁸ Ensaroglu and Kurban, *A Roadmap for a Solution*, p.11.

the Kurdish Question is political, socioeconomic issues are also significant in this context. Ensaroglu and Kurban note “the Kurdish Question asserts itself as a complicated issue with ethnic, cultural, legal, political, social, economic, and psychological aspects.”¹⁹ Considering the Kurdish Question from a narrow legalistic perspective and identifying it as a civil and political rights problem is as problematic as considering it as exclusively an issue of terrorism and socioeconomic problems. Therefore, a holistic approach to the problem needs to be adopted both in theory and practice to address political, social, legal, cultural and economic issues. Turkey should pursue transitional justice mechanisms in a way which addresses both CPR and ESCR to end the conflict and achieve sustainable peace and reconciliation.

When this research was started, there was a peace process in Turkey between the Turkish and the Kurdish sides of the conflict, but the peace process was ended in July 2015.²⁰ Yet, the purpose of this study has been discovering the ways in which Turkey should conduct a transitional justice process which is suitable for addressing the problems in the Kurdish Question rather than examining the specific process which ended in 2015. Transitional justice, historically, has been adopted in post-authoritarian and post-conflict societies, but it has also been pursued in ongoing conflicts to buttress the peace efforts.²¹ This study looks at the Kurdish Question from a post-conflict perspective and considers what pursuing transitional justice would look like in Turkey when the conflict is settled.

2.1. Research Questions

The central research question of this study is:

- Why should Turkey pursue transitional justice and which mechanisms can be adopted to address the violations of ESCR in the Kurdish Question?

The secondary questions are:

- Why should transitional justice mechanisms be considered in the Kurdish Question? And how can they contribute to peace and reconciliation in Turkey?
- What significance do ESCR violations have in the Kurdish Question?
- Which transitional justice mechanisms should be considered to address ESCR violations, root causes of the conflict and structural violence and how? And why is it important to address them in a transitional process?

¹⁹ *Ibid*, p.11.

²⁰ Todorova, A. (2015) Turkish Security Discourses and Policies: The Kurdish Question, *Information & Security: An International Journal*, Vol.33, No.2, pp.113-117.

²¹ Ambos, K. (2013) ‘Conflict (Ongoing) and Transitional Justice’ in Stan, L. and Nedelsky, N. (eds) *Encyclopedia of Transitional Justice - Volume 1*, Cambridge: Cambridge University Press, pp.146-152.

- What is significant about adopting a participatory, holistic and grassroots approach to transitional justice in Turkey?
- What can Turkey learn from the experiences of East Timor²² and Peru?

2.2. Aims and Objectives of the study

This study aims to depict the significance of addressing socioeconomic issues in the Kurdish Question. Transitional justice generally neglects ESCR abuses, structural violence and root causes of conflicts and violence. It is similar in the Kurdish Question as socioeconomic aspects of the conflict are often side-lined even though addressing them is crucial for a full-fledged solution to the problems. It is argued that leaving root causes of conflicts, structural violence and ESCR violations un(der)addressed may be a threat to a sustainable peace and a successful transition. As noted above, forced displacement has been one of the most wide-spread human rights violations committed against the Kurds, and addressing ESCR violations is of great importance in a future transitional justice process. In addition, the study aims to show the importance of embracing a participatory, holistic and grassroots approach in a transitional justice process. By examining the experiences of East Timor and Peru, the study intends to illustrate key points which need to be taken into consideration when pursuing transitional justice. Lastly, in the light of transitional justice literature and lessons learnt from the transitional justice processes of East Timor and Peru, several policy recommendations are produced for the Turkish state, transitional justice actors (internal and external), NGOs and civil society.

2.3. Methodology

This research will be conducted through qualitative content analysis and comparative case study analysis. It will do so through theoretical and secondary data analyses. Theoretical analysis will cover conceptualisation of transitional justice, ESCR and the historical background of the Kurdish Question. The corpus of material includes scholarly articles, reports of prominent NGOs of the relevant countries and official documents of the transitional countries of concern.

Secondary data analysis will be conducted on two different grounds:

- Data collection from government agencies, think tanks and human rights organisations in order to pin down violations of ESCR, root causes of the conflict and historical injustices. The reports which were published on the Kurdish Question will be examined.

²² The country is also known as Timor-Leste.

- Comparative analysis with the experiences of East Timor and Peru to examine what worked and what did not work in these processes. The experiences of these countries will be analysed through the existing literature on these countries.

The reason for not conducting a field research and interviews is that there is a wide literature on these countries' experiences. The human rights violations are well-documented in Turkey and it is not likely that a field research could collect further data than the existing studies. Moreover, the aim of this study is not suggesting a model or drawing a roadmap for the government to implement transitional justice mechanisms. Therefore, the study will not identify the needs and demands of the Kurdish people. These needs and demands should be determined by transitional justice practitioners through a broad consultation process with victims and affected communities (and other relevant actors). This thesis examines the ways in which transitional justice should be pursued in Turkey. This examination includes assessing different approaches to transitional justice, identifying various actors (who should be included in a transitional justice process) and analysing transitional justice mechanisms (how they can be designed and implemented, and how they can contribute to tackling the Kurdish Question). This study does this examination by making an in-depth analysis of the transitional processes in East Timor and Peru. It also explores other transitional justice processes around the world to see what worked and what did not. Likewise, the study does not recommend specific local practices to be adapted considering that these choices need to be made by the locals rather than external actors.

3. Justification of the case study

3.1. Why Turkey?

Transitional states often face limitations when they pursue transitional justice. Lack of resources and limited institutional capacity often have a negative impact on their efforts. Turkey can be a significant case for the literature as it has a strong economy, a functioning democracy (despite its deficits)²³ and settled institutions compared to many transitional states. Considering that a considerable majority of the transitional countries have relatively weak economies and democracies, Turkey has a great potential to provide insights to transitional justice literature. Moreover, socioeconomic issues are central to the Kurdish Question and exploring the ways in

²³ Turkey's democracy score is between four and five (ten refers to full democracy and zero refers to an authoritarian regime) according to the Economist's data. Available at: <https://infographics.economist.com/2018/DemocracyIndex/> (access date: 06.09.2018).

which these problems can be addressed in a future transitional justice process contributes to the development of the literature.

3.2. Why East Timor and Peru?

East Timor and Peru are chosen in this study for the comparative analysis. An in-depth analysis of the transitional processes of these countries will be made since their mechanisms are concerned with socioeconomic problems and ESCR violations.²⁴ Moreover, both countries have significant forced displacement problems and adopted various measures to deal with these problems.²⁵ Forced displacement is one of the most wide-spread human rights violations in the Kurdish Question, and there are many lessons that should be learnt by Turkey before it pursues transitional justice.

3.3. Significance (contribution) and focus of research

This research aims to make an original contribution to the field in several ways. First, the Kurdish Question has not been considered in transitional justice context in depth as a doctoral thesis. There are few studies on the subject and none of the existing studies specifically focused on ESCR violations and socioeconomic dimension of the Kurdish Question in the context of transitional justice.²⁶ So, there remains an open question on the significance of addressing ESCR abuses and root causes of the conflict, and this is the first study of its kind to begin addressing this question. Whilst the existing literature has showed that transitional justice can be pursued

²⁴ Transfer Commission of the Truth and Reconciliation Commission of Peru – CVR (2014) *Hatun Willakuy: Abbreviated Version of the Final Report of the Truth and Reconciliation Commission* – Peru, Lima.; The Commission for Reception, Truth, and Reconciliation Timor-Leste - CAVR (2005) *Chega! The Report of the Commission for Reception, Truth, and Reconciliation Timor-Leste: Executive Summary*.; Van der Auweraert, P. (2012) *Dealing with the 2006 Internal Displacement Crisis in Timor-Leste: Between Reparations and Humanitarian Policymaking*, International Center for Transitional Justice.; Segura, R. B. (2012) *Case Studies on Transitional Justice and Displacement: Reparations and Displacement in Peru*, New York: International Center for Transitional Justice.

²⁵ Koefner, G. (2000) Displacement in East Timor, *Refugee Survey Quarterly*, Vol.19, No.2, pp.77-88.; The CVR, *Hatun Willakuy*.

²⁶ Budak, Y. (2015) Dealing with the Past: Transitional Justice, Ongoing Conflict and the Kurdish Issue in Turkey, *International Journal of Transitional Justice*, Vol.9, No.2, pp.219-238.; Sancar, M. (2010) *Geçmişle Hesaplaşma: Unutma Kültüründen Hatırlama Kültürüne*, İstanbul: İletişim Yayınları.; Bakiner, O. (2013) Is Turkey Coming to Terms with Its Past? Politics of Memory and Majoritarian Conservatism, *Nationalities Papers: The Journal of Nationalism and Ethnicity*, Vol.41, No.5, pp.691-708.; Jongerden, J. (2018) Looking beyond the state: Transitional justice and the Kurdish issue in Turkey, *Ethnic and Racial Studies*, Vol.41, No.4, pp.721-738.; Baser, B. (2017) Intricacies of Engaging Diasporas in Conflict Resolution and Transitional Justice: The Kurdish Diaspora and the Peace Process in Turkey, *Civil Wars*, Vol.19, No.4, pp.470-494.; Mihr, A. (2018) *Regime Consolidation and Transitional Justice: A Comparative Study of Germany, Spain and Turkey*, Cambridge: Cambridge University Press.; Izgoren, E. (2016) *Transitional Justice and the Ongoing Kurdish Issue in Turkey from the Perspectives of the Wives of the Disappeared*, Unpublished master's thesis, Lund University, Lund, Sweden.; Buyukyüksel, K. (2016) *Opening the Books: Transitional Justice in the Turkish-Kurdish Conflict*, Unpublished master's thesis, Central European University, Budapest, Hungary.

to tackle the Kurdish Question, this study significantly develops this by both examining transitional justice mechanisms (which mechanisms can make what contribution) in the light of a comparative analysis and exploring the significance of addressing ESCR violations and socioeconomic issues when pursuing transitional justice. Second, Turkey is a significant example in terms of resources since it has more financial and institutional resources to allocate to a transitional justice process compared to most transitional states. Third, even though the Kurdish Question is inherently political, there have been serious socioeconomic problems including ESCR violations and underdevelopment of the region due to the oppression and conflict. Exploring socioeconomic issues in the context of a political problem offers new insights to transitional justice literature. Lastly, this study contributes to the field by developing both comparative literature on transitional justice and ESCR.

4. Thesis outline

The first chapter gives the historical background of transitional justice, conceptualises the field by examining memory, truth and reconciliation, and the relationship between them. It also elucidates two of the criticisms (which are closely linked to the main argument of the thesis) surrounding transitional justice: distanced justice²⁷ (lack of local participation) and failure of addressing socioeconomic wrongs and root causes. While setting out the criticisms, it also suggests the ways in which these criticisms can be eliminated. Finally, the chapter explains transitional justice mechanisms: trials, truth commissions, reparations, institutional reforms and amnesties.

The second chapter defines and conceptualises ESCR by describing elements and obligations resulting from ESCR. The chapter enquires into the reasons for the relative neglect of ESCR in international law by analysing prominent arguments. Then, the neglect of ESCR in transitional justice literature and practice is explored in this chapter, and the significance and limitations of addressing violations of ESCR in transitional contexts are analysed. The chapter also depicts how transitional processes can be enhanced by addressing and promoting ESCR. Lastly, the chapter depicts the linkages between development and transitional justice and highlights potential contributions that development and transitional justice can make to each other.

The third chapter aims to explain the Kurdish Question by giving the historical background of the problem, the emergence and development of the conflict and the current government's approach to the issue. It also explores the significance of socioeconomic issues (particularly

²⁷ "Distanced justice" refers to the implementation of transitional justice mechanisms in a way which does not achieve justice as victims would understand.

forced migration) in the Kurdish Question by analysing the arguments on the economic marginalisation of the Kurdish region and relative deprivation of the Kurds. Then, the chapter pins down both human rights abuses (particularly ESCR abuses) and their legacies in today's context. It argues that the socioeconomic conditions of the region show the significance and necessity of addressing and promoting ESCR in a future transitional process in Turkey.

The fourth chapter makes in-depth analyses of East Timor and Peru's transitional processes to allow a comparison between them and the Kurdish Question. Although this comparison is made in the fifth chapter, the fourth chapter lays the foundation for the comparison. This chapter examines the historical backgrounds of the violence in both countries and describes their transitional processes thoroughly. Both East Timor and Peru adopted a wide range of mechanisms including trials, truth commissions, reparations, institutional reforms and amnesties. These mechanisms are examined in detail to see which mechanisms are applied in which ways and what kind of outcomes they produced. The criticisms about these mechanisms are pinned down to provide insights for Turkey. Finally, the chapter scrutinised how the historical injustices, ESCR abuses (and their consequences) and current socioeconomic problems (forced displacement, economy, education, health etc.) are dealt with in these countries.

The fifth and the last chapter makes the comparison between Turkey and these two countries to find the ways in which a transitional justice process can be implemented efficiently. This comparison allows the study to depict rights and wrongs of other countries' experiences to find the best solution to the Kurdish Question in Turkey. The chapter considers five transitional justice mechanisms (trial, truth commission, reparation, institutional reform and amnesty) to be implemented in tackling the Kurdish Question. It does so by depicting which mechanisms can make what contribution to achieve peace and reconciliation in Turkey. Although it considers human rights violations generally, its focus is on ESCR violations, particularly on forced displacement. It also explores what is aimed at by the application of each mechanism and what abuses are going to be addressed by them. Finally, the chapter depicts the significance of adopting a participatory, holistic and grassroots approach to enhance the transitional process.

Chapter 1: Transitional Justice

1. Introduction

This chapter aims to give the historical background of transitional justice by showing how it evolved in time; conceptualise the field by asking “what is transitional justice for?”, “what are the criticisms concerning it?” and “how can transitional justice be enhanced in the light of the criticisms?”; introduce mechanisms of transitional justice; and finally summarise the chapter and express the final thoughts. These thoughts concern adopting a holistic (implementing mechanisms jointly), participatory and grassroots approach, pursuing transitional justice in a realistic and context-specific manner, and expanding the field to include socioeconomic issues to have a complete and successful transitional justice process. By conceptualising the field, this chapter lays the foundation for analysing why Turkey should pursue transitional justice, and it opens the discussion about including ESCR in transitional justice processes.

Transitional justice is a concept which is being applied in transitional countries which shift from authoritarian/totalitarian regimes to democracies or from conflicts/civil wars to peace. Since repressive regimes and armed conflicts are identified with massive human rights violations, transitional countries bear a heavy burden: wrongdoings of the past. Nascent democracies and post-conflict societies must make a decision about this burden. Two important questions related to this decision are stated as: “whether to remember or forget the abuses—the issue of acknowledgment—and whether to impose sanctions on the individuals who are co-responsible for these abuses—the issue of accountability”.²⁸ Answering these questions is critical for transitional countries as the answers shape transitional periods.

There are various definitions of transitional justice in the literature. It was defined as “a response to systematic or widespread violations of human rights”²⁹ by the International Center for Transitional Justice (ICTJ); “the conception of justice associated with periods of political change, characterised by legal responses to confront the wrongdoings of repressive predecessor regimes”³⁰ by Teitel; and “the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation”³¹ by the United Nations (UN). While

²⁸ Huyse, L. (1995) Justice after transition: on the choices successor elites make in dealing with the past, *Law & Social Inquiry*, Vol.20, No.1, p.52.

²⁹ ICTJ, *What is transitional justice*, Fact Sheet.

³⁰ Teitel, R. G. (2003) Transitional Justice Genealogy, *Harvard Human Rights Journal*, Vol.16, p.69.

³¹ The United Nations (2004) *The rule of law and transitional justice in conflict and post-conflict societies*, Report of the Secretary-General, S/2004/616, p.4.

Teitel described transitional justice as a legal response, the ICTJ and the UN did not specify the response as a legal one. This difference is related to the argument about the domination of legalism in transitional justice literature which will be explained in the section 3.2.

Transitional justice is a relatively new concept in the field of justice and the debates surrounding its use, both in theory and practice, continue to enrich the field. Yet, the application of transitional justice mechanisms has expanded since the 1970s, and it has become an essential paradigm in the 21st century.³² It is claimed that if gross human rights violations which took place in the past are not addressed, they may lead to serious problems in the future, and transitional justice can be used as an effective tool to face the past and to achieve reconciliation.³³ These assumptions of transitional justice are generally accepted but they are not without critiques. The validity of these assumptions continues to be debated in the literature which will be detailed below.

2. The Historical Background of Transitional Justice

Even though the term “transitional justice” was coined in the 1980s, there have been many precedents throughout history. Elster says: “Democratic transitional justice is almost as old as democracy itself.”³⁴ Elster explains that Athens had two transitional periods in 411 B.C. and in 404-403 B.C. when democracy was ceased twice by oligarchies. After both periods of oligarchies, democracy was restored, and Athens had been through two transitional periods.³⁵ However, Teitel states that the origins of modern transitional justice date back to post-World War I period.³⁶ Teitel points out post-World War I period national trials and identifies them in the context of transitional justice.³⁷ Yet, when Teitel describes three phases of transitional justice, she does not include post-World War I period. Teitel’s view is more persuasive since transitional justice has been identified as a separate field after World War II. Since then, history has witnessed many transitions in different parts of the world. According to Teitel, the genealogy of transitional justice consists of three phases and it gives the historical evolution of the field.³⁸

³² Olsen et al., *Transitional justice in balance*, pp.1-2.

³³ Andrieu, K. (2010) Transitional Justice: A New Discipline in Human Rights, *Online Encyclopedia of Mass Violence*, pp.1-37. Available at: <http://www.sciencespo.fr/mass-violence-war-massacre-resistance/en/document/transitional-justice-new-discipline-human-rights> (access date: 21.01.2018).; Bar-Tal, D. (2000) From Intractable Conflict through Conflict Resolution to Reconciliation: Psychological Analysis, *Political Psychology*, Vol.21, No.2, pp.351-365.

³⁴ Elster, J. (2004) *Closing the Books: Transitional Justice in Historical Perspective*, Cambridge: Cambridge University Press, p.3.

³⁵ *Ibid*, p.3.

³⁶ Teitel, *Transitional justice genealogy*, p.70.

³⁷ *Ibid*, p.72.

³⁸ *Ibid*, p.70.

Phase I refers to the period from World War II (1945) until the end of Cold War (1989) and is associated with international trials (and sanctions), particularly the Nuremberg Trials. After World War I, the prosecutions were held at national level, but this did not prevent future wars. Therefore, the response to war crimes was different in the post-World War II period as international prosecutions were employed instead of national ones.³⁹ Phase II refers to the period between 1989-2000, and democratisation and political fragmentation marked the significance of this phase.⁴⁰ Transitions in Eastern Europe, Central America and Africa shaped the form of transitional justice in Phase II. The responses to wrongdoings of predecessor regimes differed from Phase I. There was a shift from retributive justice to restorative justice.⁴¹ While retributive justice focuses on punishing perpetrators, restorative justice aims to repair damages of crimes.⁴² Unlike Phase I, most states did not prefer international trials and they sought alternative justice methods such as truth commissions and amnesties. Transitional states tended to focus more on achieving peace and reconciliation rather than holding accountable old regimes.⁴³ This shift enabled states to put more emphasis on promoting forgiveness, preserving peace and healing affected societies instead of only focusing on justice and establishing rule of law.⁴⁴ Phase III is defined as the steady-state phase of transitional justice which emerged in the beginning of the 21st century in which transitional justice has become a standard rather than an exception.⁴⁵ Compared to Phases I and II, the circumstances have changed in this phase. Whereas there were extraordinary conditions such as post-World War or a wave of democratisation in previous phases, there have been long-lasting conflicts, small wars and political fragmentations in Phase III.⁴⁶ These conditions influenced the normalisation and expansion of transitional justice in the 21st century. Several scholars add a fourth phase/generation to Teitel's genealogy considering the developments in transitional justice. The fourth phase/generation is characterised by the debates on the balance of local and global, and the extension of the field to include socioeconomic issues (such as social justice, economic crimes, ESCR abuses, root causes of violence and structural violence).⁴⁷

³⁹ *Ibid*, pp.72-73.

⁴⁰ *Ibid*, p.71.

⁴¹ *Ibid*, p.77.

⁴² Daly, K., Hayes, H. and Marchetti, E. (2006) 'New Visions of Justice' in Goldsmith, A., Israel, M. and Daly, K. (eds.) *Crime and Justice: A Guide to Criminology* (3rd ed.), Sydney: Lawbook Company, pp.439-464.

⁴³ Teitel, *Transitional Justice Genealogy*, p.77.

⁴⁴ *Ibid*, p.82.

⁴⁵ *Ibid*, p.71.

⁴⁶ *Ibid*, p.90.

⁴⁷ Sharp, D. (2013) Interrogating the Peripheries: The Preoccupations of Fourth Generation Transitional Justice, *Harvard Human Rights Journal*, Vol.26, pp.149-178.; McAuliffe, P. (2017) Reflections of the nexus between justice and peacebuilding, *Journal of Intervention and Statebuilding*, Vol.11, No.2, pp.245-260.;

It should be noted that the history of transitional justice can be described in alternative ways. For instance, McAuliffe remarks that “it is more productive to think of transitional justice not in terms of a simplified evolutionary narrative of long-term improvement and progress but rather in terms of conjunctures, i.e. discrete periods of opportunity or crisis when certain general conditions in different parts of the world coincided to either encourage or check its enlargement.”⁴⁸ He describes four stages of transitional justice advocacy: the first stage is “peace versus justice” which refers to a phase which was dominated by the arguments about whether or not transitional states should face with the past; the second stage is “truth versus justice” in which arguments were concentrated on how to face with the past since it is admitted that facing with the past is necessary; the third stage is “beyond truth versus justice” which suggested that the combination of various transitional justice mechanisms should be adopted in a holistic manner, and finally, the fourth stage is the period of “a post-euphoria era of doubt” in which it is questioned that whether or not the promises of transitional justice are legitimate and achievable.⁴⁹

3. The Conceptualisation of Transitional Justice

3.1. What is transitional justice for?

Even though states decide on whether to remember and face, or to forget the past, there is a growing belief that remembering the past is necessary for societies to move on. Leebaw states that “the idea that a durable peace requires countries to address past violence is now widely held and promoted by influential leaders and institutions under the broad heading of ‘transitional justice.’”⁵⁰ Likewise, Minow points out that “failures of collective memory stoke fires of resentment and revenge.”⁵¹ Hayner has similar views and she writes “quiet the ghosts of the past, and they will haunt you forever.”⁵² Bell describes the relationship between memory and violence in his piece and states that “the past plays an unprecedented role in shaping the present”.⁵³ These statements suggest that if the wrongdoings of the past remain unaddressed,

Nesiah, V. (2016) *Transitional Justice Practice: Looking Back, Moving Forward*, Impunity Watch Research Report, Utrecht: Impunity Watch.

⁴⁸ McAuliffe, P. (2013) From Molehills to Mountains (and Myths?): A Critical History of Transitional Justice Advocacy, *Journal of Corporate Law Studies*, Vol.13, No.2, p.88.

⁴⁹ McAuliffe, *From Molehills to Mountains*, pp.85-166.

⁵⁰ Leebaw, B. A. (2008) The Irreconcilable Goals of Transitional Justice, *Human Rights Quarterly*, Vol.30, No.1, p.96.

⁵¹ Minow, M. (2002) ‘Breaking the cycles of hatred’ in Minow, M. and Rosenblum, N. (ed) *Breaking the cycles of hatred: memory, law, and repair*, Princeton and Oxford: Princeton University Press, p.28.

⁵² Hayner, P. (2011) *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, New York: Routledge, p.23.

⁵³ Bell, D. (2009) Introduction: Violence and Memory, *Millennium: Journal of International Studies*, Vol.38, No.2, p.346.

the resentment and desires for revenge might trigger new conflicts and jeopardise nascent democracies. It is also asserted that truth has a therapeutic effect on individuals and societies. These assertions are debated in the field and they should be analysed in depth in relation to memory, truth and reconciliation. Understanding these concepts is crucial to analyse whether Turkey should face with its past and pursue transitional justice which is argued in the fifth chapter's section 2 in detail. In addition, delving into these concepts will contribute to understanding how memory, truth and reconciliation are conceptualised in the context of the Kurdish Question.

3.1.a. Memory

Until recently, memory had been underestimated in academia. It was not considered as a reliable source for writing history, but this tendency has changed a lot.⁵⁴ The study and literature of memory is getting greater prominence in social sciences in the last decades.⁵⁵ Since transitional justice asserts that we need to face wrongdoings of the past to achieve reconciliation and protect our future from renewed violence, memory becomes prominent in the field. Confronting the past requires revealing the truth about the past after both political violence and armed conflict.

Authoritarian and totalitarian regimes tend to distort narratives of the past and hide the truth through media, judiciary and other public institutions.⁵⁶ States often set one official history which is narrated from their point of view. However, there are various memories and truths regarding past human rights violations in post-conflict and post-authoritarian/totalitarian societies according to perpetrators, victims⁵⁷ and onlookers.⁵⁸ What has happened is often distorted or hidden during these regimes and violent conflicts. Therefore, memories of victims and survivors could be the only source for the truth. It is important to challenge official histories (which often set only one official record) and recover alternative memories (which are often oppressed and silenced).⁵⁹ It is important to reveal the truth because "in certain situations

⁵⁴ Friedländer, S. (1979) *When Memory Comes*, translated by Helen R. Lane, New York: Farrar, Strauss, and Giroux, quoted in Assmann, A. (2006) History, Memory, and the Genre of Testimony, *Poetics Today*, Vol.27, No.2, p.262.

⁵⁵ Bell, *Introduction: Violence and Memory*, p.345.

⁵⁶ Hamber, B. and Wilson, R. A. (2010) Symbolic closure through memory, reparation and revenge in post-conflict societies, *Journal of Human Rights*, Vol.1, No.1, p.36.

⁵⁷ The terminology regarding individuals who were subjected to human rights violations is contentious. Although they are often defined as "victims" in the literature, some of them find this problematic and describe themselves as "survivors". This research will use "victim" for the sake of simplicity.

⁵⁸ Alidu, S., Webb, D. and Fairbairn, G. J. (2009) "Truths" and "Re-Imaging" in the Reconciliation Process, *Peace Review: A Journal of Social Justice*, Vol.21, No.2, p.136.

⁵⁹ Escudero, R. (2014) Road to Impunity: The Absence of Transitional Justice Programs in Spain, *Human Rights Quarterly*, Vol.36, No.1, p.140.

chauvinist, hegemonic nationalist ideologies, which are often based on historical distortions and denials of past crimes, can be used by political entrepreneurs to incite violence.”⁶⁰ To prevent these entrepreneurs from using history to generate violence, true account of history should be set through the memories.

Forgetting the past used to be a common trend in new regimes and post-conflict societies to establish a new future. The painful memories of the past used to be buried by adopting a pragmatic approach.⁶¹ Opponents of facing the past think: digging into the violent past may jeopardise peace and the future of new democratic regimes. They assert that achieving political consolidation and stability requires silencing the past.⁶² Mendeloff also says that forgetting the past might even be contributory for reconciliation and gives the example of Spain.⁶³ He asserts that Spain has been through a successful transition by silencing its past. In Spain, after the Franco regime, the parties decided on forgetting the past and moving forward without facing the past wrongs, and they adopted *a pact of forgetting*.⁶⁴ Likewise, in Lebanon, silencing the past was supported by wide populations. People thought that digging into the past would cause new conflicts.⁶⁵ This view has been effective in many countries until recently. However, this trend tends to change, and recently transitional states do more to face wrongdoings of the past.⁶⁶ For instance, there have been calls in Spanish society to confront and recover the past to redress the past violations.⁶⁷ A movement consisting of NGOs, victim organisations and citizens emerged to raise the demands of uncovering the wrongdoings of the Franco regime.⁶⁸ Therefore, the government responded to these demands by enacting the Historical Memory Act in 2007.⁶⁹ Similar efforts to reveal the truths about past violations can be seen in Lebanon⁷⁰, in Cyprus⁷¹,

⁶⁰ Mendeloff, D. (2004) Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding: Curb the Enthusiasm, *International Studies Review*, Vol.6, No.3, p.369.

⁶¹ Kovras, I. (2013) Explaining Prolonged Silences in Transitional Justice: The Disappeared in Cyprus and Spain, *Comparative Political Studies*, Vol.46, No.6, pp.730-756.; Walzer, M. (1997) Judgment days. (50th anniversary of the Nuremberg war crime trials) (The Hard Questions), *The New Republic*, Vol.217, No.24, pp.13-14.

⁶² Kovras, *Explaining Prolonged Silences*, p.747.

⁶³ Mendeloff, *Truth-Seeking, Truth-Telling*, p.367.

⁶⁴ Davis, M. (2005) Is Spain Recovering its Memory? Breaking the Pacto del Olvido, *Human Rights Quarterly*, Vol.27, No.3, pp.859-864.; Escudero, *Road to Impunity*, p.125.

⁶⁵ Jaquemet, I. (2009) Fighting Amnesia: Ways to Uncover the Truth about Lebanon's Missing, *International Journal of Transitional Justice*, Vol.3, No.1, p.74.

⁶⁶ Goti, J. M. (2010) Editorial Note: A Turbulent Past and the Problem with Memory, *International Journal of Transitional Justice*, Vol.4, No.2, p.153.

⁶⁷ Golob, S. R. (2008) Volver: the Return of/to Transitional Justice Politics in Spain, *Journal of Spanish Cultural Studies*, Vol.9, No.2, pp.133-134.

⁶⁸ Escudero, *Road to Impunity*, p.137.

⁶⁹ *Ibid*, p.126.

⁷⁰ Jaquemet, *Fighting Amnesia*, p.70.

⁷¹ Kovras, *Explaining Prolonged Silences*, p.731.

in Turkey⁷² and in many other countries. It must be noted that each country has its own dynamics, and the same mechanisms might not give the same results in every society when applied. However, transitional justice discourse might be promising in terms of redressing the oppressive regimes' violations.

3.1.b. Truth

Truth has a significant role in transitional justice as facing the past requires revealing truth. Truth-telling may play important roles in transitional societies in various ways including healing victims, promoting reconciliation and deterring future crimes. Perhaps, the most prominent (and most challenged) assumption regarding truth-telling is its therapeutic effects on victims and societies. Proponents assert that truth-telling helps victims' healing in two ways: truth-telling "provides a sense of justice" and "helps to heal psychological trauma".⁷³ Forgetting the past and ignorance towards victims' suffering might make victims feel that they are powerless, they lack dignity and self-confidence.⁷⁴ It is assumed that acknowledging wrongdoings of the past may help relieve victims' suffering by contributing to the restoration of their dignity.⁷⁵ For instance, South Africa adopted "Revealing is healing" as a slogan to promote the Truth and Reconciliation Commission (TRC).⁷⁶ Yet, the assertions about the healing and cathartic effect of revealing the truth are open to discussion and there is little scientific evidence supporting these assertions.⁷⁷ Truth-telling processes of transitional justice such as trials or truth commissions might not give the best results of catharsis or they may even cause re-traumatisation.⁷⁸ Remembering, itself, might not contribute to closure of trauma.⁷⁹ There are several studies which show that a majority of victims, who had been part of truth-telling mechanisms, were not

⁷² Bakiner, *Is Turkey coming to terms*, p.691.

⁷³ Mendeloff, D. (2009) Trauma and Vengeance: Assessing the Psychological and Emotional Effects of Post-Conflict Justice, *Human Rights Quarterly*, Vol.31, No.3, p.599.

⁷⁴ Rauchfuss, K. and Schmolze, B. (2008) Justice heals: The impact of impunity and the fight against it on the recovery of severe human rights violations' survivors, *Torture*, Vol.18, No.1, p.42.; Daly, E. and Sarkin, J. (2007) *Reconciliation in Divided Societies: Finding Common Ground*, Philadelphia: University of Pennsylvania Press, p.142.

⁷⁵ Posel, D. (2002) 'The TRC Report: What Kind of History? What Kind of Truth?' in Posel, D. and Simpson, G. (eds) *Commissioning the Past: Understanding South Africa's Truth and Reconciliation Commission*, Johannesburg: Witwatersrand University Press, pp.150-155.

⁷⁶ Posel, D. and Simpson, G. (2002) 'Introduction - The Power of Truth: South Africa's Truth and Reconciliation Commission' in Context in Posel, D. and Simpson, G. (eds) *Commissioning the Past: Understanding South Africa's Truth and Reconciliation Commission*, Johannesburg: Witwatersrand University Press, p.12.

⁷⁷ Hayner, *Unspeakable Truths: Transitional Justice*, pp.4-5.

⁷⁸ Mendeloff, *Truth-Seeking, Truth-Telling*, pp.364-365.; de Ridder, T. (1997) The Trauma of Testifying: Deponents' Difficult Healing Process, *Track Two*, Vol.6, No.3&4, pp.30-34.; Brouneus, K. (2008) Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan Gacaca Courts, *Security Dialogue*, Vol.39, No.1, p.57.

⁷⁹ Hamber and Wilson, *Symbolic closure through memory*, p.37.

satisfied or were disappointed by the processes.⁸⁰ Yet, Mendeloff notes that these studies have limitations, particularly regarding their scale (except Backer's study).⁸¹ Backer's study depicts interesting results as a majority of victims described their experience in the TRC as upsetting, yet they admitted that "they gained something positive" and "almost 70 percent indicated that if they had known in advance what it would be like to submit a statement, they still would have done it."⁸² Another study, conducted in former Yugoslavia with 1400 victims, depicts that there is no impact, positive or negative, of truth and reconciliation efforts on the psychologies of the victims. The research suggests that "psychological interventions" are required to overcome psychological problems of the victims.⁸³

There are more studies on the subject, and overall, these studies give a complicated idea about the impact of truth-telling on victims.⁸⁴ In fact, the outcomes of these studies require deeper analysis and interpretation before drawing conclusions. Why were the victims unsatisfied with the truth-telling experiences? For instance, in Brouneus's research, the details of the testifying experiences showed that victims were not provided a healthy and safe environment in which to testify⁸⁵ which is critical for healing⁸⁶ and has a potential to produce positive outcomes.⁸⁷ In South Africa, victims were not ready to forgive the perpetrators who walked free after telling the truth (even if their version of truth was not accepted by the victims).⁸⁸ So, it is important what is uncovered, how it is uncovered and in which circumstances it is uncovered. Beyond its

⁸⁰ Hamber, B., Nageng, D. and O'Malley, G. (2000) "Telling It Like It Is . . .": Understanding the Truth and Reconciliation Commission From the Perspective of Survivors, *Psychology in Society*, Vol.26, pp.18-42.; Brouneus, *Truth-Telling as Talking Cure*, pp.55-76.; Byrne, C. (2004) Benefit or Burden: Victims' Reflections on TRC Participation, *Peace and Conflict: Journal of Peace Psychology*, Vol.10, No.3, pp.237-256.; Backer, D., Widner, J. A. and Inglehart, R. F. (2004) *The Human Face of Justice: Victims' Responses to South Africa's Truth and Reconciliation Commission Process*, ProQuest Dissertations and Theses.

⁸¹ Mendeloff, *Trauma and Vengeance*, p.605.

⁸² Backer et al., *The Human Face of Justice*, p.183.

⁸³ Basoglu, M., Livanou, M., Crnobarić, C., Frančišković, T., Suljić, E., Đurić, D., and Vranešić, M. (2005) Psychiatric and Cognitive Effects of War in Former Yugoslavia: Association of Lack of Redress for Trauma and Posttraumatic Stress Reactions, *JAMA*, Vol.294, No.5, pp.588-589.

⁸⁴ Stein, D., Seedat, J., Kaminer, S., Moomal, D., Herman, H., Sonnegga, A., and Williams, J. (2008) The impact of the Truth and Reconciliation Commission on psychological distress and forgiveness in South Africa, *Social Psychiatry and Psychiatric Epidemiology*, Vol.43, No.6, pp.462-468.; King, R. (2011) Healing Psychosocial Trauma in the Midst of Truth Commissions: The Case of Gacaca in Post-Genocide Rwanda, *Genocide Studies and Prevention*, Vol.6, No.2, pp.134-151.; De la Rey, C., Owens, I., and Schwebel, M. (1998) Perceptions of Psychosocial Healing and the Truth and Reconciliation Commission in South Africa, *Peace and Conflict: Journal of Peace Psychology*, Vol.4, No.3, pp.257-270.

⁸⁵ Brouneus, *Truth-Telling as Talking Cure*, pp.61-73.

⁸⁶ de Ridder, *The Trauma of Testifying*, p.32.

⁸⁷ Puvimanasinghe, T. and Price, I. (2016) Healing through giving testimony: An empirical study with Sri Lankan torture survivors, *Transcultural Psychiatry*, Vol.53, No.5, pp.531-550.

⁸⁸ Pigou, P. (2002) 'False Promises and Wasted Opportunities? Inside South Africa's Truth and Reconciliation Commission' in Posel, D. and Simpson, G. (eds) *Commissioning the Past: Understanding South Africa's Truth and Reconciliation Commission*, Johannesburg: Witwatersrand University Press, p.39.

therapeutic impact, uncovering the truth has a significant importance in enforced disappearance cases, as relatives of the disappeared persons experience a constant suffering, and learning the truth about their lost relatives is considered as the only way for them to recover.⁸⁹ Moreover, it is also pointed out that even if truth has no healing effect on individuals or does not contribute to reconciliation in a society, we simply owe the victims to remember and acknowledge their suffering.⁹⁰

Truth also helps in setting an accurate account of the past which is important for deterring future crimes. Bhargava wrote: “Without a proper engagement with the past and the institutionalization of remembrance, societies are condemned to repeat, re-enact, and relive the horror.”⁹¹ As mentioned in the previous section 3.1.a, states tend to establish an official version of history (and truth) from their perspective. However, there are often multiple narratives and they should be embraced through a holistic approach. It is asserted that different narratives can strengthen each other, and a shared history can be formed.⁹² A fair record of the violent past may have a deterrence impact in transitional societies. However, the deterrence impact is debated as there is no easy way to prove this assertion, and there is no way to assure the prevention of future violence.⁹³ In addition, it is discussed in the literature that it might not be possible or necessary to forge a historical account on which everybody is agreed. Critics of setting a true account of history argue that there might be different opinions about what had happened in the past, and setting only one official account of history can be problematic in a democratic society.⁹⁴ It is noted that “‘truth’ on most important issues is not objective and not nearly as neutral as we would like it to be.”⁹⁵ In addition, it is claimed that truth-telling mechanisms of transitional justice may not produce a true and complete account of history since they are selective on past violations (they tend to exclude sexual violence and socioeconomic issues).⁹⁶ In fact, analysing the root causes of the violence is important and can be done through

⁸⁹ Rauchfuss and Schmolze, *Justice heals: The impact of impunity*, p.42.; Hayner, *Unspeakable Truths: Transitional Justice*, p.2.

⁹⁰ Andrieu, *Transitional Justice: A New Discipline*, p.21.

⁹¹ Bhargava, R. (2000) ‘Restoring Decency to Barbaric Societies’ in Rotberg, R. and Thompson, D. (eds) *Truth v. justice: The morality of truth commissions (University Center for Human Values series)*, Princeton, N.J.: Princeton University Press, p.54.

⁹² Daly and Sarkin, *Reconciliation in Divided Societies*, pp.142-146.

⁹³ Minow, M. (1998) *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*, Boston: Beacon Press, pp.145-146.; Daly and Sarkin, *Reconciliation in Divided Societies*, p.144.

⁹⁴ Andrieu, *Transitional Justice: A New Discipline*, pp.11-12.

⁹⁵ Daly and Sarkin, *Reconciliation in Divided Societies*, p.146.

⁹⁶ Mendeloff, *Truth-Seeking, Truth-Telling*, p.374.

truth-telling mechanisms. Although they are often excluded, addressing and tackling root causes can contribute to reconciliation and prevention of the future violence.⁹⁷

3.1.c. Reconciliation

Transitional justice literature often assumes that truth-telling promotes individual healing, and this will lead to societal (and national) healing and reconciliation. There are various (sometimes conflicting) definitions and perceptions⁹⁸ in the literature but reconciliation is “coming together” in its simplest definition.⁹⁹ Hamber and Kelly’s definition is quite comprehensive: reconciliation is “[a] process that establishes peace and prevents violence from continuing or re-merging by addressing the root causes and the consequences of conflict.”¹⁰⁰ However, it must be borne in mind that its meaning differs in different societies. Likewise, its application takes different forms according to the context.¹⁰¹ It is noted that “trauma is not only an individual process but a social and political phenomenon that affects society as a whole.”¹⁰² It is argued that silence about the violent past causes trauma to pass on to next generations and this may pose a threat in the future.¹⁰³ So, trauma is related to individuals, societies and even future generations. It is asserted that acknowledging sufferings of people and restoring their dignity helps societies achieve reconciliation and ensure that wrongdoings of the past will not take place in the future.¹⁰⁴

The relationship between reconciliation and truth is complex and different interpretations of truth and reconciliation lead to different conclusions.¹⁰⁵ As argued in the previous sections 3.1.a-b some argue that truth is necessary for healing and reconciliation, while others oppose the idea. For instance, Mendeloff is critical of the whole idea of achieving reconciliation through facing the past. He writes that there is no empirical data on the assumption that “reconciliation requires truth-telling”. There are many states in which divided parties coexist without a truth-

⁹⁷ Laplante, *Transitional Justice and Peace Building*, pp.331-355.

⁹⁸ Bar-Tal, *From Intractable Conflict*, p.355.; Hayner, P. (2001) *Unspeakable Truths: Confronting State Terror and Atrocity*, New York and London: Routledge, p.161.; Andrieu, *Transitional Justice: A New Discipline*, pp.22-23.; Evans, M. (2018) A future without forgiveness: beyond reconciliation in transitional justice, *International Politics*, Vol.55, No.5, pp.678-692.; Van Zyl, P. (1999) Dilemmas of Transitional Justice: The Case of South Africa's Truth and Reconciliation Commission, *Journal of International Affairs*, Vol.52, No.2, pp.662-663.

⁹⁹ Daly and Sarkin, *Reconciliation in Divided Societies*, p.5.

¹⁰⁰ Hamber, B. and Kelly, G. (2004) *Reconciliation: A working definition*, Democratic Dialogue. Available at: <http://cain.ulst.ac.uk/dd/papers/dd04recondef.pdf> (access date: 16.07.2018).

¹⁰¹ Daly and Sarkin, *Reconciliation in Divided Societies*, p.42.

¹⁰² Rauchfuss and Schmolze, *Justice heals: The impact of impunity*, p.40.

¹⁰³ Danieli, Y. (2009) Massive Trauma and the Healing Role of Reparative Justice, *Journal of Traumatic Stress*, Vol.22, No.5, p.352.; Minow, *Breaking the cycles of hatred*, p.16.; Andrieu, *Transitional Justice: A New Discipline*, p.21.

¹⁰⁴ Escudero, *Road to Impunity*, p.140.

¹⁰⁵ Daly and Sarkin, *Reconciliation in Divided Societies*, pp.5-6.

telling process, and in some examples, such as South Africa and Central America, truth-telling processes did not end up achieving reconciliation.¹⁰⁶ Moreover, some argued that truth may threaten reconciliation. In post-Soviet countries, the truth was not revealed as publishing the personal files of people could be dangerous for the society.¹⁰⁷ Likewise, truth may trigger the demands for justice and if these demands are not responded to, reconciliation may be impeded.¹⁰⁸ In addition, the public and elites do not often easily admit the truth.¹⁰⁹ If truth challenges the existing political and economic powers of the elites, they may not acknowledge the truth.

Moreover, how societies and individuals consider reconciliation is also critical in transitional states. For instance, people may prefer to forget the past for reconciliation and societal healing as happened in Lebanon, Sierra Leone and Mozambique.¹¹⁰ In some contexts, even victims may want to forgive and forget rather than remembering the past as it can be more successful than “court or commission-sponsored remembering.”¹¹¹ Samii’s research shows that a majority of people in Burundi were reluctant to pursue transitional justice due to several reasons such as the fear of renewed conflict and political power struggles.¹¹² What is important here is the demand of victims and societies. In Sierra Leone, individuals and some communities decided to pursue their own reconciliation path through forgiving, forgetting and resistance to the official reconciliation process which was implemented by external actors without consulting affected populations.¹¹³ Renner noted: “the hegemonic understanding of reconciliation as healing through public truth-telling tends to privilege symbolic restitution practices over other kinds of restitution, in particular financial help for post-conflict societies.”¹¹⁴ Therefore, governments

¹⁰⁶ Mendeloff, *Truth-Seeking, Truth-Telling*, p.366.

¹⁰⁷ Daly and Sarkin, *Reconciliation in Divided Societies*, p.150.

¹⁰⁸ Daly and Sarkin, *Reconciliation in Divided Societies*, p.140.; Davis, *Is Spain Recovering its Memory*, p.879.

¹⁰⁹ Daly and Sarkin, *Reconciliation in Divided Societies*, p.147.

¹¹⁰ Rotondi, J. V. and Eisikovits, N. (2016) ‘Forgetting after War: A Qualified Defense’ in Corradetti, C., Eisikovits, N. and Rotondi, J. (eds) *Theorizing transitional justice*, London: Routledge, pp.17-23.; Hayner, *Unspeakable Truths: Transitional Justice*, pp.195-209.; Shaw, R. (2007) Memory Frictions: Localizing the Truth and Reconciliation Commission in Sierra Leone, *International Journal of Transitional Justice*, Vol.1, No.2, pp.183-207.; Jaquemet, *Fighting Amnesia*, p.74.

¹¹¹ Rotondi and Eisikovits, *Forgetting after War*, p.23.

¹¹² Samii, C. (2013) Who wants to forgive and forget? Transitional justice preferences in postwar Burundi, *Journal of Peace Research*, Vol.50, No.2, pp.219-233.

¹¹³ Shaw, R. (2005) *Rethinking Truth and Reconciliation Commissions: Lessons from Sierra Leone*, United States Institute of Peace Special Report, Washington, DC: United States Institute of Peace, p.1.; Lambourne, W. (2009) Transitional Justice and Peacebuilding After Mass Violence, *International Journal of Transitional Justice*, Vol.3, No.1, pp.28-29.

¹¹⁴ Renner, J. (2013) The Local Roots of the Global Politics of Reconciliation: The Articulation of “Reconciliation” as an Empty Universal in the South African Transition to Democracy, *Millennium: Journal of International Studies*, Vol.42, No.2, p.284.

and external actors must avoid imposing a reconciliation process on transitional societies which is exclusively defined from their perspective.¹¹⁵ The perceptions and demands of people should be the determining factor for designing reconciliation measures. Though, it must be kept in mind that the decision of people may change in time as some countries, such as Cyprus, Lebanon and Spain, witnessed growing demands of facing with the past after choosing to forget.¹¹⁶

To conclude, the relationship between truth and reconciliation continues to be debated and there is no satisfying empirical evidence for either side. In fact, Brouneus says that there is no empirical evidence on the relationship between truth and reconciliation.¹¹⁷ Perhaps, the difficulty lies in proving such intangible claims. Is it even possible to measure the effects of truth-telling on reconciliation? The same difficulty can be observed at the individual level as human beings respond to violence in different ways. Perhaps it will take years to see the impacts both on individuals and societies. As stated earlier, even though truth-telling has no contribution to individual healing or national reconciliation, we have a duty to remember. Therefore, instead of opposing the whole idea of truth and reconciliation, ways must be sought to enhance them. In addition, the understandings of these concepts (memory, truth and reconciliation) vary in different contexts, and each context should be understood well to design transitional processes.

3.2. The criticisms of transitional justice

The criticisms surrounding transitional justice are vast in literature and practice. Analysing all the criticisms regarding the theory and implementation of transitional justice is beyond the scope of this research. The wide array of the critiques of transitional justice include the promotion of Western-style liberal democracy and economy, the problem of neutrality and selectivity, the argument about distanced justice (dominance of legalism and local ownership), the failure of addressing socioeconomic wrongs (and root causes) and the exclusion of gender aspects.¹¹⁸ Distanced justice and failure of addressing socioeconomic wrongs will be focused

¹¹⁵ Evans, *A future without forgiveness*, pp.678-692.; Renner, *The Local Roots of the Global Politics of Reconciliation*, pp.263-285.; Bloomfield, D. (2003) 'Reconciliation: an Introduction' in Bloomfield, D., Barnes, T. and Huyse, L. (eds) *Reconciliation After Violent Conflict: A Handbook*, Stockholm: International Institute for Democracy and Electoral Assistance (IDEA), pp.10-18.

¹¹⁶ Escudero, *Road to Impunity*, p.137.; Jaquemet, *Fighting Amnesia*, p.70.; Kovras, *Explaining Prolonged Silences*, p.731.

¹¹⁷ Brouneus, *Truth-Telling as Talking Cure*, pp.55-76.

¹¹⁸ Sharp, D. (2013) Beyond the Post-Conflict Checklist: Linking Peacebuilding and Transitional Justice through the Lens of Critique, *Chicago Journal of International Law*, Vol.14, No.1, p.178.; Nagy, R. (2008) Transitional Justice as Global Project: critical reflections, *Third World Quarterly*, Vol.29, No.2, pp.275-276.; Bell, C. and O'Rourke, C. (2007) Does Feminism Need a Theory of Transitional Justice? An Introductory Essay, *International Journal of Transitional Justice*, Vol.1, No.1, pp.23-44.; Rubio-Marin, R. (2006) *What happened to the women? Gender and reparations for human rights violations*, New York: Social Science Research Council.

upon in this section as they are significantly linked to the main argument of the thesis, particularly to the significance of addressing socioeconomic rights and the importance of adopting a grassroots approach in transitional contexts.

3.2.a. Distanced justice (lack of local participation)

Transitional justice is critiqued for being distanced from affected people and communities, and this critique is linked to the domination of legalism and adoption of top-down practices which will be analysed in this section. Gready, McEvoy and McCargo criticise transitional justice for being dominated by legalism.¹¹⁹ Legalism was defined as an “ethical attitude that holds moral conduct to be a matter of rule following, and moral relationships to consist of duties and rights determined by rules” by Shklar.¹²⁰ Legal rights and following the rules are considered to be more important than “expediency or the public interest or the social good” in legalism.¹²¹ In their critiques, McEvoy and McCargo refer to Shklar’s work which challenges the putative superiority of law. Shklar opposes the assertions that law is “neutral and objective”, completely divorced from politics and social contexts, and has a higher status than politics and other disciplines.¹²² McCargo remarks: “Solutions to complex political problems need to be more creative, sometimes deploying legal mechanisms, but never in purely legalistic ways.”¹²³ Yet, in transitional justice processes, “lawyers, policy makers, and state officials” have become the main actors. What is considered as transitional justice is often distant from affected people and communities, and it is far from meeting the needs of victims and societies.¹²⁴ The argument goes beyond the dominance of legalism. It has been argued that the more transitional justice is applied around the world, the more it becomes professionalised. Transitional justice has become an industry with experts, academic centres, conferences and standardised programs. Through embracing a one-size-fits-all approach, local contexts are often side-lined.¹²⁵

¹¹⁹ McEvoy, *Beyond Legalism*, pp.411-440.; McCargo, *Transitional Justice and Its Discontents*, pp.5-20.; Gready, *Analysis: Reconceptualising transitional justice*, pp.3-21.; Vinjamuri and Snyder, *Advocacy and Scholarship*, pp.345-362.

¹²⁰ Shklar, J. N. (1964) *Legalism: an essay on law, morals and politics*, Cambridge: Harvard University Press, p.1.

¹²¹ *Ibid*, p.9.

¹²² *Ibid*, p.111.

¹²³ McCargo, *Transitional Justice and Its Discontents*, p.18.

¹²⁴ McEvoy, *Beyond Legalism*, pp.412-414.

¹²⁵ Theidon, *Editorial Note*, p.296.; Arenhövel, *Democratization and Transitional Justice*, p.578.; Madlingozi, *On Transitional Justice Entrepreneurs*, p.225.; Nagy, *Transitional Justice as Global Project*, p.275.

The UN and other main actors which designate transitional justice processes mostly focus on accountability, democracy and “rule of law” in transitional states.¹²⁶ They are important, but they need to be complemented with other disciplines and perspectives to achieve the goals of transitional justice.¹²⁷ Nagy writes: “A technocratic focus on ‘the law’ abstracts from lived realities.”¹²⁸ McEvoy argues that transitional justice tends to be seen as state-centric and top-down; there is a growing trust in the state, its institutions and state-like institutions in transitional justice praxis, and the investments often go to these institutions. However, strengthening state institutions to achieve transitional justice’s goals must be challenged. States and state-like institutions often fail to address the problems of affected societies as they fail to engage in civil society and people to properly identify their needs.¹²⁹

Elites of transitional states and donors play an important role in transitional processes. Many of the post-conflict and post-authoritarian states are weak in the context of economy, institutions and human capital, and they need external support for the transitional mechanisms.¹³⁰ Limited resources of transitional states make them vulnerable to donors. Muck and Wiebelhaus-Brahm’s study depicts that transitional processes are often funded by donors as most transitional societies are not able to finance these processes.¹³¹ This is related to a wider argument about the motivations of donors. In general, local practitioners of human rights and development criticise donors for not letting them have ownership of the processes.¹³² Various scholars claimed that foreign aid and investment is motivated by political and other interests of the donors, while others asserted donors are motivated by altruism and humanitarian concerns.¹³³ Moreover, external actors still need the involvement of recipient states, and it is noted that

¹²⁶ Muvingi, I. (2016) Donor-Driven Transitional Justice and Peacebuilding, *Journal of Peacebuilding & Development*, Vol.11, No.1, pp.11-14.

¹²⁷ McEvoy, *Beyond legalism*, pp.416-417.

¹²⁸ Nagy, *Transitional Justice as Global Project*, p.279.

¹²⁹ McEvoy, *Beyond legalism*, pp.421-424.

¹³⁰ Mokhiber, C. (2000) *Local perspectives: foreign aid to the justice sector*, Main Report of International Council on Human Rights Policy.; Lundy, P. and McGovern, M. (2008) ‘The Role of Community in Participatory Transitional Justice’ in McEvoy, K. and McGregor, L. (eds) *Transitional Justice from Below: Grassroots Activism and the Struggle for Change*, Oxford and Portland: Hart Publishing, p.104.

¹³¹ Muck, W. and Wiebelhaus-Brahm, E. (2016) External Transitional Justice Funding: Introducing a New Dataset, *Journal of Peacebuilding & Development*, Vol.11, No.2, pp.66-71.

¹³² Mokhiber, *Local perspectives*, pp.74-75.

¹³³ Alesina, A. and Dollar, D. (2000) Who Gives Foreign Aid to Whom and Why, *Journal of Economic Growth*, Vol.5, No.1, pp.33-63.; Lumsdaine, D. (1993) *Moral Vision in International Politics: The Foreign Aid Regime 1949– 1989*, Princeton: Princeton University Press.; Schraeder, P., Hook, S. and Taylor, B. (1998) Clarifying the Foreign Aid Puzzle: A Comparison of American, Japanese, French and Swedish Aid Flows, *World Politics*, Vol.50, No.2, pp.294-323.; Lancaster, C. (2007) *Foreign Aid: Diplomacy, Development and Domestic Politics*, Chicago: University of Chicago Press.; Roper, S. D. and Barria, L. A. (2007) Gatekeeping versus Allocating in Foreign Assistance: Donor Motivations and Contributions to War Crimes Tribunals, *The Journal of Conflict Resolution*, Vol.51, No.2, pp.285-304.

international actors tend to convince only elites who are going to implement these measures to their societies. The interests of both sides are closely linked, and these interests do not often correspond to the needs of the affected people and communities.¹³⁴ For instance, international criminal justice mechanisms are often considered as distant, inaccessible and unfamiliar by local people.¹³⁵ Yet, there has been a growing tendency among donors to support “human rights” and “legal and judicial development” in transitional states.¹³⁶ The Democratic Republic of Congo, Sierra Leone and Rwanda can be examples of these arguments. Even though a huge amount of money has been invested in their transitions, these efforts failed to make considerable contributions to the lives of people.¹³⁷ International tribunals were often criticised for serving the interests of the international community more than victims’ and survivors’ interests.¹³⁸ Although international tribunals often fail to make meaningful contributions to transitional societies, donors prefer to support these retributive methods rather than restorative local and community-based programs.¹³⁹ This does not mean that the involvement of international actors and donors cannot make any meaningful contribution to transitional processes. External actors have a capacity to contribute to the processes by providing resources, know-how, and a fair, objective and balanced realm in which understandings of conflict can be explored without being instigated by conflict parties.¹⁴⁰ However, this must not prevent people participating in the

¹³⁴ Fletcher, L. E. , Weinstein, H. M. and Rowen, J. (2009) Context, Timing and the Dynamics of Transitional Justice: A Historical Perspective, *Human Rights Quarterly*, Vol.31, No.1, p.214.; Hellsten, S. K. (2012) *Transitional Justice and Aid*, Helsinki: World Institute for Development Economics, Research Working Paper No.06, pp.7-10.; Muvungi, *Donor-Driven Transitional Justice*, p.15.

¹³⁵ McGregor, L. (2008) ‘International Law as a ‘Tiered Process’: Transitional Justice at the Local, National and International Level’ in McEvoy, K. and McGregor, L. (eds) *Transitional Justice from Below: Grassroots Activism and the Struggle for Change*, Oxford and Portland: Hart Publishing, p.51.; Muvungi, *Donor-Driven Transitional Justice*, p.13.; Kendall, S. (2011) Donors' Justice: Recasting International Criminal Accountability, *Leiden Journal of International Law*, Vol.24, No.3, p.588.

¹³⁶ Oomen, B. (2005) Donor-Driven Justice and its Discontents: The Case of Rwanda, *Development and Change*, Vol.36, No.5, pp.890-891.; Lundy and McGovern, *The Role of Community*, p.99.; Mokhiber, *Local perspectives*, p.1.

¹³⁷ Lundy and McGovern, *The Role of Community*, p.104.; Gouby, M. (2012) On Home Ground, Lubanga Verdict Falls Flat, *Institute for War and Peace Reporting: Global Voices Africa*. Available at: <https://iwpr.net/global-voices/home-ground-lubanga-verdict-falls-flat> (access date: 09.08.2018.); Oomen, *Donor-Driven Justice and its Discontents*, p.891.

¹³⁸ Gready, *Analysis: Reconceptualising transitional justice*, pp.9-11.; Kendall, *Donors' Justice*, pp.587-588.; Mertus, J. (2000) ‘Truth in a Box: The Limits of Justice Through Judicial Mechanisms’ in Amadiume, I. and An-Na’im, A. (eds) *The Politics of Memory: Truth, Healing and Social Justice*, London: Zed Books, pp.142-161.

¹³⁹ Muck, W. and Wiebelhaus-Brahm, E. (2011) *Patterns of Transitional Justice Assistance Among the International Community*, Paper prepared for presentation at the Sixth European Consortium for Political Research General Conference, Reykjavik, Iceland, August 25-27, 2011, p.30.

¹⁴⁰ Arenhövel, *Democratization and Transitional Justice*, p.584.; Andrieu, *Transitional Justice: A New Discipline*, p.22.

decision-making or implementing processes since they will be the ones who will be most affected by these mechanisms.

As transitional justice has been dominated by a legalist approach, international law had an important impact on it. International law has been criticised for being Euro-centric by several academics.¹⁴¹ Since transitional justice mechanisms are being applied to mostly non-European societies, the Eurocentric nature of these mechanisms decreases the possibility of them to be adopted and embraced by the locals. If these mechanisms fail to include local actors into both decision-making and implementation processes, they are likely to face resistance from these societies.¹⁴² For instance, in Sierra Leone, people resisted to the truth-telling process as they believed that the forgive and forget approach would be more beneficial for reconciliation. Therefore, some communities made a collective decision not to participate in truth-telling processes.¹⁴³

Transitional processes are often shaped and conducted by non-local actors who tend to ignore local contexts and local people who are affected most but who do not often have authority in designation and implementation of transitional justice mechanisms.¹⁴⁴ It is stated that “[a]ctions that are complex, and in part communal, require responses that are equally complex, and in part communal.”¹⁴⁵ To achieve success in transitional justice processes, local context and realities need to be analysed and comprehended thoroughly.¹⁴⁶ Therefore, a one-size-fits-all approach in transitional justice is being challenged and local participation is being promoted in transitional societies.¹⁴⁷ In fact, the UN Secretary General published a guidance note on transitional justice which repudiates one-size-fits-all approaches and promotes “analysis of national needs and

¹⁴¹ For the debates, see: Sharma, A. (2006) *Are human rights Western?: A contribution to the dialogue of civilizations*, New Delhi: Oxford University Press.; Baxi, U. (2012) *The future of human rights (Third edition.. ed., Oxford India perennials)*, New Delhi: Oxford University Press.; Gathii, J. T. (1998) International Law and Eurocentricity, *European Journal of International Law*, Vol.9, No.1, pp.184-211. ; Koskeniemi, M. (2011) Histories of International law: Dealing with Eurocentrism, *Rechtsgeschichte - Legal History*, Vol.19, pp.152-176.

¹⁴² McGregor, *International Law as a 'Tiered Process'*, p.50.; Muvingi, *Donor-Driven Transitional Justice*, pp.17-19.

¹⁴³ Shaw, *Rethinking Truth and Reconciliation Commissions*, p.2.

¹⁴⁴ Muvingi, *Donor-Driven Transitional Justice*, p.17.; Madlingozi, *On Transitional Justice Entrepreneurs*, pp.210-213.; Balasco, L. M. (2013) The Transitions of Transitional Justice: Mapping the Waves from Promise to Practice, *Journal of Human Rights*, Vol.12, No.2, p.206.; Lundy and McGovern, *The Role of Community*, p.100.

¹⁴⁵ Gready, *Analysis: Reconceptualising transitional justice*, p.7.

¹⁴⁶ Fletcher et al., *Context, Timing and the Dynamics of Transitional Justice*, pp.170-209.; Daly and Sarkin, *Reconciliation in Divided Societies*, p.36.; Balasco, *The Transitions of Transitional Justice*, p.206.; Lundy and McGovern, *The Role of Community*, p.102.

¹⁴⁷ The UN Secretary-General report, *The rule of law and transitional justice*, p.1.; Muvingi, *Donor-Driven Transitional Justice*, p.20.; Lundy and McGovern, *The Role of Community*, p.106.

capacities, drawing upon national expertise to the greatest extent possible.”¹⁴⁸ However, although the significance of the local contexts and their participation is recognised, international norms and actors still subordinate local realities. Transitional justice mechanisms which were shaped by international norms and practices are often imposed on transitional societies which are, in a way, obliged to accept them to receive financial support.¹⁴⁹

International actors need to be more conscious about the way they support transitional societies; local people and their needs should be determinant factors in these processes. Theidon emphasises that “the local is the realm of solution, the global the realm of imposition and domination.”¹⁵⁰ Bottom-up and participatory approaches need to be adopted to eliminate criticisms about “distanced justice”. These approaches will enable practitioners to understand the local contexts and help them to find the best measures for that society.¹⁵¹ Moreover, examining and engaging in different local contexts may allow new forms of justice to emerge. Even though they may challenge the standard forms of justice, they should be considered in the context of transitional justice.¹⁵²

Participation merits a further discussion in transitional justice. Lundy and McGovern write: “Participatory action can be summed up as a process that facilitates the permanent ability to identify and analyse problems, formulate and plan solutions, mobilise resources and implement them, to gain control over the processes that affect peoples’ lives.”¹⁵³ Participation empowers local actors to achieve their own development by defining their problems and finding their own solutions.¹⁵⁴ McEvoy and McGregor remark that democratic participation should be promoted at all levels of the transitional justice which tend to be elite-driven.¹⁵⁵ It is argued that letting local actors participate only in implementation processes is insufficient. “For a fully participatory process (we will argue) they should also take part at every stage in the process, including conception, design, decision-making and management.”¹⁵⁶ The UN also acknowledged the need for participation of local actors and began to promote it in transitional justice processes to

¹⁴⁸ The United Nations Secretary General (2010) *Guidance Note of the Secretary-General on the United Nations Approach to Transitional Justice*, The United Nations, p.5.

¹⁴⁹ Muvingi, *Donor-Driven Transitional Justice*, pp.10-11.; Lundy and McGovern, *The Role of Community*, pp.104-107.

¹⁵⁰ Theidon, *Editorial Note*, p.296.

¹⁵¹ Laplante, *Transitional Justice and Peace Building*, p.342.; Mokhiber, *Local perspectives*, pp.88-93.

¹⁵² Gready, *Analysis: Reconceptualising transitional justice*, p.10.

¹⁵³ Lundy and McGovern, *The Role of Community*, p.109.

¹⁵⁴ *Ibid*, p.109.

¹⁵⁵ McEvoy, K. and McGregor, L. (2008) ‘Transitional Justice from Below: An Agenda for Research, Policy and Praxis’ in McEvoy, K. and McGregor, L. (eds) *Transitional Justice from Below: Grassroots Activism and the Struggle for Change*, Oxford and Portland: Hart Publishing, p.6.

¹⁵⁶ Lundy and McGovern, *The Role of Community*, p.100.

understand the local realities better.¹⁵⁷ This is not to say that international actors must be excluded from these processes. As mentioned above, they should also participate in these processes by assisting local actors.

It must be noted that bottom-up approaches should not be adopted unquestioningly because they may also entail risks to transitional processes. These risks might be the lack of capacity and expertise to deliver justice or reproducing societal injustices which existed before the transition.¹⁵⁸ It must be remembered that societies may have unjust hierarchies or social inequalities in terms of race, religion and gender. “While participation has the potential to challenge patterns of dominance, it may also be the means through which existing power relations are entrenched and reproduced.”¹⁵⁹ These potential risks, however, should not trivialise the importance of these approaches. Grassroots approaches to transitional justice need to be supervised and regulated to eliminate potential risks of them. “Distanced justice” criticism is important for Turkey as well to avoid pursuing transitional justice in a manner which is distant from people. The fifth chapter’s sections 4 and 5 emphasise the importance of locality and adopting a participatory and grassroots approach to ensure that Turkey’s future transitional justice process will not be distant from people and communities.

3.2.b. Failure of addressing socioeconomic wrongs and root causes

The second main criticism of transitional justice is about its failure in addressing violations of ESCR. As noted earlier, transitional justice has concentrated on redressing CPR abuses and promoting accountability. Therefore, ESCR abuses and root causes of conflicts and political repression have often been overlooked in transitional processes.¹⁶⁰ Accordingly, the criticisms about this failure are being raised by both scholars and practitioners recently. There has been a growing demand for transitional justice to address socioeconomic issues.¹⁶¹ The reasons for the neglect of ESCR in transitional justice is linked to a wider phenomenon in international law. Woefully, ESCR have been neglected and given a secondary status vis-a-vis CPR in international

¹⁵⁷ McGregor, *International Law as a ‘Tiered Process’*, p.69.

¹⁵⁸ McEvoy and McGregor, *Transitional Justice From Below*, pp.9-10.; Gready, *Analysis: Reconceptualising transitional justice*, pp.13-14.

¹⁵⁹ Lundy and McGovern, *The Role of Community*, p.112.

¹⁶⁰ Arbour, *Economic and Social Justice*, p.5.; Laplante, *Transitional Justice and Peace Building*, p.333.; Roht-Arriaza, N. (2006) ‘The new landscape of transitional justice’ in Roht-Arriaza, N. and Mariezcurrena, J. (eds) *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice*, New York: Cambridge University Press, p.2.; Alexander, J. (2003) *A Scoping Study of Transitional Justice and Poverty Reduction*, Final report for The Department for International Development (DFID), pp.6-8.

¹⁶¹ Schmid and Nolan, *Do No Harm*, p.363.; Arbour, *Economic and Social Justice*, pp.1-27.; Laplante, *Transitional Justice and Peace Building*, pp.331–355.; Waldorf, *Anticipating the Past*, pp.171-186.; Miller, *Effects of Invisibility*, pp.266-291.

law. The second chapter is going to make an in-depth analysis of the issue, but a brief analysis of the problem will be provided in this section.

The Universal Declaration of Human Rights (UDHR) does not differentiate human rights and makes no hierarchy among them¹⁶² but ESCR have been considered as less important rights compared to CPR, and ESCR abuses have been seen as “less serious” in comparison to CPR abuses.¹⁶³ Arbour writes: “contrary to common perceptions, there is no legal, judicial, or empirical basis for the comparative neglect of economic, social, and cultural rights in mainstream justice, including transitional justice.”¹⁶⁴ Likewise, the Guidance Note of the Secretary-General, which depicts the UN’s approach to transitional justice, emphasises the importance of addressing “the root causes of conflict or repressive rule” and “violations of all rights, including economic, social, and cultural rights.”¹⁶⁵ So, the significance of addressing ESCR violations and root causes in transitional contexts needs to be analysed to understand the issue better.

Firstly, “root causes” must be described. According to the UN, root causes of the conflict can be “socio-economic inequities and inequalities, systematic ethnic discrimination, denial of human rights, disputes over political participation or long-standing grievances over land and other resource allocation.”¹⁶⁶ There might be other root causes in different contexts. These examples can also be root causes of violence under repressive regimes. Transitional justice has been criticised for focusing exclusively on consequences of conflicts and political repression rather than looking at the root causes. The critiques propose that the field must include not only the results but also the causes of the conflicts and political repression.¹⁶⁷ Likewise, Laplante suggests that truth commissions should not only look at the past abuses, but also scrutinise why these abuses took place in the first place. She notes that socioeconomic issues might be the root

¹⁶² The Universal Declaration of Human Rights (n.d.). Available at: <http://www.un.org/en/documents/udhr/index.shtml> (access date: 17.07.2018).

¹⁶³ Kirschweg, S. and Hamacher, J. (2015) *Integrating Economic, Social, and Cultural Rights in Transitional Justice Processes: A Vehicle for Reform in the Middle East and North Africa*, Berlin: Zentrum für Internationale Friedenseinsätze (ZIF) Conference Report, p.3. Available at: http://www.zif-berlin.org/fileadmin/uploads/analyse/dokumente/veroeffentlichungen/ZIF_ConferenceReport_TransitionalJustice_MENA_Tunis_2014.pdf (access date: 18.07.2018).

¹⁶⁴ Arbour, *Economic and Social Justice*, p.14.

¹⁶⁵ The UN Secretary General, *Guidance Note of the Secretary-General*, p.7.

¹⁶⁶ The United Nations General Assembly Security Council (2001) *Prevention of armed conflict*, Report of the Secretary-General, para.7.

¹⁶⁷ Balasco, *The Transitions of Transitional Justice*, p.203.; Mani, R. (2005) Balancing Peace with Justice in the Aftermath of Violent Conflict, *Development*, Vol.48, No.3, p.27.; Crenzel, E. (2008) Argentina’s National Commission on the Disappearance of Persons: Contributions to Transitional Justice, *International Journal of Transitional Justice*, Vol.2, No.2, p.190.; Lambourne, *Transitional Justice and Peacebuilding*, p.30.

causes of the conflicts in the broad sense.¹⁶⁸ Moreover, failure in addressing root causes may jeopardise the future as well. Andrieu wrote: “Not taking into account the socio-economic roots of conflict means supporting structural violence, and planting the seeds of future conflicts.”¹⁶⁹ In that vein, truth commissions of Guatemala and Peru asserted that poverty and exclusion might generate violence and conflicts.¹⁷⁰ These claims suggest that if structural violence¹⁷¹ and socioeconomic injustices are not addressed and no improvement is achieved in people’s everyday lives, redressing the past is incomplete and sustainable peace is in jeopardy. Differentiating structural violence from economic violence is worth a more extended discussion than can be had here. Yet, it should be noted that economic violence “refers to violations of economic and social rights, corruption, and plunder of natural resources.”¹⁷² So, although structural violence and economic violence may overlap in some cases (such as violating ESCR of an ethnic group discriminately), they are different concepts.

Root causes of conflicts also linked to violations of ESCR. ESCR abuses, such as forced displacements, destroying homes and villages, and demolition of food resources, have been used as tools of war by repressive regimes in many countries.¹⁷³ These are also wrongdoings of predecessor regimes in the same way as CPR violations and they need to be redressed. In fact, transitional justice has been criticised for being selective even on violations of CPR. Let alone addressing violations of ESCR, transitional justice mechanisms often discriminate some violations of CPR. For instance, torture or sexual violence cases have often been ignored by these mechanisms as the main focus is on more “serious crimes” like killings and disappearances.¹⁷⁴ Galanter points out that impacts of conflicts should not be limited to only immediate damages.¹⁷⁵ Most of the time immediate injuries such as mass killings or enforced disappearance

¹⁶⁸ Laplante, *Transitional Justice and Peace Building*, p.335.

¹⁶⁹ Andrieu, *Transitional Justice: A New Discipline*, p.19.

¹⁷⁰ Laplante, *Transitional Justice and Peace Building*, p.336.

¹⁷¹ Structural violence is defined as “a condition in which violence occurs without being precipitated by the direct actions of specific individuals against other specific individuals.” by Evans (Evans, M. (2016) Structural Violence, Socioeconomic Rights, and Transformative Justice, *Journal of Human Rights*, Vol.15, No.1, p.2.) see also: Farmer, P. (2004) An Anthropology of Structural Violence, *Current Anthropology*, Vol.45, No.3, pp.305-325.; Galtung, J. (1969) Violence, Peace, and Peace Research, *Journal of Peace Research*, Vol.6, No.3, pp.167-191.

¹⁷² Sharp, D. (2012) Addressing Economic Violence in Times of Transition: Toward a Positive-Peace Paradigm for Transitional Justice, *Fordham International Law Journal*, Vol.35, No.3, p.785.

¹⁷³ Arbour, *Economic and Social Justice*, p.9.

¹⁷⁴ McGregor, *International Law as a ‘Tiered Process’*, pp.59-68.; Nesiah, V. et al. (2006) *Truth Commissions and Gender: Principles, Policies, and Procedures*, New York: International Center for Transitional Justice.; Oosterveld, V. (2009) The Special Court for Sierra Leone’s Consideration of Gender-based Violence: Contributing to Transitional Justice, *Human Rights Review*, Vol.10, No.1, pp.73-98.; Hayner, *Unspeakable Truths: Transitional Justice*, p.75.

¹⁷⁵ Galanter, M. (2002) ‘Righting Old Wrongs’ in Minow, M. and Rosenblum, N. (ed) *Breaking the cycles of hatred: memory, law, and repair*, Princeton and Oxford: Princeton University Press, p.114.

cases are on the forefront whereas loss of property, forced removals or other structural injustices are not. However, these violations and inequalities also harm people and create victims. Violence in the form of structural injustices put people in a constant deprivation, and their sufferings continue on a daily basis.¹⁷⁶ Lundy and McGovern raise similar criticisms. They argue that transitional justice only focuses on direct injustices such as war crimes or crimes against humanity, and it fails to address structural injustices which are often among the root causes of the conflict.¹⁷⁷ It is argued that social justice must be a part of redressing the past.¹⁷⁸ There are different definitions and perceptions of social justice in the literature.¹⁷⁹ In transitional justice context, Andrieu describes it as “settling the economic, political and social injustices that may have created the conflict and defining the basis of a just, stable society”.¹⁸⁰ If structural injustices are not tackled, they are going to continue to haunt people’s lives.

In various countries such as South Africa, Chile and Guatemala, there were vehement street protests after their transitional processes due to the socioeconomic inequalities and structural injustices. Even though transitional justice mechanisms operated in these countries, they failed to redress socioeconomic wrongdoings. Then, unaddressed problems led to unrest in these countries because of poverty, exclusion and inequality.¹⁸¹ To eliminate these risks and achieve sustainable peace, a holistic approach must be adopted. And this holistic approach should embrace economic, political and social structural reforms.¹⁸² These examples are significant to prove the importance of addressing socioeconomic problems in transitional processes. Transitional justice should bring *justice* in different ways, and social justice must be an aspect of this, especially for Turkey. Peruvian and East Timorese people also demanded justice in socioeconomic terms which is explained in the fourth chapter in detail.

4. Transitional Justice Mechanisms

There are various mechanisms of transitional justice such as trials, truth commissions, amnesties, purges, exiles and reparations¹⁸³ which will be described in this section. Transitional justice mechanisms are specified differently by various scholars. Olsen, Payne and Reiter analyse

¹⁷⁶ Andrieu, *Transitional Justice: A New Discipline*, p.18.

¹⁷⁷ Lundy and McGovern, *The Role of Community*, p.102.

¹⁷⁸ Andrieu, *Transitional Justice: A New Discipline*, p.18.

¹⁷⁹ Rawls, J. (1999) *A Theory of Justice (revised edition)*, Cambridge: Harvard University Press.; Amadiume, I. and An-Na’im, A. (2000) *The Politics of memory: Truth, healing and social justice*, London: Zed.; Arbour, *Economic and Social Justice*, p.5.

¹⁸⁰ Andrieu, *Transitional Justice: A New Discipline*, p.4.

¹⁸¹ Laplante, *Transitional Justice and Peace Building*, pp.331-355.

¹⁸² Laplante, *Transitional Justice and Peace Building*, pp.331-332.

¹⁸³ Binningsbø, H. M., Gates, S., Loyle, C. E. and Elster, J. (2012) Armed conflict and post-conflict justice, 1946–2006: A dataset, *Journal of Peace Research*, Vol.49, No.5, p.734.

five mechanisms in their study: trials, truth commissions, amnesties, reparations and lustration. However, they claim that writing new constitutions, setting up memorials and museums, and reforming the judiciary and security sector can also be considered as transitional justice mechanisms.¹⁸⁴ Binningsbo, Loyle, Gates and Elster specify six mechanisms in their study: trials, truth commissions, reparations, amnesties, purges and exiles.¹⁸⁵ Thoms, Ron and Paris include trials, truth commissions and vetting in their study but also remark that reparations, conflict resolution, memorialisation, history education, and legal and institutional reforms are also important transitional justice mechanisms.¹⁸⁶ Different interpretations lead to different classifications by scholars. For instance, Thoms and his fellow scholars consider lustrations, purges and security sector reforms as forms of institutional reforms in their aforementioned study.¹⁸⁷ Memorialisation and apologies are considered as a form of reparation by Gray. He also classifies structural and legal reforms as reparations.¹⁸⁸ These considerations will be elucidated below in the related sections. In this study, five transitional justice mechanisms will be analysed: trials, truth commissions, reparations, institutional reforms and amnesties. Exploring these mechanisms will help in answering the main research question of the thesis (Why should Turkey pursue transitional justice and which mechanisms can be adopted to address the violations of ESCR in the Kurdish Question?) and laying the foundation for the fifth chapter's section 6 which focuses on designing the mechanisms for a future transitional process in Turkey.

4.1. Trials

As transitional justice is about facing and redressing the past wrongdoings, accountability for the past crimes comes to the forefront in this context. Trials have been adopted by many states in transitional justice history. According to Powers and Proctor's study, 32 countries had 78 trials between 1983 and 2006.¹⁸⁹ Sikkink and Walling's study identifies 49 countries and territories which held at least one trial in their transitions between 1979 and 2004.¹⁹⁰ Another study depicts that between 1970 and 2007 38 countries held 81 trials.¹⁹¹ These trials include domestic trials,

¹⁸⁴ Olsen, T. D., Payne, L. A. and Reiter, A. G. (2010) Transitional justice in the world, 1970-2007: Insights from a new dataset, *Journal of Peace Research*, Vol.47, No.6, p.805.

¹⁸⁵ Binningsbø et al., *Armed conflict and post-conflict justice*, pp.733-734.

¹⁸⁶ Thoms, O., Ron, J. and Paris, R. (2008) *The Effects of Transitional Justice Mechanisms: A Summary of empirical research findings and implications for analysts and practitioners*, Ontario: Centre for International Policy Studies (CIPS) Working Paper, p.21.

¹⁸⁷ Thoms et al., *The Effects of Transitional Justice Mechanisms*, p.21.

¹⁸⁸ Gray, D. C. (2010) A No-Excuse Approach to Transitional Justice: Reparations as Tools of Extraordinary Justice, *Washington University Law Review*, Vol.87, No.5, p.1056.

¹⁸⁹ Powers, K. L. and Proctor, K. (2017) Victim's Justice in the Aftermath of Political Violence: Why Do Countries Award Reparations, *Foreign Policy Analysis*, Vol.13, No.4, pp.806-807.

¹⁹⁰ Sikkink, K. and Walling, C. (2007) The Impact of Human Rights Trials in Latin America, *Journal of Peace Research*, Vol.44, No.4, pp.427-445.

¹⁹¹ Olsen et al., *Transitional justice in the world*, p.807.

international trials and hybrid trials. Hybrid trials are combination of both national and international instruments of justice in a country.

It is important to establish a moral order in new regimes. Teitel explains that trials help in consolidating new regimes and rule of law by demarcating it from predecessor regimes. Violations of old regimes are delegitimised by trials.¹⁹² Andrieu describes the aims of trials as “issuing a detailed narrative of past atrocities, documenting the history for future generations, acting as a deterrent for the future, giving victims a voice, strengthening the rule of law, and promoting reconciliation on the ground.”¹⁹³ It is claimed that new regimes have a moral duty to prosecute perpetrators. Successor regimes owe this to victims and survivors of predecessor regimes.¹⁹⁴

Although trials are attached much significance by their proponents, they are not without their detractors. Trials are criticised for being backward looking, ineffective and selective.¹⁹⁵ They often fail to address economic crimes and structural violence.¹⁹⁶ They may also risk the stability of nascent democracies and peaceful environment in transitional contexts. Agents of predecessor regimes might still have power and they can use this power to trigger new conflicts. Critics of trials claim that stability and peace must be prioritised over accountability. In some cases, new human rights abuses are committed during trials and they turn into a means for vengeance.¹⁹⁷ Trials are also criticised for concentrating on perpetrators instead of victims. Sufferings and needs of victims are often not properly taken into account at the legal proceedings.¹⁹⁸ Arendt critiqued that perpetrators’ acts were on trial at Nuremberg rather than the sufferings of the Jewish people.¹⁹⁹ Furthermore, some victims were re-traumatised because of the legal proceedings. Trials may have damaging effects on victims, when their stories are questioned through vehement cross-examinations.²⁰⁰ Many victims are disappointed after the

¹⁹² Teitel, R. G. (2000) *Transitional Justice*, New York: Oxford University Press, p.29.

¹⁹³ Andrieu, *Transitional Justice: A New Discipline*, pp.5-6.

¹⁹⁴ Huyse, *Justice after transition*, p.55.

¹⁹⁵ Andrieu, *Transitional Justice: A New Discipline*, pp.7-9.; Huyse, *Justice after transition*, p.59.

¹⁹⁶ Miller, *Effects of Invisibility*, p.275.

¹⁹⁷ Kendall, *Donors' Justice*, pp.587-590.; Wiebelhaus-Brahm, E. (2007) Uncovering the Truth: Examining Truth Commission Success and Impact, *International Studies Perspectives*, Vol.8, No.1, pp.18-19.; Koskeniemi, M. (2002) Between Impunity and Show Trials, *Max Planck Yearbook of United Nations Law Online*, Vol.6, No.1, pp.1-35.; McCargo, *Transitional Justice and Its Discontents*, pp.5-20.

¹⁹⁸ Andrieu, *Transitional Justice: A New Discipline*, p.9.; Rosenblum, N. L. (2002) ‘Justice and the Experience of Injustice’ in Minow, M. and Rosenblum, N. (ed) *Breaking the cycles of hatred: memory, law, and repair*, Princeton and Oxford: Princeton University Press, p.79.

¹⁹⁹ Arendt, H. (1964) *Eichmann in Jerusalem: A report on the Banality of Evil*, New York: The Viking Press, p.5.

²⁰⁰ Mendeloff, *Trauma and Vengeance*, p.620.; Kent, L. (2012) Interrogating the "Gap" Between Law and Justice: East Timor's Serious Crimes Process, *Human Rights Quarterly*, Vol.34, No.4, pp.1031-1032.

criminal proceedings, and they experienced anger, resentment and betrayal because of light sentences and pardons.²⁰¹

A dichotomy between victims and perpetrators can be problematic as people can be both victims and perpetrators in different contexts.²⁰² Vaclav Havel stated: “None of us is just its victim; we are all responsible for it”²⁰³ in reference to the Czechoslovakian situation where people were adapted to the totalitarian system and contributed to its continuation. So, instead of dichotomising people into victims and perpetrators and punishing the latter, a different approach needs to be adopted to repair the harms. Moreover, it is often not possible to prosecute all perpetrators in transitional processes since there are large numbers of perpetrators. Elster notes selectivity of perpetrators could be justified due to the limited capacity of the judicial system in new regimes.²⁰⁴ Yet, selecting a few perpetrators to prosecute is questioned by various scholars.²⁰⁵ Trials were also criticised regarding their effectiveness to fight impunity. Even though proponents claim that trials must be held to fight impunity, it is doubtful that the perpetrators will be prosecuted properly and get severe penalties. Teitel points out that criminal proceedings often end with light sentences or no penalties. And in many cases, penalties were followed by pardons.²⁰⁶ After all, only few perpetrators are punished in most cases. Therefore, spending huge amounts of material and personnel resources to try a few perpetrators is also criticised.²⁰⁷ Another criticism of trials is about trials being distant from people on the ground. This point was argued in the “distanced justice” part above. In short, victims are often not able to attend trials, especially international tribunals. So, they might not get a sense of justice as they are distanced from trials.²⁰⁸ Sieff and Vinjamuri remark that trials

²⁰¹ Rauchfuss and Schmolze, *Justice heals: The impact of impunity*, p.45.; Stover, E. (2005) *The Witnesses: War Crimes and the Promise of Justice in The Hague*, Philadelphia: University of Pennsylvania Press.; Mendeloff, *Trauma and Vengeance*, p.611.

²⁰² Andrieu, *Transitional Justice: A New Discipline*, p.7.

²⁰³ Huyse, *Justice after transition*, p.61.

²⁰⁴ Elster, *Closing the Books*, p.213.

²⁰⁵ Andrieu, *Transitional Justice: A New Discipline*, p.9.; McEvoy, K. and Mallinder, L. (2012) Amnesties in Transition: Punishment, Restoration, and the Governance of Mercy, *Journal of Law and Society*, Vol.39, No.3, p.421.; Kendall, *Donors' Justice*, p.586.; Akhavan, P. (1998) Justice in The Hague, Peace in the Former Yugoslavia? A Commentary on the United Nations War Crimes Tribunal, *Human Rights Quarterly*, Vol.20, No.4, pp.737-816.

²⁰⁶ Teitel, *Transitional Justice*, pp.47-48.

²⁰⁷ Olsen, T. D., Payne, L. A. and Reiter, A. G. (2010) At What Cost? The Political Economy of Transitional Justice, *Taiwan Journal of Democracy*, Vol.6, No.1, pp.165-184.; Skilbeck, R. (2008) Funding Justice: The Price of War Crimes Trials, *Human Rights Brief*, Vol.15, No.3, pp.6-10.; Kendall, *Donors' Justice*, pp.585-586.; Smith, A. M. (2009) *After Genocide: Bringing the Devil to Justice*, Buffalo, NY: Prometheus Books.; Wippman, D. (2006) The Costs of International Justice, *The American Journal of International Law*, Vol.100, No.4, pp.861-881.

²⁰⁸ Burt, J. (2009) Guilty as Charged: The Trial of Former Peruvian President Alberto Fujimori for Human Rights Violations, *International Journal of Transitional Justice*, Vol.3, No.3, p.403.

must be decentralised to serve the victims and society more efficiently.²⁰⁹ If these trials are decentralised, they could answer the needs of post-conflict societies. Gready suggests that in addition to decentralisation of trials, alternative justice mechanisms, which are indigenous and unconventional, may need to be adopted and implemented by the participation of local people.²¹⁰

There are contradicting assessments on trials. According to the research done by Kim and Sikkink, trials foster human rights protection in transitional countries.²¹¹ On the contrary, findings of Snyder and Vinjamuri suggest that trials do not deter future conflicts, they may even lead to new ones.²¹² Even though there are shortcomings of trials, they have a potential to contribute to transitional process in several ways. Minow points out that international tribunals in Rwanda and the former Yugoslavia produced reliable documentation and condemnation of past abuses.²¹³ Likewise, Teitel notes that even though trials are not effective in their judgements they have a symbolic meaning in terms of promoting rule of law.²¹⁴

4.2. Truth Commissions

Truth commissions are one of the prominent mechanisms of transitional justice.²¹⁵ Between 1970 and 2007, 53 truth commissions were established in 37 countries.²¹⁶ Truth commissions are defined by Hayner as:

A truth commission (1) is focused on past, rather than ongoing, events; (2) investigates a pattern of events that took place over a period of time; (3) engages directly and broadly with the affected population, gathering information on their experiences; (4) is a temporary body, with the aim of concluding with a final report; and (5) is officially authorized or empowered by the state under review.²¹⁷

Truth commissions are not conventional instruments of legal systems and they are different from trials as their main focus is on victims rather than perpetrators, and they have broader

²⁰⁹ Sieff, M. and Vinjamuri, L. (2002) Prosecuting War Criminals: The Case for Decentralisation, *Conflict, Security and Development*, Vol.2, No.2, p.103.

²¹⁰ Gready, *Analysis: Reconceptualising transitional justice*, p.10.

²¹¹ Kim, H. and Sikkink, K. (2007) *Do Human Rights Trials Make a Difference*, San Francisco: Annual Meeting of International Studies Association (unpublished), p.29.

²¹² Snyder, J. and Vinjamuri, L. (2003) Trials and errors: Principle and pragmatism in strategies of international justice, *International Security*, Vol.28, No.3, p.5.

²¹³ Minow, *Breaking the cycles of hatred*, p.21.

²¹⁴ Teitel, *Transitional Justice*, pp.49-50.

²¹⁵ Before examining truth commissions, a point needs to be clarified. "Truth commissions" and "truth and reconciliation commissions" are often not differentiated in the literature and in practice. Daly and Sarkin explain that the two are different as the former aims to unearth the truth about the past whereas the latter aims at both unearthing the past and contributing to reconciliation (Daly and Sarkin, *Reconciliation in Divided Societies*, p.109). Yet, in this study, "truth commission" refers to both.

²¹⁶ Olsen et al., *Transitional justice in the world*, p.807.

²¹⁷ Hayner, *Unspeakable Truths: Transitional Justice*, pp.11-12.

aims than trials.²¹⁸ As discussed above in the “truth” section, they aim to contribute to the healing of victims and society by providing a space for victims and survivors to tell their stories. Truth commissions also issue reports when they complete their tasks. They make recommendations to new regimes and these recommendations include reparations to victims, institutional reforms and amnesties. In addition, they generate cumulative factual records of past violations and these records could be used in criminal proceedings.²¹⁹ Even though truth does not lead to prosecutions, revealing it may bring shame to perpetrators which could also be considered as a punishment in itself.²²⁰ Although their impacts are contested, it was asserted that the truth commissions of Argentina, Chile, Morocco, El Salvador and South Africa made considerable contributions to their societies as they led to reparations, institutional reforms and prosecutions, and raised awareness in public.²²¹ Kim and Sikkink’s research findings suggest that truth commissions foster human rights protection.²²² It is also claimed that they deter further abuses through recommending reforms.²²³ In addition, they are more cost-effective compared to trials.²²⁴

The formation of truth commissions is significant for their success. Establishing authority (national government, the UN etc.), independence of commission, composition of commissioners, designation of mandate and authority, legal powers and resources have significant impacts on their achievements. Commissioners play a significant role as the appointment of commissioners, their backgrounds (such as ethnic, professional and political), and commissioners’ approach (legal or social science) are influential on the success and acceptance of truth commissions.²²⁵ Size of the staff is among the determinants of success. Although there are many factors to influence the success of a commission, a greater number of staff increases the likelihood of success.²²⁶ Likewise, the management of a truth commission is

²¹⁸ Wiebelhaus-Brahm, E. (2009) *Truth commissions and transitional societies: the impact on human rights and democracy*, London: Routledge, p.4.

²¹⁹ Rosenblum, *Justice and the Experience of Injustice*, p.94.

²²⁰ Daly and Sarkin, *Reconciliation in Divided Societies*, p.143.

²²¹ Hayner, *Unspeakable Truths: Transitional Justice*, p.5.

²²² Kim and Sikkink, *Do Human Rights Trials Make a Difference*, p.25.

²²³ Wiebelhaus-Brahm, *Truth commissions and transitional societies*, p.4.

²²⁴ Muck and Wiebelhaus-Brahm, *Patterns of Transitional Justice Assistance*, p.19.

²²⁵ Bakiner, O. (2014) Truth Commission Impact: An Assessment of How Commissions Influence Politics and Society, *International Journal of Transitional Justice*, Vol.8, No.1, p.14.; Chapman, A. and Ball, P. (2001) The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa, and Guatemala, *Human Rights Quarterly*, Vol.23, No.1, pp.17-19.; Hayner, *Unspeakable Truths: Transitional Justice*, pp.212-213.; Freeman, M. (2006) *Truth commissions and procedural fairness*, New York: Cambridge University Press, pp.28-30.; Wiebelhaus-Brahm, *Uncovering the Truth*, pp.30-31.

²²⁶ Hayner, *Unspeakable Truths: Transitional Justice*, p.285.; Freeman, *Truth commissions and procedural fairness*, pp.30-31.; Wiebelhaus-Brahm, *Uncovering the Truth*, p.30.

crucial for achieving its aims.²²⁷ The nature of their mandate and the terms of reference have huge impacts on truth commissions' operation and achievements.²²⁸ Lack of adequate financial resources is a common challenge for many truth commissions as the budget of a truth commission has an important impact on its success.²²⁹ Legal powers (for subpoena, investigation and granting amnesty) of truth commissions are also critical for their success and impact. Yet, they often lack these powers, except a few examples such as the South African TRC.²³⁰

Truth commissions face serious challenges during their operation including "weak legal institutions, limited resources, dependence on cooperation from officials who served the previous regime, missing data, and political environments that limit their mandates and options."²³¹ Truth commissions are expected to fulfil wide range of duties, they need "extensive research, advanced methods for data collection and processing, and a complex information management system leading to analysis and interpretation of the findings" to achieve them.²³² Hayner noted: "A commission may need social workers or psychologists, computer and information-systems specialists, data coding and data entry staff, logistical coordinators, and interpreters."²³³ Financial resources, adequate staff and effective administration are crucial for their success.

There are various critiques of truth commissions. It is argued that asking victims to forgive can be problematic if there is no convincing evidence that shows truth-telling will lead to healing and reconciliation.²³⁴ Being forced to forgive may cause new traumas. Even if forgiveness may have some benefits,²³⁵ it is questionable to ask victims to forego their right to justice. Hamber notes that victims and survivors cannot be expected to forgive perpetrators.²³⁶ Victims may have

²²⁷ Hayner, *Unspeakable Truths: Transitional Justice*, pp.211-212.

²²⁸ Hayner, *Unspeakable Truths: Transitional Justice*, pp.75-78.; Chapman and Ball, *The Truth of Truth Commissions*, p.12.; Bakiner, *Truth Commission Impact*, p.14.; Freeman, *Truth commissions and procedural fairness*, pp.27-28.

²²⁹ Hayner, *Unspeakable Truths: Transitional Justice*, p.187.; Chapman and Ball, *The Truth of Truth Commissions*, p.16.; Freeman, *Truth commissions and procedural fairness*, p.31.

²³⁰ Chapman and Ball, *The Truth of Truth Commissions*, p.15.; Hayner, *Unspeakable Truths: Transitional Justice*, p.286.; Bakiner, *Truth Commission Impact*, pp.25-27.; Freeman, *Truth commissions and procedural fairness*, pp.34-35.

²³¹ Chapman and Ball, *The Truth of Truth Commissions*, p.5.

²³² *Ibid*, p.7.

²³³ Hayner, *Unspeakable Truths: Transitional Justice*, p.213.

²³⁴ Andrieu, *Transitional Justice: A New Discipline*, p.13.; Evans, *A future without forgiveness*, pp.684-685.

²³⁵ Tam, T., Hewstone, M., Kenworthy, J., Cairns, E., Marinetti, C., Geddes, L. and Parkinson, B. (2008) Postconflict Reconciliation: Intergroup Forgiveness and Implicit Biases in Northern Ireland, *Journal of Social Issues*, Vol.64, No.2, pp.303-320.; Cehajic, S., Brown, R. and Castano, E. (2008) Forgive and Forget? Antecedents and Consequences of Intergroup Forgiveness in Bosnia and Herzegovina, *Political Psychology*, Vol.29, No.3, pp.351-367.

²³⁶ Hamber and Wilson, *Symbolic closure through memory*, p.47

different expectations from transitional processes, and some of them may not want to forgive. In addition, truth commissions are critiqued for being toothless.²³⁷ They often have no sanctions or penalties and some perpetrators attend truth commissions only to avoid prosecution and punishment. So, they may lead to impunity. They are also criticised for aiming to establish one official truth. Establishing one version of truth is problematic and it may marginalise other groups in the society.²³⁸ One official narrative of the past may silence different narratives and states might manipulate and abuse it.

As argued in section 3.2.b, truth commissions are challenged for ignoring violations of ESCR. It was remarked that violations of ESCR must be included in their mandates, and structural injustices need to be eliminated to prevent future crimes. Describing the circumstances and patterns which allowed abuses is crucial to fix the problems to prevent future abuses.

The effectiveness of truth commissions is challenged regarding their follow-up processes. Although they make useful recommendations, implementation processes are often arduous.²³⁹ Implementation of the recommendations and taking concrete measures are significant for victims. Truth commissions raise hope among victims, and when implementation of recommendations fail or lag, this leads to disappointment. Moreover, it must be borne in mind that truth commissions are not a panacea. People tend to have unrealistic expectations from truth commissions that are beyond these commissions' capacity. After all, political will of the governments is determinant in their implementation.²⁴⁰ When establishing a truth commission, the mandate and tasks should be clear to avoid such disappointments.

An important point needs to be noted. Truth commissions have various limitations such as time, resources and legislative powers. There is little evidence that they achieve their objectives, but the alternative to truth commissions is often doing nothing.²⁴¹ So, even though they do not meet the expectations, they can still contribute to transitional processes.²⁴² In addition, lack of

²³⁷ Wiebelhaus-Brahm, *Uncovering the Truth*, p.22.

²³⁸ Andrieu, *Transitional Justice: A New Discipline*, pp.11-12.; Wallis, J. (2013) Victors, Villains and Victims: Capitalizing on Memory in Timor-Leste, *Ethnopolitics*, Vol.12, No.2, p.136.

²³⁹ Laplante, L. J. and Theidon, K. (2007) Truth with Consequences: Justice and Reparations in Post-Truth Commission Peru, *Human Rights Quarterly*, Vol.29, No.1, pp.229-230.; Hayner, P. (1996) Commissioning the truth: Further research questions, *Third World Quarterly*, Vol.17, No.1, pp.24-28.; Wiebelhaus-Brahm, *Truth commissions and transitional societies* p.146.; Gready, P. (2011) *The Era of Transitional Justice: The Aftermath of the Truth and Reconciliation Commission in South Africa and Beyond*, Abingdon: Routledge, p.36.

²⁴⁰ Hayner, *Unspeakable Truths: Transitional Justice*, pp.5-6.; Wiebelhaus-Brahm, *Truth commissions and transitional societies*, p.147.

²⁴¹ Wiebelhaus-Brahm, *Uncovering the Truth*, p.21.

²⁴² Bakiner, *Truth Commission Impact*, pp.29-30.

evidence about their success might not mean that they are not successful. Wiebelhaus-Brahm says it is not clear how to distinguish a truth commission's impact and success. Besides, there are many factors which affect a truth commission's functioning and outcomes. Even completing their tasks such as publishing a final report could be considered as success.²⁴³ Likewise, Daly and Sarkin write that although they are criticised, truth commissions have a lot to offer for reconciliation as they can support victims to make sense of the past.²⁴⁴ Although empirical evidence is lacking on the impacts of truth commissions, they are considered as useful "or at least not harmful" by the research done so far.²⁴⁵ To conclude, truth commissions have a significant role among other transitional justice mechanisms as they have an opportunity to promote other mechanisms. They can recommend prosecutions, reparations, institutional reforms and amnesties to governments.²⁴⁶

4.3. Reparations

Although reparations are less-studied compared to other mechanisms²⁴⁷ they have a critical role in transitional societies. Waldorf notes that reparations are "the most victim-centred transitional justice mechanism".²⁴⁸ A prevalent definition of reparations is: "a monetary and/or nonmonetary attempt to address as well as compensate victims for damage(s) experienced during politically violent activity."²⁴⁹ Reparations contribute to reconciliation processes by offering victims and survivors a sense of justice and satisfaction as they are "crystallization of recognition".²⁵⁰ States have a duty to provide reparation and remedy for the victims of gross human rights violations under international law.²⁵¹ The UN's guidelines and principles remark that states need to provide victims reparations in these forms: "restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition."²⁵² Reparations can also be

²⁴³ Wiebelhaus-Brahm, *Truth commissions and transitional societies*, pp.8-9.

²⁴⁴ Daly and Sarkin, *Reconciliation in Divided Societies*, pp.60-61.

²⁴⁵ Wiebelhaus-Brahm, *Truth commissions and transitional societies*, p.6.

²⁴⁶ Thoms et al., *The Effects of Transitional Justice Mechanisms*, p.23.

²⁴⁷ De Greiff, P. (2006) 'Introduction - Repairing the Past: Compensation for Victims of Human Right Violations' in De Greiff, P. (ed) *The Handbook of Reparations*, New York: Oxford University Press, p.1.

²⁴⁸ Waldorf, *Anticipating the Past*, p.177.

²⁴⁹ Powers and Proctor, *Victim's Justice*, p.790.

²⁵⁰ Mobekk, E. (2006) *Transitional Justice and Security Sector Reform: Enabling Sustainable Peace*, Occasional Paper No: 13, Geneva: Geneva Centre for the Democratic Control of Armed Forces (DCAF), p.62.; Garcia-Godos, J. (2008) Victim Reparations in the Peruvian Truth Commission and the Challenge of Historical Interpretation, *International Journal of Transitional Justice*, Vol.2, No.1, p.64.; Roht-Arriaza, N. (2004) 'Reparations in the aftermath of repression and mass violence' in Stover, E. and Weinstein, H. M. (eds) *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, New York: Cambridge University Press, p.136.

²⁵¹ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Resolution adopted by the General Assembly on 16 December 2005)

²⁵² *Ibid.*

classified as “financial and non-financial reparations, individual and collective reparations and judicial and non-judicial reparations.”²⁵³ They can be financial such as monetary payments or non-financial as in public apologies. Reparations may take the form of individual reparations such as housing, physical and mental health treatments and medications, or collective (communal) reparations such as providing sewage systems, potable water supplies or teaching personnel for schools.²⁵⁴ Even though individual reparations are necessary in transitional contexts, collective reparations may have greater impacts by remedying structural injustices which may be among root causes of conflicts.²⁵⁵ Most of the reparations are non-judicial but there might also be judicial reparations if a country’s judicial system allows courts to do so.

Although most violations are irreparable, reparations still depict the willingness of states to redress the past. Hamber and Wilson notes that reparations might generate a “symbolic closure” psychologically.²⁵⁶ A survey study in Nepal reveals that the majority of the victims prioritise reparations rather than trials.²⁵⁷ Since reparations have a potential to affect individuals directly and tangibly, they can make changes in people’s lives.²⁵⁸ Yet, reparations are considered as the most expensive transitional justice mechanism as they require high monetary resources.²⁵⁹ Financing reparation programs poses serious challenges to transitional states. Therefore, they often do not grant reparations to victims.²⁶⁰ A study depicts that “wealthy, democratic countries are more likely to award reparations than are poorer, nondemocratic countries.”²⁶¹ For instance, due to the scarce resources, only the most affected victims benefited from reparations in Sierra Leone.²⁶² Moreover, implementation of collective reparations (which aims to remedy the

²⁵³ Mobekk, *Transitional Justice and Security Sector Reform*, p.61.

²⁵⁴ The Office of the United Nations High Commissioner for Human Rights-OHCHR (2014) *Transitional Justice and Economic, Social and Cultural Rights*, New York and Geneva: The United Nations Publication, p.39.

²⁵⁵ Vandeginste, S. (2003) ‘Reparation’ in Bloomfield, D., Barnes, T. and Huyse, L. (eds) *Reconciliation After Violent Conflict: A Handbook*, Stockholm: International Institute for Democracy and Electoral Assistance (IDEA), p.147.

²⁵⁶ Hamber and Wilson, *Symbolic closure through memory*, p.44.

²⁵⁷ Robins, S. (2009) Whose voices? Understanding victims' views of transition, *Journal of Human Rights Practice*, Vol.1, No.2, p.324.

²⁵⁸ Andrieu, *Transitional Justice: A New Discipline*, p.15.

²⁵⁹ Powers and Proctor, *Victim’s Justice*, p.793.

²⁶⁰ Mobekk, *Transitional Justice and Security Sector Reform*, pp.63-64.; Daly and Sarkin, *Reconciliation in Divided Societies*, p.42.; Roht-Arriaza, *Reparations in the aftermath of repression*, pp.121-122.; Vandeginste, *Reparation*, pp.159-160.; Segovia, A. (2006) ‘Financing Reparations Programs: Reflections from International Experience’ in De Greiff, P. (ed) *The Handbook of Reparations*, New York: Oxford University Press.

²⁶¹ Powers and Proctor, *Victim’s Justice*, p.788.

²⁶² The OHCHR, *Transitional Justice and ESCR*, p.43.

collective harm²⁶³) could be purported as development projects, and this entails both risks and benefits in transitional contexts. Although collective reparations could contribute to development in transitional societies, they may also be criticised for allowing states “to slap a ‘reparations’ label on a development project and get off cheaply.”²⁶⁴ In addition to financial constraints, eligibility and proportionality are complex and difficult issues regarding reparations. Deciding who is going to receive what type of reparation is difficult since there are a vast number of victims and crimes.²⁶⁵ Moreover, victims may have different needs and expectations and satisfying them is often difficult. Analysing local contexts and demands is crucial in applying reparations as in other transitional justice mechanisms.²⁶⁶ Needs and expectations of victims must be examined thoroughly before a reparation program is implemented.

There are also concerns about reparations. If they are not accompanied with a form of acknowledgement or accountability measures, victims and survivors may feel that their silence is bought.²⁶⁷ In fact, reparations are supposed to show that states not only reveal but also acknowledge their wrongs and want to repair them.²⁶⁸ Rosenblum writes: “From the standpoint of repair, perhaps the most important official action, taken in addition to reparations or standing alone, is apology.”²⁶⁹ In some cases, victims or survivors do not accept reparations. Verdeja notes that victims often call for apologies.²⁷⁰ For instance, Asian “comfort women” refused reparations because reparations were not accompanied by an acknowledgement or an apology of the Japanese Government.²⁷¹ Minow remarks that “reparations without apologies seem inauthentic, and apologies without reparations seem cheap.”²⁷²

Apologies are non-monetary, moral reparations. Hazan explains that apologies are vital in transitional contexts since states’ acknowledgement of past crimes is important for victims and societies. Apologies convey a necessary message: past violations were unjust, and they will not

²⁶³ Rosenfeld, F. (2010) Collective reparation for victims of armed conflict, *International Review of the Red Cross*, Vol.92, No.879, pp.731-746.

²⁶⁴ Roht-Arriaza, *Reparations in the aftermath of repression*, pp.129-131.

²⁶⁵ Mobekk, *Transitional Justice and Security Sector Reform*, p.65.; De Greiff, *Introduction - Repairing the Past*, p.6.; Roht-Arriaza, *Reparations in the aftermath of repression*, p.126.; Vandeginste, *Reparation*, pp.156-157.

²⁶⁶ Vandeginste, *Reparation*, pp.158.

²⁶⁷ Andrieu, *Transitional Justice: A New Discipline*, p.16.; Lipscomb, L. (2010) Beyond the Truth: Can Reparations Move Peace and Justice Forward in Timor-Leste, *Asia - Pacific Issues*, No.93, p.9.

²⁶⁸ Huyse, *Justice after transition*, p.53.

²⁶⁹ Rosenblum, *Justice and the Experience of Injustice*, p.98.

²⁷⁰ Verdeja, E. (2010) Official Apologies in the Aftermath of a Political Violence, *Metaphilosophy*, Vol.41, No.4, p.565.

²⁷¹ Rosenblum, *Justice and the Experience of Injustice*, p.98.

²⁷² Minow, *Breaking the cycles of hatred*, p.23.

occur in the future.²⁷³ Espindola points out: “An apology, even in the simplest of senses, involves recognition that the victim was not treated appropriately, and that at the very least she deserves redress in the form of an acknowledgment of the wrong done.”²⁷⁴ After German Chancellor Willy Brandt’s apology at the Warsaw Ghetto in 1970, apologies have tended to increase over the years.²⁷⁵ Apologies are considered to be supporting rule of law and fostering civic trust in public institutions.²⁷⁶ They also contribute to reconciliation and help victims in restoring their dignity. The moral value of victims can be recognised by apologies. Apologies reaffirm publicly that victims are worthy individuals. Espindola even claims that the main function of an apology is depicting respect to the victims.²⁷⁷ However, if the apology is not authentic and sincere, it will not achieve its assumed goals. In order for apologies to have an effect on victims, the perpetrators need to admit that what they have done was wrong and there is no excuse or justification of the act.²⁷⁸

James identified several requirements for an authentic political apology:

1) is recorded officially in writing; 2) names the wrongs in question; 3) accepts responsibility; 4) states regret; 5) promises non-repetition; 6) does not demand forgiveness; 7) is not hypocritical or arbitrary; and 8) undertakes—through measures of publicity, ceremony, and concrete reparation—to both morally engage those in whose name apology is made and to assure the wronged group that the apology is sincere.²⁷⁹

Apologies are criticised for being a cheap response to gross human rights violations. They might be considered as a way to get away from responsibilities by simply expressing an apology.²⁸⁰ However, apologies do not have to be the only response to past violations as they alone may not meet needs of victims. Just like other transitional justice mechanisms, they must be complemented with other mechanisms (such as material reparations, institutional reforms and

²⁷³ Hazan, P. (2006) Measuring the impact of punishment and forgiveness: a framework for evaluating transitional justice, *International Review of the Red Cross*, Vol.88, No.861, p.42.

²⁷⁴ Espindola, J. (2013) An Apology for Public Apologies? Transitional Justice and Respect in Germany, *German Studies Review*, Vol.36, No.2, p.327.

²⁷⁵ Hazan, *Measuring the impact of punishment and forgiveness*, p.42.

²⁷⁶ Hazan, *Measuring the impact of punishment and forgiveness*, p.43.

²⁷⁷ Espindola, *An Apology for Public Apologies*, p.342.

²⁷⁸ Daly and Sarkin, *Reconciliation in Divided Societies*, p.162.

²⁷⁹ James, M. (2008) ‘Wrestling with the Past: Apologies, Quasi-Apologies, and Non-Apologies in Canada’ in Gibney, M., Howard-Hassman, R., Coicaud, J. and Steiner, N. (eds), *The Age of Apology: facing up to the past*, Philadelphia: University of Pennsylvania Press, pp.137-153.

²⁸⁰ Verdeja, *Official Apologies*, p.564.

trials).²⁸¹ It must be noted that even though apologies do not necessarily achieve their goals, they at least open a discussion about the past.

Memorialisation is considered as an important way to move forward in transitional states. It has been requested by people from different societies and contexts.²⁸² They are necessary because “memorials recognise the suffering of a demarcated group of people and promise redress through representation and remembrance.”²⁸³ The main objective of memorialisation is supporting victims to cope with their painful memories but there are also broader objectives such as deterring future abuses, establishing peace and democracy.²⁸⁴ Acknowledging the past wrongs and remembering them is crucial for victims. It is claimed that memorials help them to restore their dignity as their suffering is recognised and not forgotten.²⁸⁵ These claims about memorialisation sounds sensible in common sense. However, as it is necessary for other transitional justice mechanisms, further research is required to assess the impacts of memorialisation. Woefully, there is little empirical evidence and research which depict how memorialisation contributes to transitional justice processes.²⁸⁶ In addition, memorialisation should not be expected to “achieve reconciliation, violence prevention or respect for human rights” by itself, it can only contribute to these aims.²⁸⁷ They must be accompanied by other transitional justice mechanisms.

There are also risks about memorialisation. As in other mechanisms, they need to fit into the context and realities rather than being implemented through a top-down process.²⁸⁸ They can be manipulated by new regimes (or other actors) to impose particular ideologies onto

²⁸¹ Mobekk, *Transitional Justice and Security Sector Reform*, pp.61-66.; Verdeja, *Official Apologies*, pp.563-581.

²⁸² Hamber, B., Sevcenko, L. and Naidu, E. (2010) Utopian Dreams or Practical Possibilities? The Challenges of Evaluating the Impact of Memorialization in Societies in Transition, *International Journal of Transitional Justice*, Vol.4, No.3, p.397.

²⁸³ Wilke, C. (2013) Remembering Complexity? Memorials for Nazi Victims in Berlin, *International Journal of Transitional Justice*, Vol.7, No.1, p.142.

²⁸⁴ Hamber et al., *Utopian Dreams or Practical Possibilities*, p.417.; Jones, S. (2015) “Simply a Little Piece of GDR History”?: The Role of Memorialization in Post-Socialist Transitional Justice in Germany, *History & Memory*, Vol.27, No.1, pp.154-182.; The United Nations General Assembly (2014) *Report of the Special Rapporteur in the Field of Cultural Rights. Shaheed Farida: Memorialization Processes*, The UN General Assembly, Doc. No: A/HRC/25/49.

²⁸⁵ David, L. (2017) Against Standardization of Memory, *Human Rights Quarterly*, Vol.39, No.2, pp.296-318.

²⁸⁶ Hamber et al., *Utopian Dreams or Practical Possibilities*, p.398.

²⁸⁷ Hamber et al., *Utopian Dreams or Practical Possibilities*, p.400.; Jones, *Simply a Little Piece of GDR History*, p.155.

²⁸⁸ Brown, K. (2012) ‘What It Was Like to Live through a Day’: Transitional Justice and the Memory of the Everyday in a Divided Society, *International Journal of Transitional Justice*, Vol.6, No.3, pp.450-452.

societies.²⁸⁹ For instance, reconciliation seems to be hindered by war memorials in Vukovar, in the former Yugoslavia, as these memorials were selective on narratives. When they promote the sufferings of Croats, memorials silence, sometimes even trivialise the sufferings of Serbs.²⁹⁰ Clark notes that memorials in Vukovar obstruct reconciliation because there is too much memory.²⁹¹ These kinds of memorials prevent people moving forward. That is why societies need “to learn to remember the past in a balanced and inclusive way that brings communities together and helps people to move on with their lives.”²⁹²

To conclude, reparations have a significant potential to contribute to transitional processes. Reparations should not be identified with material reparations exclusively. Moral and symbolic reparations such as apologies and memorialisation also have a significant potential to contribute to peace and reconciliation. This is important in the Kurdish Question since the identity and culture of the Kurdish people have been oppressed and recognizing their sufferings and restoring their dignity could contribute to peace and reconciliation in Turkey. Therefore, financial constraints should not be an excuse for not implementing reparations. Even symbolic reparations may play a critical role in Turkey.

4.4. Institutional Reforms

Institutional reforms are key components of transitional justice processes.²⁹³ They are aimed at preventing future violations by reforming state structures which previously allowed perpetrators to commit heinous crimes.²⁹⁴ Corrupt institutions which abetted human rights violations need to be transformed to reestablish trust in them.²⁹⁵ The Office of the United Nations High Commissioner for Human Rights (OHCHR) report states: “States should ensure: vetting; an independent and impartial judiciary; civilian control of the military and other enforcement personnel; complaint procedures; and the training of relevant State personnel in human rights

²⁸⁹ Visoka, G. (2016) Arrested Truth: Transitional Justice and the Politics of Remembrance in Kosovo, *Journal of Human Rights Practice*, Vol.8, No.1, pp.62-80.; Hamber et al., *Utopian Dreams or Practical Possibilities*, p.418.

²⁹⁰ Clark, J.N. (2013) Reconciliation through Remembrance? War Memorials and the Victims of Vukovar, *International Journal of Transitional Justice*, Vol.7, No.1, p.119.

²⁹¹ *Ibid*, p.122.

²⁹² *Ibid*, p.135.

²⁹³ A distinction in terminology is made between “reform” and “transformation” regarding institutions of transitional states: “Whereas nondemocratic societies may be faced with demands for institutional transformation, in democratic societies the imperative is typically to reform rather than to transform.” (Aoláin, F. and Campbell, C. (2005) The Paradox of Transition in Conflicted Democracies, *Human Rights Quarterly*, Vol.27, No.1, pp.172-213.) Yet, both terms are used interchangeably in the literature and it will be done so in this thesis as well.

²⁹⁴ OHCHR, *Transitional Justice and ESCR*, p.44.

²⁹⁵ The Office of the UN High Commission on Human Rights (2006) *Rule of Law Tools for Post-Conflict States: Vetting: An Operational Framework*, HR/PUB/06/5, p.3.

and humanitarian law.”²⁹⁶ The UN emphasises the importance of adopting a context-specific approach in designing and implementing institutional reforms.²⁹⁷ Fernando remarks that the UDHR (Article 8) and the International Covenant on Civil and Political Rights (ICCPR) (Article 2) could be considered as the legal basis for the responsibility of states for the prevention of future human rights abuses.²⁹⁸

Truth commissions have a significant role in institutional reforms as they help in diagnosing malfunctioning institutions which allowed abuses to take place. Thus, these institutions can be reformed, and people who were involved in past abuses can be removed to prevent future abuses.²⁹⁹ In the transitional justice literature, researches have mostly focused on vetting, security sector reform (SSR) and legislative reform, and other types of institutional reforms are often left under-researched.³⁰⁰ Before explaining vetting, a point needs to be clarified. Vetting, purge and lustration are in use in the transitional justice literature (sometimes synonymously),³⁰¹ but it is important to depict distinctions among them. Lustration has been implemented in some Eastern European countries specifically to expel some public officials who were affiliated with the prior regime.³⁰² Lustration policies have occasionally been adopted by other states (Belgium, France, and The Netherlands).³⁰³ Apart from Eastern European countries, vetting has been implemented as a transitional justice mechanism which refers to removing people from public employment if they violated human rights. Unlike lustration, vetting only expels individuals, if they personally have a human rights abuses record.³⁰⁴ Purges, on the other hand, can be defined as removing individuals from public offices with or without trials.³⁰⁵ These terms may seem to be only slightly different from each other, but those differences are important. Vetting can be considered as the most appropriate form since it only removes individuals who committed crimes and it does so by a legal or an administrative process.

²⁹⁶ OHCHR, *Transitional Justice and ESCR*, p.44.

²⁹⁷ OHCHR, *Rule of Law Tools for Post-Conflict States*, p.1.

²⁹⁸ Fernando, B. (2014) Editorial: Institutional Reforms as an Integral Part of a Comprehensive Approach to Transitional Justice, *International Journal of Transitional Justice*, Vol.8, No.2, p.188.

²⁹⁹ Van Zyl, P. (2005) ‘Promoting Transitional Justice in Post-Conflict Societies’ in Bryden, A. and Hänggi, H. (eds) *Security Governance in Post-Conflict Peacebuilding*, Geneva: Geneva Centre for the Democratic Control of Armed Forces (DCAF) Yearly Books, p.216.

³⁰⁰ OHCHR, *Transitional Justice and ESCR*, p.45.

³⁰¹ Horne, C. (2014) The Impact of Lustration on Democratization in Postcommunist Countries, *International Journal of Transitional Justice*, Vol.8, No.3, pp.496-521.

³⁰² Hayner, *Unspeakable Truths: Transitional Justice*, p.9.

³⁰³ Huyse, *Justice after transition*, p.52.

³⁰⁴ Mobekk, *Transitional Justice and Security Sector Reform*, p.68.

³⁰⁵ Posner, E. A. and Vermeule, A. (2003) *Transitional Justice as Ordinary Justice*, University of Chicago Law School Public Law and Legal Theory Working Paper Series, No.40, p.6.

Vetting is a central component of institutional reforms in transitional states.³⁰⁶ Fifty-four vetting processes have been implemented worldwide between 1970 and 2004.³⁰⁷ Vetting policies are implemented to reform state institutions to prevent future abuses and to promote democracy. Reforming public institutions will not be complete without vetting programs because presence of abusive public employees would prevent restoring civic trust in those institutions.³⁰⁸ Removing abusers from their positions and preventing the employment of them are critical for reforming public institutions. Thus, people can see that public institutions will not tolerate future abuses and they will consider these institutions as trustworthy and legitimate.³⁰⁹ Moreover, they may contribute to “fill the impunity gap by ensuring that those who are responsible for past abuses but are not criminally prosecuted are at least excluded from public service.”³¹⁰ Vetting must be complemented with other institutional reform measures to assure that human rights violations will not occur again.³¹¹ Vetting alone cannot promise that violations will not take place in the future.

As with other transitional justice mechanisms, institutional reforms are criticised on various grounds. Lustration policies have been criticised since people could be expelled according to their political affiliations, even though they did not commit any human rights violations.³¹² Cohen describes it as “a collective witch-hunt rather than the pursuit of individual responsibility through some variant of the criminal law.”³¹³ In addition, people who were subjected to lustration often did not have a chance to defend themselves and refute the claims about them. This is also problematic because these processes also carry the risk of violating rights of removed people.³¹⁴ To avoid such risks, people who are subject to lustration or vetting processes must be given a right to defend themselves. Another criticism against vetting, lustration and purge processes are about politicisation of the processes. Huyse claims that these policies might be politicised by states.³¹⁵ Sometimes these policies are implemented to defeat political rivals. That is why these operations must be conducted on objective grounds, and rights of the accused need

³⁰⁶ Thoms et al., *The Effects of Transitional Justice Mechanisms*, p.21.

³⁰⁷ Balasco, *The Transitions of Transitional Justice*, p.201.

³⁰⁸ OHCHR, *Rule of Law Tools for Post-Conflict States*, p.4.

³⁰⁹ Mayer-Rieckh, A. (2007) ‘On Preventing Abuse: Vetting and Other Transitional Reforms’ in Mayer-Rieckh, A. and De Greiff, P. (eds) *Justice as Prevention: Vetting Public Employees in Transitional Societies*, New York: Social Science Research Council, p.485.

³¹⁰ Mayer-Rieckh, *On Preventing Abuse*, p.484.

³¹¹ Mobekk, *Transitional Justice and Security Sector Reform*, p.75.; Mayer-Rieckh, *On Preventing Abuse*, pp.483.

³¹² Horne, *The Impact of Lustration*, p.513.

³¹³ Cohen, S. (1995) State Crimes of Previous Regimes: Knowledge, Accountability, and the Policing of the Past, *Law & Social Inquiry*, Vol.20, No.1, p.26.

³¹⁴ *Ibid*, p.27.

³¹⁵ Huyse, *Justice after transition*, p.62.

to be protected during vetting processes.³¹⁶ Moreover, lack of human resources can be an obstacle to vetting process. Recruiting and training new staff for vetted positions requires time and resources which may be difficult to be undertaken in transitional states.³¹⁷ That is why the context of the transitional state must be analysed well, and vetting programs must be designed and implemented carefully.

SSR is a concept which aims to enhance democracy and to prevent future abuses by reforming an abusive or non-functional security sector. Its objectives are described as: "i) Establishment of effective governance, oversight and accountability in the security system. ii) Improved delivery of security and justice services. iii) Development of local leadership and ownership of the reform process. iv) Sustainability of justice and security service delivery."³¹⁸ Even though SSR could be considered as a form of institutional reform, it is also being applied as a broader concept and as a distinct phenomenon in peacebuilding processes. SSR is significant in transitional states because security personnel (which includes military, police, secret police, intelligence agencies) are supposed to protect citizens. However, they often commit egregious crimes during authoritarian regimes and conflicts.³¹⁹ So, reforming this sector is crucial to end systematic abuses and ensure that security personnel will protect the citizens' rights rather than violating them. Victims will also be transformed into "rights-bearing citizens" through SSR programs.³²⁰

SSR must be accompanied with vetting of abusive members to ensure that the ethos of abusive institutions will be changed, and trust will be reinstilled in them.³²¹ Moreover, the context of the country in which SSR is going to be implemented is crucial.³²² Since each country has different social, political and economic realities, analysing the context is critical for the success. Wulf explains that transitional societies provide a promising environment for the application of SSR compared to more stable ones.³²³ As these societies are often eager to change, application of SSR programs can make an important contribution to transition processes. However, SSR

³¹⁶ Mobekk, *Transitional Justice and Security Sector Reform*, p.73.

³¹⁷ Mobekk, *Transitional Justice and Security Sector Reform*, p.69.; Huyse, *Justice after transition*, p.63.

³¹⁸ Organization for Economic Cooperation and Development - OECD (2007) *OECD DAC Handbook on Security System Reform: Supporting security and justice*, Paris: OECD, p.21.

³¹⁹ Davis, L. (2009) *Transitional Justice and Security System Reform*, Initiative for Peacebuilding (IFP) Report, Brussels: Initiative for Peacebuilding, p.7.

³²⁰ *Ibid*, p.12.

³²¹ Van Zyl, *Promoting Transitional Justice*, pp.219-220.

³²² Wulf, H. (2004) *Security sector reform in developing and transitional countries*, Berghof Research Center for Constructive Conflict Management Handbook, Berlin: Berghof Research Center for Constructive Conflict Management, pp.6-9.

³²³ *Ibid*, pp.7-17.

programs also have limitations like other transitional justice mechanisms. Absence of political will and financial limitations influence the implementation and success of SSR programs.³²⁴

Mayer-Rieckh classifies two types of institutional reform measures other than vetting and SSR: the first one aims to transform individual members of public institutions and the second one aims to transform institutional and sectoral structures. The former can be practised by providing human rights and professional standards training to public officials to assure that they will not violate human rights.³²⁵ The latter can be practised by (a) providing accountability to ensure that if public officials commit crimes, they will be held accountable for their acts; (b) securing operational independence of public officials to ensure that governments or partisan political groups are not going to intervene in their mandates; (c) assuring representation to prevent group domination at public institutions and allowing different groups to have adequate positions; (d) guaranteeing responsiveness to make public officials serve people rather than the state or a partisan group.³²⁶ It must be noted that when these two types of institutional reforms target security personnel and institutions, they share the same goal with SSR initiatives. Considering that the state officials and institutions have a responsibility in human rights violations which are committed against the Kurdish people, institutional reforms may play a critical role in Turkey. This is elaborated in the fifth chapter's section 6.4 in detail.

4.5. Amnesties

The peace versus justice dilemma has been argued in transitional justice since the emergence of the field. Freeman states that transitional justice scholars and practitioners have considered amnesty as an impediment to accountability and justice. Amnesties have been treated inimically in transitional justice literature.³²⁷ Since 1999, the UN has been in a strong opposition to amnesties.³²⁸ A similar approach has been adopted by the Inter-American Court of Human Rights and other international actors, and amnesties for international crimes (particularly for war crimes, genocide and crimes against humanity) are often not welcomed in transitional processes.³²⁹ Yet, the stance of international actors and scholars did not really reduce their

³²⁴ *Ibid*, p.17.

³²⁵ Mayer-Rieckh, *On Preventing Abuse*, pp.495-496.

³²⁶ *Ibid*, pp.496-501.

³²⁷ Freeman, M. (2009) 'Amnesties and DDR Programs' in Patel, A.C., De Greiff, P. and Waldorf, L. (eds) *Disarming the Past: Transitional Justice and Ex-combatants*, New York: Social Science Research Council, p.37.

³²⁸ Hayner, *Unspeakable Truths: Transitional Justice*, p.105.

³²⁹ Binder, C. (2011) The Prohibition of Amnesties by the Inter-American Court of Human Rights, *German Law Journal*, Vol.12, No.5, pp.1203-1230.; The Office of the United Nations High Commissioner for Human Rights - OHCHR (2005) '*Promotion and Protection of Human Rights—Impunity: Report of the Independent*

importance and implementation.³³⁰ Even if amnesties are viewed in an antagonistic way in transitional justice literature, their application has risen since the 1980s.³³¹ A vast number of amnesties (424) have been adopted in the world between 1970 and 2004.³³² Amnesty can be defined as:

an extraordinary legal measure whose primary function is to remove the prospect and consequences of criminal liability for designated individuals or classes of persons in respect of designated types of offenses irrespective of whether the persons concerned have been tried for such offenses in a court of law.³³³

Proponents of amnesties assert that they have a crucial role in achieving peace and stability in the aftermath of a conflict or political repression. It is asserted that amnesties are “an important necessity to allow a society to move forward, even if they potentially breach the obligation to investigate, prosecute and, if applicable, punish.”³³⁴ Advocates claim that members of conflicting parties who committed human rights violations will probably not lay down their arms if they know that they are going to be prosecuted. In the context of repressive regimes, the old regime is unlikely to hand over their power to the new regime if there is no amnesty.³³⁵ Freeman explains that amnesties can enable transitions to start and provide a safe environment for other transitional justice mechanisms.³³⁶ Amnesties may also help reveal the truth if they are conditioned on “a full disclosure of all crimes.”³³⁷ It should be understood that they can be implemented by the old regime as a last move to protect themselves or by the new regime to secure stability and peace.³³⁸ Therefore, they should not be considered in “monolithic and absolutist terms” as they vary a lot.³³⁹ They need to be analysed individually according to the context in which they are applied.

Expert to Update the Set of Principles to Combat Impunity: Addendum UN Doc E/CN.4/2005/102.Add.1.; Hayner, *Unspeakable Truths: Transitional Justice*, p.105.

³³⁰ McEvoy and Mallinder, *Amnesties in Transition*, p.416.

³³¹ Mallinder, L. (2007) Can Amnesties and International Justice Be Reconciled, *International Journal of Transitional Justice*, Vol.1, No.2, p.209.

³³² Balasco, *The Transitions of Transitional Justice*, p.201.

³³³ Freeman, M. (2009) *Necessary Evils: Amnesties and the Search for Justice*, New York: Cambridge University Press, p.13.

³³⁴ Villalba, C. S. (2011) *Transitional Justice: Key Concepts, Processes and Challenges*, Institute for Democracy & Conflict Resolution (IDCR) Briefing Paper, (IDCR-BP-07/11), p.5.

³³⁵ Alfonsin, R. (1993) "Never Again" in Argentina, *Journal of Democracy*, Vol.4, No.1, pp.15-19.; Mallinder, *Can Amnesties and International Justice Be Reconciled*, p.209.; Hadden, T. (2004) 'Punishment, Amnesty and Truth: Legal and Political Approaches' in Guelke, A. (ed) *Democracy and Ethnic Conflict: Advancing Peace in Deeply Divided Societies*, Basingstoke: Palgrave Macmillan, p.212.

³³⁶ Freeman, *Necessary Evils*, p.19.

³³⁷ Mallinder, *Can Amnesties and International Justice Be Reconciled*, p.213.

³³⁸ Mobekk, *Transitional Justice and Security Sector Reform*, p.30.; Snyder and Vinjamuri, *Trials and errors*, p.18.

³³⁹ Freeman, *Necessary Evils*, p.31.

Amnesties are often criticised for denying justice and leading to impunity by opponents, but they have been considered in a more positive way by several scholars in recent years.³⁴⁰ Mallinder states that “individualized, conditional amnesties in conjunction with other transitional justice mechanisms can, if well designed, actually contribute to guaranteeing each of the victims’ rights.”³⁴¹ If they are designed cautiously, they have a potential to prevent future violations.³⁴² So, rather than opposing all amnesties, scholars and practitioners must search the ways in which amnesties foster reconciliation and peace. For instance, prosecuting most responsible perpetrators and granting amnesty to low-level perpetrators could be feasible when these amnesties are complemented by other transitional justice mechanisms which protect victims’ rights. Amnesties can be applied conditionally which may require perpetrators to pay reparations to victims, to reveal the truth or to acknowledge the wrongdoing.³⁴³ Amnesties are criticised for leading to amnesia, but this perception needs to be changed since amnesty does not necessarily mean amnesia anymore.³⁴⁴ Mallinder writes: “the traditional conception of amnesty as ‘amnesia’ is becoming increasingly outdated. Instead, states are finding innovative ways to address past crimes without burying the truth or enforcing widespread prosecutions.”³⁴⁵

The most significant criticism of amnesty is pertaining to impunity. It should be acknowledged that blanket amnesties were adopted in the past in the name of reconciliation and stability of the new regime, even though there were demands from victims and human rights organisations for accountability.³⁴⁶ These amnesties allowed perpetrators to avoid prosecutions. However, these blanket amnesties have been challenged recently and the scope of amnesties tend to be much more limited to prevent perpetrators from shielding themselves.³⁴⁷ Danieli claims that impunity may prevent individuals’ healing and closure, and cause new traumas.³⁴⁸ However, as mentioned earlier, even though trials are established, few perpetrators are prosecuted in most cases. McEvoy and Mallinder note that this generates many “false innocents”.³⁴⁹ So, granting amnesties to low-level perpetrators, at least, shows that their crimes are acknowledged.

³⁴⁰ Roht-Arriaza, *The new landscape of transitional justice*, pp.1-16.; Mallinder, *Can Amnesties and International Justice Be Reconciled*, pp.208-230.; McEvoy and Mallinder, *Amnesties in Transition*, pp.410-440.; Snyder and Vinjamuri, *Trials and errors*, pp.5-44.

³⁴¹ Mallinder, *Can Amnesties and International Justice Be Reconciled*, p.210.

³⁴² Snyder and Vinjamuri, *Trials and errors*, p.6.

³⁴³ Mallinder, *Can Amnesties and International Justice Be Reconciled*, pp.214-215.; Snyder and Vinjamuri, *Trials and errors*, pp.33-34.

³⁴⁴ Freeman, *Necessary Evils*, pp.15-16.

³⁴⁵ Mallinder, L. (2008) *Amnesty, Human Rights and Political Transitions: Bridging the Peace and Justice Divide*, Oxford: Hart, p.14.

³⁴⁶ McGregor, *International Law as a ‘Tiered Process’*, pp.55-56.

³⁴⁷ McEvoy and Mallinder, *Amnesties in Transition*, p.415.

³⁴⁸ Danieli, *Massive Trauma*, p.352.

³⁴⁹ McEvoy and Mallinder, *Amnesties in Transition*, p.421.

Moreover, prosecutions should not be considered as the only way of justice, as there are other ways to achieve justice as in restorative or traditional justice mechanisms. Amnesties could be applied accordingly with these justice mechanisms and they could meet demands of victims and societies.³⁵⁰ Another criticism against amnesties is about recidivism. It is asserted that trials have a deterrent impact in preventing future abuses. However, McEvoy and Mallinder assert that amnesties can make a greater impact on deterring crimes in specific contexts. Amnesties can help in convincing conflicting sides to surrender and to disarm.³⁵¹ When amnesties contribute to the termination of a conflict or to the transformation into a democratic regime, they actually help in the prevention of future violations. So, this criticism could be eliminated through conditioning amnesties to non-recidivism provisions.³⁵²

Even though proponents suggest that trials may trigger new atrocities and amnesties secure stability, amnesties need to be designed and implemented carefully. Otherwise, they may not prevent future violations as happened in Sierra Leone and in Haiti where further atrocities took place after amnesties.³⁵³ States should not grant amnesty without democratic support.³⁵⁴ A South African mother whose son had been tortured and killed said: “They are asking forgiveness from the government, they did nothing to the government, what they did, they did to us.”³⁵⁵ When granting amnesties states must find the ways in which the needs of the victims will be met. Moreover, it should be borne in mind that as in other transitional justice mechanisms, “effective political backing and strong institutions” are critical for the success of amnesties.³⁵⁶ In order to eliminate risks and to design an amnesty which contributes to reconciliation and peace, there are necessary criteria suggested by Mallinder: (a) public support, (b) an honest aim for reconciliation and peace, (c) being limited in scope, (d) being conditional, (e) being accompanied by reparations.³⁵⁷ Freeman writes: “Amnesty is an issue that will not go away.”³⁵⁸ Therefore, we need to find the ways in which they give the best results.

³⁵⁰ Mallinder, *Can Amnesties and International Justice Be Reconciled*, pp.220-221.

³⁵¹ McEvoy and Mallinder, *Amnesties in Transition*, p.427.

³⁵² Freeman, *Necessary Evils*, p.16.

³⁵³ Mobekk, *Transitional Justice and Security Sector Reform*, p.31.

³⁵⁴ Mobekk, *Transitional Justice and Security Sector Reform*, p.32.; Mallinder, *Can Amnesties and International Justice Be Reconciled*, pp.226-227.

³⁵⁵ Hamber and Wilson, *Symbolic closure through memory*, p.46.

³⁵⁶ Snyder and Vinjamuri, *Trials and errors*, p.20.

³⁵⁷ Mallinder, *Can Amnesties and International Justice Be Reconciled*, pp.228-229.

³⁵⁸ Freeman, *Necessary Evils*, p.31.

5. Conclusion

In this chapter, the historical background of transitional justice is explained, the field is conceptualised, and transitional justice mechanisms are described. These are done so through an analytical and critical approach to explore the ways in which transitional justice processes could be enhanced. Before concluding the chapter, some important points will be remarked. Firstly, transitional justice mechanisms must be implemented complementarily to have a full-fledged and successful transitional process. This holistic approach has been supported by many scholars.³⁵⁹ As depicted in this chapter, material reparations can be seen as blood money if they are granted without recognition or an apology, or truth-telling can lead to disappointment of victims if they receive no reparation. Amnesties could be considered as an escape for the perpetrators if they are not complemented by other justice mechanisms. Therefore, complementarity is critical for transitional justice mechanisms. In addition, these mechanisms are often designed ambitiously and make promises beyond their capacity. So, transitional justice mechanisms should be designed and applied in a realistic manner to prevent disappointment among victims.

Another critical point is that all transitional societies have different historical, political, social and economic conditions and they require context-specific solutions.³⁶⁰ Transitional justice mechanisms should not be applied through a one-size-fits-all approach. Likewise, adopting a grassroots approach in the transitional justice process can help in finding the best mechanisms to implement in a particular society. Understanding the context can be achieved by opening the channels for participation of local actors which may also empower them. The importance of choosing the right approaches is elaborated in the fifth chapter's section 5 in detail. Finally, transitional justice must be expanded to address violations of ESCR to achieve sustainable peace and stability.

³⁵⁹ Boraine, *Transitional Justice: A Holistic Interpretation*, pp.17-28.; Van Zyl, *Promoting Transitional Justice*, p.226.; Mobekk, *Transitional Justice and Security Sector Reform*, p.76.; De Greiff, P. (2009) 'Establishing Links Between DDR and Reparations' in Patel, A.C., De Greiff, P. and Waldorf, L. (eds), *Disarming the Past: Transitional Justice and Ex-combatants*, New York: Social Science Research Council, pp.143-144.; Hazan, *Measuring the impact of punishment and forgiveness*, p.20.; Thoms et al., *The Effects of Transitional Justice Mechanisms*, p.17.

³⁶⁰ Daly, E. (2001) Transformative justice: Charting a path to reconciliation, *International Legal Perspectives*, Vol.12, No.1-2, p.77.

Chapter 2: Economic, Social and Cultural Rights

1. Introduction

The first chapter outlined two main criticisms surrounding transitional justice: the “distanced justice” and failure of addressing socioeconomic wrongs. Whereas the former criticism has an indirect connection, the latter has a direct link with the second chapter. The failure of addressing ESCR is associated with development which is also a key thing to remember when considering the whole argument of the thesis. Examining ESCR and development in the context of transitional justice is critical for answering the research question of the thesis: Which transitional justice mechanisms can be used to address the violations and promotion of ESCR in the Kurdish region of Turkey, and how?

To date, violations of CPR have received most of the attention in transitional justice processes, and violations of ESCR have often been left un(der)addressed. However, there have been calls from academics and practitioners to include violations of ESCR in transitional justice processes.³⁶¹ These arguments and counterarguments have been elaborated in the first chapter. The second chapter will begin with defining ESCR in the context of international law and continue analysing the neglect towards ESCR by exploring the misconceptions about them. Then, elements and obligations of ESCR will be elaborated. Finally, the significance of addressing ESCR violations in transitional justice will be delineated, and the chapter will be concluded by discussing how ESCR abuses can be addressed in transitional processes, and development can be integrated in transitional justice. These analyses will show the significance of incorporating ESCR in transitional justice and contribute to laying the foundation for proving that Turkey needs to address violations of ESCR in a future transitional justice process.

2. Economic, Social and Cultural Rights

2.1. ESCR in International Law

There are various definitions of ESCR. According to the OHCHR, they are defined as “those human rights relating to the workplace, social security, family life, participation in cultural life, and access to housing, food, water, health care and education.”³⁶² Workers’ rights, the right to social security and social protection, the right to housing, the right to food and water, the right

³⁶¹ Schmid and Nolan, *Do No Harm*, p.363.; Arbour, *Economic and Social Justice*, pp.1-27.; Laplante, *Transitional Justice and Peace Building*, pp.331–355.; Waldorf, *Anticipating the Past*, pp.171-186.; Miller, *Effects of Invisibility*, pp.266-291.

³⁶² The Office of the United Nations High Commissioner for Human Rights – OHCHR (2008) *Frequently Asked Questions on Economic, Social and Cultural Rights*, Fact Sheet No.33, p.1.

to health, the right to education and cultural rights are some examples of ESCR.³⁶³ These rights have been expressed in various international and regional treaties.³⁶⁴ Minkler depicts their importance by stating “ES rights enable each and every individual to claim sufficient resources to live a dignified life no matter what a country’s average income or income distribution might be.”³⁶⁵ So, ESCR are necessary for people to maintain a dignified life as a human being.

CPR and ESCR are recognised in the 1948 UDHR which considered them as “equal and inalienable rights”.³⁶⁶ Yet, two separate covenants were adopted rather than one single covenant due to various ideological and political reasons.³⁶⁷ Even though there has been no distinction, separation or hierarchy among human rights in the UDHR, historically, ESCR have been neglected both in theory and practice as they have been given a secondary status vis a vis CPR. Due consideration has not been given to ESCR, and this negligence could be observed today.³⁶⁸ Even if it is still inadequate and much weaker compared to CPR, a growing attention is being given to ESCR in national and international laws and hopefully this will also affect the implementation of these rights.³⁶⁹ In 1993, the equal importance of all human rights has been

³⁶³ OHCHR Fact Sheet No.33, p.2.; Jung, C. and Rosevear, E. (2011) *Economic and Social Rights in Developing Country Constitutions Preliminary Report on the TIESR Dataset*, Toronto Initiative for Economic and Social Rights (TIESR), pp.1-53.

³⁶⁴ International Convention on the Elimination of All Forms of Racial Discrimination (1965) International Covenant on Economic, Social and Cultural Rights (1966), Convention on the Elimination of All Forms of Discrimination against Women (1979), Convention on the Rights of the Child (1989), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), Convention on the Rights of Persons with Disabilities (2006), European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), its First Protocol (1952), European Social Charter (1961) and Revised European Social Charter (1996), American Convention on Human Rights (1969), and Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (1988), African Charter on Human and Peoples’ Rights (1981), African Charter on the Rights and Welfare of the Child (1990), and Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (2003).

³⁶⁵ Minkler, L. (2013) ‘Introduction: Why Economic and Social Human Rights?’ in Minkler, L. (ed) *The State of Economic and Social Human Rights: A Global Overview*, New York: Cambridge University Press, p.2.

³⁶⁶ The Universal Declaration of Human Rights. Available at: <http://www.un.org/en/documents/udhr/index.shtml> (access date: 17.07.2018)

³⁶⁷ Wallace, R. (1997) *International Law (3rd edition)*, London: Sweet & Maxwell, p.209.; The Office of the United Nations High Commissioner for Human Rights - OHCHR (2005) *Economic, Social and Cultural Rights: Handbook for National Human Rights Institutions*, Professional Training Series No.12, p.VII.

³⁶⁸ Ssenyonjo, M. (2009) *Economic, Social and Cultural Rights in International Law*, Oxford and Oregon: Hart Publishing, p.4.; Eide, A. (2000) ‘Economic and Social Rights’ in Symonides, J. (ed) *Human Rights: Concept and Standards*, Aldershot, Ashgate, and Paris: UNESCO, p.112.; Leckie, S. (1998) Another Step towards Indivisibility: Identifying the Key Features of Violations of Economic, Social and Cultural Rights, *Human Rights Quarterly*, Vol.20, No.1, pp.81-82.; Fredman, S. (2008) *Human rights transformed: Positive rights and positive duties*, Oxford: Oxford University Press, p.66.; Craven, M. C. R. (2002) *The International Covenant on Economic, Social, and Cultural Rights: A perspective on its development*, Oxford: Clarendon Press, p.352.

³⁶⁹ Minkler, *Introduction: Why Economic and Social Human Rights*, p.2.; Forsythe, D. P. (2018) *Human Rights in International Relations (Fourth Edition)*, Cambridge: Cambridge University Press, pp.110-114.; Schutter, O. (2013) *Economic, Social and Cultural Rights as Human Rights: An Introduction*, The

reasserted at the World Conference on Human Rights in Vienna.³⁷⁰ The Vienna Declaration stated: “All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.”³⁷¹ Yet, this reaffirmation has not improved the implementation of ESCR considerably. To ensure that ESCR are receiving adequate attention just as CPR, the crux of the problem needs to be scrutinised.

2.2. The Neglect of ESCR

Historically, CPR and ESCR have been interpreted and implemented differently. It is asserted that the separation of ESCR and CPR goes back to the Cold War. Ssenyondo notes “the real driving force behind the distinction was based not on legal or empirical rationality but rather on Cold War politics.”³⁷² During the Cold War, there were two power blocs in the world, the Western and the Eastern blocs. While the former prioritised CPR, the latter bloc acted as an advocate of ESCR.³⁷³ The UN General Assembly aimed at including both ESCR and CPR in a single covenant and formed a draft between 1949 and 1951. However, this approach changed in 1952 because of Cold War politics. The decision was made under the influence of the Western-dominated Commission and that resulted in two separate covenants.³⁷⁴ Yet, some scholars do not agree with this historical explanation and claim that the Western countries have not been against the protection of ESCR.³⁷⁵ Moreover, although CPR are often considered as more important than ESCR, there have been calls from different actors to acknowledge the priority of ESCR over CPR.

Interdisciplinary Research Cell in Human Rights (CRIDHO) Working Paper, 2013/2, p.7.; O’Cinneide, C. (2015) ‘The Constitutionalization of Social and Economic Rights’ in Garcia, H. A., Klare, K. and Williams, L. A. (eds) *Social and Economic Rights in Theory and Practice: Critical Inquiries*, Abingdon, Oxon; New York: Routledge, pp.258-268.

³⁷⁰ OHCHR Fact Sheet No.33, p.7.

³⁷¹ Vienna Declaration and Programme of Action (Adopted by the World Conference on Human Rights in Vienna on 25 June 1993), Paragraph 5. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx> (access date: 18.07.2018)

³⁷² Ssenyondo, *ESCR in International Law*, p.12.

³⁷³ Programme on Women’s Economic, Social and Cultural Rights (PWESCR) (2015), *International Covenant on Economic, Social and Cultural Rights: A Handbook*, New Delhi: PWESCR, pp.6-7.; Eide, *Economic and Social Rights*, p.111.; Fredman, *Human rights transformed*, pp.1-2.

³⁷⁴ Ssenyondo, *ESCR in International Law*, pp.26-27.

³⁷⁵ Whelan, D. and Donnelly, J. (2007) The West, Economic and Social Rights, and the Global Human Rights Regime: Setting the Record Straight, *Human Rights Quarterly*, Vol.29, No.4, pp.908-949.; Dennis, M. J. and Stewart, D. P. (2004) Justiciability of Economic, Social, and Cultural Rights: Should There be an International Complaints Mechanism to Adjudicate the Rights to Food, Water, Housing, and Health, *American Journal of International Law*, Vol.98, No.3, pp.462-515.; Cole, W. (2013) Strong Walk and Cheap Talk: The Effect of the International Covenant of Economic, Social, and Cultural Rights on Policies and Practices, *Social Forces*, Vol.92, No.1, pp.165-194.

It is claimed that if a person lacks the “most basic needs” for survival, s/he would be unable to enjoy CPR.³⁷⁶

Recognition and implementation of ESCR have been and still are weak compared to CPR.³⁷⁷ Chapman remarks that “little attention and few resources” have been paid to achieving and protecting ESCR.³⁷⁸ Nevertheless, the neglect of ESCR is being criticised more, and positive steps are being taken towards the realisation of ESCR at domestic and international levels.³⁷⁹ Some prominent human rights organisations, such as Human Rights Watch (HRW) and Amnesty International (AI), have not considered ESCR as important as CPR historically,³⁸⁰ but this has tended to change recently as these organisations started to focus on promotion and protection of ESCR as well.³⁸¹ Although, exploring the reasons for the initial neglect of these organisations towards ESCR and for the change which happened recently is beyond the scope of this section, it should be noted that they have a true potential to contribute to the promotion and protection of ESCR.³⁸²

2.2.a. Arguments for the neglect

Human rights are categorised into three group of rights (which correspond to the three notions of the French Revolution: Liberty, Equality and Fraternity) by a Czech jurist, Karel Vasak, in 1977 and this categorisation has been widely accepted in international law, both in theory and

³⁷⁶ Donnelly, J. (1981) Recent trends in UN human rights activity: Description and polemic, *International Organization*, Vol.35, No.4, pp.633-655.; Howard, R. (1983) The Full-Belly Thesis: Should Economic Rights Take Priority over Civil and Political Rights? Evidence from Sub-Saharan Africa, *Human Rights Quarterly*, Vol.5, No.4, pp.468-469.; Macklem, P. (2015) Human rights in international law: Three generations or one, *London Review of International Law*, Vol.3, No.1, p.71.

³⁷⁷ Eide, *Economic and Social Rights*, p.110.; Leckie, *Another Step towards Indivisibility*, pp.81-82.; Forsythe, *Human Rights in International Relations*, pp.111-114.

³⁷⁸ Chapman, A. (1996) A "Violations Approach" for Monitoring the International Covenant on Economic, Social and Cultural Rights, *Human Rights Quarterly*, Vol.18, No.1, p.27.

³⁷⁹ Eide, *Economic and Social Rights*, pp.156-158.; Glasius, M. (2016) 'Global Civil Society and Human Rights' in Goodhart, M. (ed) *Human Rights: Politics and Practice (Third edition)*, New York: Oxford University Press, pp.152-153.; Schutter, *ESCR as Human Rights*, pp.7-8.; Byrnes, A. (2010) Second-class rights yet again? Economic, social and cultural rights in the report of the National Human Rights Consultation, *University of New South Wales Law Journal*, Vol.33, No.1, pp.201-204.

³⁸⁰ Glasius, *Global Civil Society and Human Rights*, pp.152-153.; Alston, P. and Goodman, R. (2013) *International human rights: Text and materials*, Oxford: Oxford University Press, pp.292-294.; Schmid, E. (2015) *Taking Economic, Social and Cultural Rights Seriously in International Criminal Law*, Cambridge: Cambridge University Press, p.9.

³⁸¹ Roth, K. (2004) Defending Economic, Social and Cultural Rights: Practical Issues Faced by an International Human Rights Organization, *Human Rights Quarterly*, Vol.26, No.1, pp.63-73.; Rubenstein, L. S. (2004) How International Human Rights Organizations Can Advance Economic, Social and Cultural Rights: A Response to Kenneth Roth, *Human Rights Quarterly*, Vol.26, No.4, pp.845-865.

³⁸² Roth, *Defending ESCR*, pp.63-73.; Rubenstein, *How International Human Rights Organizations Can Advance ESCR*, pp.845-865.; Robinson, F. (2003) NGOs and the Advancement of Economic and Social Rights: Philosophical and Practical Controversies, *International Relations*, Vol.17, No.1, pp.79-96.; Roth, K. (2004) Response to Leonard S. Rubenstein, *Human Rights Quarterly*, Vol.26, No.4, pp.873-878.

practice since then. CPR are the first, ESCR are the second, and group rights are considered as the third generation of human rights.³⁸³ In view of this classification, CPR are viewed as negative rights which oblige states not to interfere individuals' enjoyment of these rights; ESCR are considered as positive rights which require states to take action; group rights are regarded as collective rights which can be exercised not by individuals, only as groups with a combination of states and institutions.³⁸⁴ This classification is questioned by numerous scholars.³⁸⁵ It is asserted that considering ESCR as second generation of human rights might be understood as there is a hierarchy among human rights. So, some could claim that they should only be of concern after the achievement of CPR.³⁸⁶ Furthermore, it is noted that separating the emergence of human rights into phases chronologically is problematic. They did not arise in three distinct phases and did not evolve sequentially.³⁸⁷ Although it is not easy to determine why Vasak's concept was accepted so broadly despite the vagueness of its basis, Jensen contemplated that it may have been widely accepted because it justified the idea that there is a division between CPR and ESCR.³⁸⁸

Critical arguments are more plausible as classification of human rights is problematic. The UDHR did not classify or separate human rights. More importantly, enjoyment of each human right depends on enjoyment of the others.³⁸⁹ For instance, the right to life cannot be enjoyed if people are dying from famines. It is noted that most of the time, famines (which amount to death) take place because of intentioned policies of states.³⁹⁰ Therefore, CPR have a significant influence on

³⁸³ Vasak, K. (1977) A Thirty-Year Struggle: The Sustained Efforts to give Force of Law to the UDHR, *The UNESCO Courier*, p.29.; Wallace, *International Law*, p.205.; Macklem, *Human rights in international law*, pp.61-92.

³⁸⁴ Vasak, *A Thirty-Year Struggle*, p.29.; Ssenyonjo, *ESCR in International Law*, pp.10-11.; Macklem, *Human rights in international law*, p.68.

³⁸⁵ Daci, J. (2014) Justiciability of Economic, Social and Cultural Rights, *Academicus: International Scientific Journal*, Vol.9, No.9, p.55.; Macklem, *Human rights in international law*, pp.61-92.; Shue, H. (1980) *Basic rights: Subsistence, affluence, and U.S. foreign policy*, Princeton, New Jersey: Princeton University Press.; van den Herik, L. (2014) 'Economic, Social, and Cultural Rights: International Criminal Law's Blind Spot?' in Riedel, E., Giacca, G., and Golay, C. (eds) *Economic, social, and cultural rights: Contemporary issues and challenges*, Oxford: Oxford University Press, pp.343-366.; Alston, P. (1982) A Third Generation of Solidarity Rights: Progressive Development or Obfuscation of International Human Rights Law, *Netherlands International Law Review*, Vol.29, No.3, pp.307-322.

³⁸⁶ Ssenyonjo, *ESCR in International Law*, pp.11-12.; Schmid, *Taking ESCR Seriously*, p.24.; Alston, *A Third Generation of Solidarity Rights*, pp.316-317.

³⁸⁷ Ssenyonjo, *ESCR in international Law*, p.12.; Macklem, *Human rights in international law*, pp.62-68.

³⁸⁸ Jensen, S. (2017) *Putting to rest the Three Generations Theory of human rights*, Open Global Rights. Available at: <https://www.openglobalrights.org/putting-to-rest-the-three-generations-theory-of-human-rights/> (access date: 20.07.2018).

³⁸⁹ Macklem, *Human rights in international law*, p.71.; McChesney, A. (2000) *Promoting and Defending Economic, Social and Cultural Rights: A Handbook*, Washington, DC.: American Association for the Advancement of Science, pp.21-22.; Daci, *Justiciability of ESCR*, p.58.

³⁹⁰ Mourey, A. (1991) Famine and War, *International Review of the Red Cross*, Vol.31, No.284, p.551.; Daci, *Justiciability of ESCR*, p.62.

the enjoyment of ESCR. Political pressure is often needed to prompt states to act for eliminating poverty. CPR are significant to produce this pressure.³⁹¹ So, human rights are interdependent, and ignoring ESCR violations may well prevent individuals from enjoying other human rights. Moreover, violations of CPR and ESCR may produce the exact same results. Schmid remarked: “The extremist policies of the Khmer Rouge resulted in the worst fabricated famine in recent history. The first Khmer Rouge trial at the Extraordinary Chambers in the Courts of Cambodia has been criticised for focusing on executions and detention in the notorious Camp S-21, to the exclusion of starvation or other abuses related to ESCR.”³⁹² In this case, both type of actions (execution and starvation) should have been addressed at the Court because the results were the same.

ESCR have often been considered as too ambiguous compared to CPR, but this approach has been criticised by many.³⁹³ It must be borne in mind that for almost 70 years, CPR have been studied and implemented. However, ESCR did not get a similar level of attention and implementation.³⁹⁴ Alston states that human rights organisations and individuals (judges, human rights lawyers, academicians etc.) have been contemplating the definition and implementation of CPR for years.³⁹⁵ If the same amount of attention had been given to ESCR, there could be a vast literature and a settled practice on ESCR as well. It is also claimed that addressing and monitoring ESCR are difficult since they are too vague and establishing fixed and universal standards for ESCR would not work since all states have different contexts and resources.³⁹⁶ It is asserted that the benchmarks need to be different, and this may affect their justiciability.³⁹⁷ However, some ESCR are clearer than CPR. For instance, not to evict people arbitrarily from their homes or not to ban any group of people from attending schools are quite

³⁹¹ Fredman, *Human rights transformed*, p.67.

³⁹² Schmid, *Taking ESCR Seriously*, pp.30-31.

³⁹³ Ssenyonjo, *ESCR in International Law*, p.5.; Leckie, *Another Step towards Indivisibility*, pp.87-88.; van den Herik, *Economic, Social, and Cultural Rights*, p.349.; OHCHR *Fact Sheet No.33*, p.9.

³⁹⁴ Cole, *Strong Walk and Cheap Talk*, p.168.

³⁹⁵ Alston, P. (1997) Making Economic and Social Rights Count: A Strategy for the Future, *The Political Quarterly*, Vol.68, No.2, pp.191-192.

³⁹⁶ Schmid, *Taking ESCR Seriously*, p.31.; Alston, *Making ESR Count*, p.189.; Scott, C. and Macklem, P. (1992) Constitutional Ropes of Sand or Justiciable Guarantees? Social Rights in a New South African Constitution, *University of Pennsylvania Law Review*, Vol.141, No.1, pp.44-45.; Chapman, *A Violations Approach*, pp.23-66.

³⁹⁷ Alston, *Making ESR Count*, p.193.; Byrnes, *Second-class rights*, pp.218-220.; Whelan and Donnelly, *The West, Economic and Social Rights*, pp.934-935.; Dennis and Stewart, *Justiciability of ESCR*, p.473.; Donnelly, *Recent trends in UN human rights activity*, pp.646-648; Freeman, M. (2013) ‘Conclusion: Reflections on the Theory and Practice of Economic and Social Rights’ in Minkler, L. (ed) *The State of Economic and Social Human Rights: A Global Overview*, New York: Cambridge University Press, p.370.; Alston, *Making ESR Count*, p.193.

clear and can be applied universally.³⁹⁸ Besides, some CPR are ambiguous too.³⁹⁹ Many CPR also require interpretation such as freedom of speech or freedom from torture. For instance, the limits of freedom of speech have been argued in the context of hate speech, racism and religion as there are different views about what constitutes a breach of this right.⁴⁰⁰ In short, vagueness should not be an excuse for failing to realise and implement ESCR.

ESCR are often considered as ideals and aspirations rather than actual justiciable rights like CPR. Denying CPR is seen as a violation but denying people's ESCR is often considered as "social injustice".⁴⁰¹ Yet, denials of ESCR may constitute grave human rights violations.⁴⁰² Forced eviction is considered as a crime against humanity, whereas starvation constitutes a war crime under the Rome Statute.⁴⁰³ Famines and forced displacement culminated in far more deaths in East Timor compared to killings.⁴⁰⁴ There are numerous examples (in Ukraine, Sudan, North Korea, Ethiopia) in which famine and forced displacement amounted to gross human rights violations.⁴⁰⁵ Why should ESCR (the right to housing, the right to food and the right to health etc.) be considered as aspirations and ideals when their violations result in death and destruction? Yet, denial of ESCR are often seen as structural violence whilst denial of CPR is considered as discrete abuse.⁴⁰⁶ Unlike CPR violations, ESCR violations are considered as indirect abuses. Especially in post-conflict contexts, ESCR violations are associated with wider social injustices. There is a common belief that ESCR cannot be violated by direct actions and do not

³⁹⁸ An example: *Olga Tellis and ors Vs. Bombay Municipal Corporation*, 1985 (The Supreme Court of India).

³⁹⁹ *OHCHR Fact Sheet No.33*, p.30.; Alston, *Making ESR Count*, p.191.

⁴⁰⁰ Glass, M. (1978) Anti-Racism and Unlimited Freedom of Speech: An Untenable Dualism, *Canadian Journal of Philosophy*, Vol.8, No.3, pp.559-575.; Bleich, E. (2013) Freedom of Expression versus Racist Hate Speech: Explaining Differences Between High Court Regulations in the USA and Europe, *Journal of Ethnic and Migration Studies*, Vol.40, No.2, pp.283-300.; Tomlins, S. (2015) The Freedom to Offend? How the "Mohammad Cartoon Controversy" Has Influenced Public Debate on Canada's Hate Speech Regulation, *Journal of Church and State*, Vol.57, No.1, pp.44-71.; Yong, C. (2011) Does Freedom of Speech Include Hate Speech, *Res Publica*, Vol.17, No.4, pp.385-403.; Keane, D. (2008) Cartoon Violence and Freedom of Expression, *Human Rights Quarterly*, Vol.30, No.4, pp.845-875.; Kahn, R. A. (2010) Flemming Rose, the Danish cartoon controversy, and the new European freedom of speech, *California Western International Law Journal*, Vol.40, No.2, pp.253-290.

⁴⁰¹ Beitz, C. and Goodin, R. (2011) 'Introduction: Basic Rights and Beyond' in Beitz, C. and Goodin, R. (eds) *Global Basic Rights*, New York: Oxford University Press, p.11.; Dennis and Stewart, *Justiciability of ESCR*, p.465.; Schmid, *Taking ESCR Seriously*, p.23.; van den Herik, *Economic, Social, and Cultural Rights*, p.343.; Scott and Macklem, *Constitutional Ropes of Sand*, p.18.

⁴⁰² Ssenyonjo, *ESCR in International Law*, p.14.

⁴⁰³ Rome Statute of the International Criminal Court, Article 7 and Article 8.

⁴⁰⁴ The CAVR, *Chega*, p.44.

⁴⁰⁵ Marcus, D. (2003) Famine crimes in international law, *The American Journal of International Law*, Vol.97, No.2, pp.245-281.; Skogly, S. (2001) Crimes Against Humanity - Revisited: Is There a Role for Economic and Social Rights, *The International Journal of Human Rights*, Vol.5, No.1, pp.58-80.; van den Herik, *Economic, Social, and Cultural Rights*, pp.343-366.

⁴⁰⁶ Schmid, *Taking ESCR Seriously*, pp.29-30.; Schmid and Nolan, *Do No Harm*, pp.371-372.

constitute serious crimes.⁴⁰⁷ Many transitional justice scholars hold similar views, although they do not necessarily claim that ESCR violations are exclusively indirect.⁴⁰⁸ They often regard ESCR violations as structural injustice and root causes. This is not to say that these perceptions are wrong. However, it is crucial to accept that ESCR may also be violated directly and constitute gross human rights violations. If a state forcibly evicts people from their homes, this is a direct and discrete abuse of ESCR.⁴⁰⁹ Moreover, even though ESCR have often been recognised as collective rights, they may also appear as individual rights as in the case of forced displacements. In such cases, individuals are denied their right to adequate housing and that kind of right becomes an individual right.⁴¹⁰ As depicted in the fourth and fifth chapters, forced displacement has been widespread in Turkey, Peru and East Timor. So, considering ESCR violations as discrete and direct abuses is critical for integrating these rights in transitional justice processes.

It is often presumed that ESCR do not entail strict and judicially enforceable obligations like CPR, and they are not justiciable rights.⁴¹¹ While CPR are considered as “legal” rights, ESCR are seen as “programmatic” rights. It is explained that the “ESCR are not justiciable” argument does not have a basis in the covenants or in the nature of ESCR.⁴¹² Article 8 of the UDHR foresees “an effective remedy by the competent national tribunals” for human rights violations.⁴¹³ As the UDHR does not make a distinction between rights, ESCR violations can also be adjudicated in courts. Recognising that some ESCR abuses are direct and discrete violations is critical for their justiciability. Considering ESCR violations as social injustice may be interpreted as them being the result of misguided policies or just unfortunate conditions. However, these abuses could be

⁴⁰⁷ Leckie, *Another Step towards Indivisibility*, pp.82-87.; Schmid, *Taking ESCR Seriously*, p.37.; Schmid and Nolan, *Do No Harm*, pp.371-374.

⁴⁰⁸ Laplante, *Transitional Justice and Peace Building*, pp.331-355; Muvungi, I. (2009) Sitting on Powder Kegs: Socioeconomic Rights in Transitional Societies, *International Journal of Transitional Justice*, Vol.3, No.2, pp.163-182.; Buckley-Zistel, S. (2009) *Connecting Transitional Justice and Development* (paper presented at the conference ‘The Contribution of Civil Society and Victim Participation in Transitional Justice Processes’ Marburg, Germany, 2 December 2009).; Waldorf, *Anticipating the Past*, pp.171-186.; Carranza, R. (2008) Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes, *International Journal of Transitional Justice*, Vol.2, No.3, pp.310-330.

⁴⁰⁹ Schmid and Nolan, *Do No Harm*, pp.374-376.; For exemplary cases see: Olga Tellis and ors Vs. Bombay Municipal Corporation, 1985 (the Supreme Court of India).; Port Elizabeth Municipality v Various Occupiers, 2004 (The Constitutional Court of South Africa).

⁴¹⁰ OHCHR *Fact Sheet No.33*, p.8.

⁴¹¹ Whelan and Donnelly, *The West, Economic and Social Rights*, p.933.; Eide, *Economic and Social Rights*, p.112.; Cole, *Strong Walk and Cheap Talk*, p.168.; Byrnes, *Second-class rights*, pp.200-201.

⁴¹² Daci, *Justiciability of ESCR*, p.55.; The Committee on Economic, Social and Cultural Rights (CESCR), General Comment No.9 (1998) “*Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights*” E/C.12/1998/24, par.10.

⁴¹³ The UDHR, Article 8: “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”

results of human agency/actions.⁴¹⁴ That means there is a responsibility of an agent who must be sanctioned. Moreover, objecting to the justiciability of ESCR undermines “the capacity of the courts to protect the rights of the most vulnerable and disadvantaged groups in society.”⁴¹⁵ Daci remarks that ESCR “would be just illusory if they wouldn’t be justiciable.”⁴¹⁶ Even in the time of war, ESCR cannot be suspended under the Geneva Conventions.⁴¹⁷ The enforceability of human rights is critical because violations need to be redressed. Although there are other ways (administrative, financial, social etc.) to promote and protect ESCR, judicial enforcement is fundamental for the realisation of these rights.⁴¹⁸ There are numerous cases in which violations of ESCR were brought in front of courts.⁴¹⁹ So, ESCR are justiciable rights and the violations of ESCR can be brought to courts.

States are obliged to realise ESCR progressively as it is assumed that their implementation requires resources.⁴²⁰ While states are required “to respect and to ensure” CPR, they only need to “take steps ... to the maximum of its available resources, with a view to achieving progressively the full realization” of ESCR.⁴²¹ It is assumed ESCR are “equality-promoting” positive rights which require states to take action to realise them, whereas CPR are “freedom-protecting” negative rights which oblige states with inaction as states only need to restrain themselves from interfering in individuals’ rights.⁴²² Yet, this approach is challenged by several scholars.⁴²³ It was explained that ESCR, like CPR, entail both positive and negative actions of

⁴¹⁴ Schmid, *Taking ESCR Seriously*, p.37.

⁴¹⁵ CESCR General Comment No.9, *Substantive issues arising*, par.10.

⁴¹⁶ Daci, *Justiciability of ESCR*, p.55.

⁴¹⁷ The Geneva Conventions of 12 August 1949.

⁴¹⁸ OHCHR *Fact Sheet No.33*, p.31.; Daci, *Justiciability of ESCR*, p.60.; The Committee on Economic, Social and Cultural Rights (CESCR) General Comment 3. (General Comments) *The nature of States parties obligations (Art. 2, par.1 of the Covenant)* 12/14/1990, par.7.

⁴¹⁹ *Government of the Republic of South Africa v Grootboom*, 2000 (The Constitutional Court of South Africa).; *Zander v. Sweden*, 1993 (The European Court of Human Rights).; *Lopez Ostra v. Spain*, 1994 (The European Court of Human Rights).; *San Antonio Independent School District v. Rodriguez*, 1973 (the Supreme Court of the United States).; *D.H. and Others v the Czech Republic*, 2007 (The European Court of Human Rights).

⁴²⁰ Craven, *International Covenant on ESCR*, p.130.; Fukuda-Parr, S., Lawson-Remer, T. and Randolph, S. (2009) An Index of Economic and Social Rights Fulfilment: Concept and Methodology, *Journal of Human Rights*, Vol.8, No.3, pp.197-199.; Whelan and Donnelly, *The West, Economic and Social Rights*, p.935.

⁴²¹ International Covenant on Civil and Political Rights, Article 2 (1).; International Covenant on Economic, Social and Cultural Rights, Article 2 (1).

⁴²² Beitz and Goodin, *Introduction: Basic Rights and Beyond*, p.11.; Vasak, *A Thirty-Year Struggle*, p.29.; Ssenyonjo, *ESCR in International Law*, pp.10-11.; Macklem, *Human rights in international law*, p.68.; Fredman, *Human rights transformed*, p.66.

⁴²³ Macklem, *Human rights in international law*, pp.69-70., Shue, *Basic rights*, pp.37-40.; Ssenyonjo, *ESCR in International Law*, pp.9-12.; Scott and Macklem, *Constitutional Ropes of Sand*, pp.1-148.; van den Herik, *Economic, Social, and Cultural Rights*, pp.350-351.; Schmid, *Taking ESCR Seriously*, p.27.; Fredman, *Human rights transformed*.

states.⁴²⁴ For instance, not to displace people from their homes and not to contaminate water resources are negative obligations of states regarding ESCR.⁴²⁵ On the other hand, some CPR oblige states to act.⁴²⁶ For instance, the ICCPR describes necessary prison conditions in the 10th Article including separation of juveniles from adults and separation of accused and convicted individuals.⁴²⁷ It should be comprehended that states need to take positive actions (such as building prisons) to comply with the ICCPR's articles.⁴²⁸ Moreover, there is a common belief that only violations of CPR constitute serious crimes, and ESCR violations are not as serious as CPR.⁴²⁹ However, several scholars object to this view and state that ESCR violations may also constitute most serious human rights violations.⁴³⁰

It is argued that ESCR are costly, and many states do not have enough resources to meet requirements of these rights immediately.⁴³¹ However, ESCR are not necessarily costly. Some ESCR do not require resources such as not forcibly displacing people, whereas some others require resources as in primary education under international law.⁴³² Besides, some CPR are costly too. Contrary to common belief, they are not cost-free.⁴³³ For instance, to ensure the right to freedom from torture, states need to establish a well-functioning security and justice system with various institutions such as courts, prisons etc. Security forces and these institutions need to be monitored to prevent violations. Establishing these systems with monitoring mechanisms is also costly.⁴³⁴ Some scholars argue that progressive realisation also applies to CPR as

⁴²⁴ Ssenyonjo, *ESCR in International Law*, p.12.; Macklem, *Human rights in international law*, pp.69-70.; Schmid, *Taking ESCR Seriously*, p.27.; van den Herik, *Economic, Social, and Cultural Rights*, pp.350-351.; Centre of Human Rights (1998) The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, *Human Rights Quarterly*, par.6, Vol.20, No.3.

⁴²⁵ Fredman, *Human rights transformed*, p.68.

⁴²⁶ Shue, *Basic rights*, pp.37-38.; Fredman, *Human rights transformed*, pp.1-2.

⁴²⁷ International Covenant on Civil and Political Rights.

⁴²⁸ Fredman, *Human rights transformed*, p.69.; Byrnes, *Second-class rights*, p.200.

⁴²⁹ Eide, *Economic and Social Rights*, p.112.; Ainley, K. (2008) 'Individual Agency and Responsibility for Atrocity' in Renee, J. (ed.) *Confronting evil in international relations: ethical responses to problems of moral agency*, Basingstoke: Palgrave Macmillan, pp.37-60.

⁴³⁰ Skogly, *Crimes Against Humanity – Revisited*, pp.58-80.; Marcus, D. (2006) The normative development of socioeconomic rights through supranational adjudication, *Stanford Journal of International Law*, Vol.42, No.1, pp.53-102.; Drumbl, M. A. (2009) *Accountability for Property Crimes and Environmental War Crimes, Prosecution Litigation, and Development*, New York: International Centre For Transitional Justice.; van den Herik, *Economic, Social, and Cultural Rights*, pp.343-366.

⁴³¹ Minkler, *Introduction: Why Economic and Social Human Rights*, p.8.; Beitz and Goodin, *Introduction: Basic Rights and Beyond*, p.11.; McChesney, *Promoting and Defending ESCR*, pp.18-19.; Fredman, *Human rights transformed*, pp.80-81.

⁴³² The Universal Declaration of Human Rights (Article 26).; The International Covenant on Economic, Social and Cultural Rights (Articles 13-14).; UNESCO Convention against Discrimination in Education (Article 4).

⁴³³ Byrnes, *Second-class rights*, p.200.; OHCHR Fact Sheet No.33, p.9.

⁴³⁴ Shue, *Basic rights*, pp.37-38.; Alston, *Making ESR Count*, pp.189-190.

protection of these rights often cannot be achieved overnight in many countries.⁴³⁵ Furthermore, “the key issue is not the amounts spent, but rather how they are spent.”⁴³⁶ A state with vast resources may allocate little to meet ESCR whereas another state with relatively fewer resources may make a better effort to meet ESCR.⁴³⁷ For instance, Kerala, a poor Indian state, allocates an exceptional amount of its scarce resources to education and health services.⁴³⁸ Likewise, the Brazilian Government’s social initiative *Bolsa Familia* is a remarkable practice to realise people’s ESCR. The government grants monthly payments to poor families for “keeping their children in school and taking them for regular health checks”. Similar initiatives have been applied in almost 20 countries (including Turkey, Morocco, Chile, South Africa) after the success of *Bolsa Familia*.⁴³⁹ So, the costs argument should not restrain states and the international community from promoting and advocating for ESCR. So, Turkey should not neglect redressing and realising ESCR (particularly the right to housing, the right to food and the right to health which are often violated during forced displacement) by claiming the cost argument because realising and redressing CPR also require resources.

States often utilise the “to the maximum of its available resources” standard as an escape clause for their inaction.⁴⁴⁰ Yet, this understanding is criticised because states must take all possible steps to meet ESCR obligations expeditiously.⁴⁴¹ The Limburg Principles explicitly emphasise that all states are under “an obligation to begin immediately to take steps towards full realization” of ESCR.⁴⁴² Progressive realisation cannot be considered as an excuse for not conforming to the Covenant’s obligations. The Limburg Principles states that: “In determining whether adequate measures have been taken for the realization of the rights recognised in the Covenant attention shall be paid to equitable and effective use of and access to the available resources.”⁴⁴³ States

⁴³⁵ Alston, P. and Quinn, G. (1987) The Nature and Scope of States Parties’ Obligations under the International Covenant on Economic, Social and Cultural Rights, *Human Rights Quarterly*, Vol.9, No.2, p.172.; Jhabvala, F. (1985) Domestic Implementation of the Covenant on Civil and Political Rights, *Netherlands International Law Review*, Vol.32, No.3, pp.467-475.

⁴³⁶ OHCHR Fact Sheet No.33, p.34.

⁴³⁷ OHCHR Fact Sheet No.33, pp.33-34.; McChesney, *Promoting and Defending ESCR*, p.38.

⁴³⁸ Minkler, *Introduction: Why Economic and Social Human Rights*, p.9.

⁴³⁹ The World Bank (2007) *Bolsa Familia: Changing the Lives of Millions in Brazil*, World Bank Feature Story, August 22, 2007. Available at: <http://www.worldbank.org/en/news/feature/2007/08/22/bolsa-familia-changing-the-lives-of-millions-in-brazil> (access date: 17.07.2018).

⁴⁴⁰ OHCHR Professional Training Series, pp.11-12.

⁴⁴¹ OHCHR Fact Sheet No.33, p.14.; Leckie, *Another Step towards Indivisibility*, pp.92-94.; Eide, *Economic and Social Rights*, pp.125-126.; CESCR General Comment 3. (General Comments) The nature of States parties obligations (Art. 2, par.1 of the Covenant) 12/14/1990, par.2.; Daci, *Justiciability of ESCR*, pp.59-61.

⁴⁴² The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, (UN doc. E/CN.4/1987/17, Annex; and *Human Rights Quarterly*, Vol. 9 (1987)), par.16.

⁴⁴³ *The Limburg Principles*, par.27.

are required to allocate their resources effectively to achieve the realisation of ESCR; they need to prioritise the implementation of ESCR over discretionary services when they plan their budgets.⁴⁴⁴

There are several obligations which need to be fulfilled immediately such as elimination of discrimination, non-retrogressive measures, minimum core obligations of ESCR and trade union rights. Failure to meet these obligations lead to violations of ESCR.⁴⁴⁵ For instance, the elimination of discrimination does not require resources and needs to be fulfilled immediately.⁴⁴⁶ Preventing discrimination against minorities' access to health or education services must be ensured immediately because it is not subject to material resources. Furthermore, material resources are not necessary for some other ESCR. For instance, the right to join trade unions or the right to strike do not oblige states to spend significant resources, and they must be implemented immediately.⁴⁴⁷ In short, achieving ESCR at their fullest extent may take time, but lack of enough resources should not justify failure of taking necessary steps, and states must ensure some ESCR immediately. The discrimination argument is critical for the Kurdish Question as many Kurds believe that they are discriminated against by the Turkish state which is explained in the third chapter in detail. Even if this is not the case, these perceptions must be taken into account and their socioeconomic rights must be realised in a non-discriminatory manner.

2.3. Elements and obligations of ESCR

The United Nations General Assembly adopted the International Covenant on Economic, Social and Cultural Rights (ICESCR), the fundamental treaty for ESCR, in 1966.⁴⁴⁸ The monitoring treaty body of the ICESCR is the Committee on Economic, Social and Cultural Rights (CESCR)⁴⁴⁹ which was formed to observe states' progress in implementing and promoting ESCR.⁴⁵⁰ It consists of independent experts to assess the regular reports of the state parties.⁴⁵¹ The CESCR reviews

⁴⁴⁴ OHCHR *Professional Training Series*, p.13.; Fukuda-Parr et al., *An Index of Economic and Social Rights*, p.203.

⁴⁴⁵ Leckie, *Another Step towards Indivisibility*, pp.98-105.; OHCHR *Fact Sheet No.33*, pp.15-16.; Dennis and Stewart, *Justiciability of ESCR*, p.471.; Chapman, *A Violations Approach*, pp.42-43.; Felner, E. (2009) Closing the 'Escape Hatch': A Toolkit to Monitor the Progressive Realization of Economic, Social, and Cultural Rights, *Journal of Human Rights Practice*, Vol.1, No.3, pp.403-408.

⁴⁴⁶ Fukuda-Parr et al., *An Index of Economic and Social Rights*, p.199.

⁴⁴⁷ OHCHR *Professional Training Series*, p.15.; McChesney, *Promoting and Defending ESCR*, p.31.

⁴⁴⁸ International Covenant on Economic, Social and Cultural Rights.

⁴⁴⁹ "The Committee was established under ECOSOC Resolution 1985/17 of 28 May 1985 to carry out the monitoring functions assigned to the United Nations Economic and Social Council (ECOSOC) in Part IV of the Covenant."

⁴⁵⁰ *PWESCR Handbook*, p.8.

⁴⁵¹ Craven, *International Covenant on ESCR*, pp.42-43.; *PWESCR Handbook*, p.23.

state reports and adopt “concluding observations” for those certain reports. However, these observations are not legally-binding.⁴⁵² In addition, many states fail in submitting reports; yet, the committee does not have power to give an effective response to non-submission.⁴⁵³ Likewise, the CESCR has limited power to oblige states to comply with the ICESCR. It does not have authority to impose sanctions on violators. Even though it is not adequate for the protection of ESCR, the Committee can expose violators to the international community.⁴⁵⁴ Since the supervisory mechanism was not strong enough to protect ESCR, a complaint mechanism has been adopted to empower the Committee and people whose rights guaranteed under the Covenant had been violated.⁴⁵⁵ The Optional Protocol to the ICESCR (OP-ICESCR) was adopted by the UN General Assembly in 2008. An individual complaint procedure has been recognised by the OP-ICESCR, and the CESCR is authorised to receive complaints and to address the violations of ESCR.⁴⁵⁶ Both groups and individuals can apply to the Committee as victims of ESCR violations. State obligations and minimum core obligations will be explained in this section to understand ESCR better so that the importance of including ESCR in transitional justice processes can be understood better too.

2.3.a. State obligations

Obligations of states are sometimes classified into three: to respect, to protect and to fulfil.⁴⁵⁷ In addition to these three obligations, non-discrimination could be considered as the comprehensive obligation of all states parties.⁴⁵⁸ Obligations are important as the development of institutions, policies and strategies, which are necessary for protecting ESCR, can be achieved by identifying them.⁴⁵⁹ The first obligation of states is to respect ESCR. States must refrain from interfering with people’s enjoyment of ESCR.⁴⁶⁰ The obligation includes not enacting laws and

⁴⁵² Ssenyonjo, *ESCR in International Law*, p.28.

⁴⁵³ Alston, P. (1992) ‘The Committee on Economic, Social and Cultural Rights’ in Alston, P. (ed) *The United Nations and Human Rights*, Oxford: Clarendon Press, pp.504-505.; Forsythe, *Human Rights in International Relations*, p.113.

⁴⁵⁴ Minkler, *Introduction: Why Economic and Social Human Rights*, p.4.; O’Cinneide, *Constitutionalization of Social and Economic Rights*, p.265.

⁴⁵⁵ Ssenyonjo, *ESCR in International Law*, pp.30-31.

⁴⁵⁶ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (The General Assembly adopted resolution A/RES/63/117, on 10 December 2008)

⁴⁵⁷ Schutter, *ESCR as Human Rights*, pp.5-6.; *OHCHR Fact Sheet No.33*, p.11.; Eide, A. (1984) ‘The international human rights system’ in Eide, A., Eide, W. B., Gussow, J., Goonatillake, S. and Omawale (eds) *Food as a Human Right*, Tokyo: United Nations University Press, p.154.; Centre of Human Rights (1998) *The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, *Human Rights Quarterly*, Vol.20, No.3, par.6.

⁴⁵⁸ Schutter, *ESCR as Human Rights*, p.6.

⁴⁵⁹ Freeman, *Conclusion: Reflections on the Theory*, p.371.

⁴⁶⁰ Eide, *Economic and Social Rights*, p.127.; Craven, *International Covenant on ESCR*, pp.110-111.; Scott and Macklem, *Constitutional Ropes of Sand*, p.74.

implementing policies, and abolishing the existing ones, which do not comply with ESCR.⁴⁶¹ For instance, states must ensure that there is no discrimination based on race, religion or socioeconomic status regarding provision of education and healthcare.⁴⁶²

The second obligation is to protect ESCR as states must protect people's ESCR from other actors' interference. These actors can be "individuals, groups, corporations" and other third-parties.⁴⁶³ States must prevent these actors from violating people's ESCR by taking necessary precautions. These may include legal measures, policies and regulations.⁴⁶⁴ States do not provide anything to realise ESCR under this obligation, they need to secure that "individuals are not arbitrarily deprived of the enjoyment of their rights."⁴⁶⁵ For instance, taking necessary measures to prevent the usage of unhealthy ingredients in foodstuffs is critical to achieve the right to food.⁴⁶⁶ Likewise, states need to regulate private health and education institutions to protect the rights of individuals.⁴⁶⁷

The third obligation of states is to fulfil ESCR. States must take necessary measures (such as "legislative, administrative, budgetary, judicial, promotional") to achieve ESCR fully.⁴⁶⁸ Although the full realisation of ESCR can be ensured in a long-term process, states need to take all necessary steps by allocating "all appropriate means" expeditiously to make progress.⁴⁶⁹ It is explained that this obligation requires states to facilitate, promote and provide. Facilitating means empowering and supporting individuals and groups to enjoy their ESCR by introducing constructive measures such as enacting necessary laws or adopting policies. Promoting requires states to enable people to realise their rights. This can be achieved by education and raising awareness. Lastly, providing requires states "to 'provide' ESCR when individuals or groups are unable, on grounds reasonably considered to be beyond their control, to realise these rights themselves."⁴⁷⁰ The last obligation is particularly important for the marginalised and vulnerable groups such as poor people, asylum seekers, disabled persons, minorities, women and

⁴⁶¹ Ssenyonjo, *ESCR in International Law*, p.23.

⁴⁶² MacNaughton, G. (2013) 'Beyond a Minimum Threshold: The Right to Social Equality' in Minkler, L. (ed) *The State of Economic and Social Human Rights: A Global Overview*, New York: Cambridge University Press, pp.296-297.

⁴⁶³ Ssenyonjo, *ESCR in International Law*, p.24.

⁴⁶⁴ Eide, *Economic and Social Rights*, p.127.; Scott and Macklem, *Constitutional Ropes of Sand*, pp.74-75.

⁴⁶⁵ Craven, *International Covenant on ESCR*, p.112.

⁴⁶⁶ Eide, *Economic and Social Rights*, p.128.

⁴⁶⁷ MacNaughton, *Beyond a Minimum Threshold*, pp.297-299.

⁴⁶⁸ Ssenyonjo, *ESCR in International Law*, p.25.

⁴⁶⁹ MacNaughton, *Beyond a Minimum Threshold*, p.299.; Craven, *International Covenant on ESCR*, pp.114-116.

⁴⁷⁰ Ssenyonjo, *ESCR in International Law*, p.25.; Dennis and Stewart, *Justiciability of ESCR*, p.491.

children.⁴⁷¹ For instance, in case of a natural disaster, states would be expected to provide food and shelter to victims, if they are unable to meet these needs themselves.

2.3.b. *The minimum core obligations*

The minimum core obligations of states are critical for ESCR as they are not subject to progressive realisation and resource constraints, and they need to be ensured immediately.⁴⁷² The CESCR remarked in its third general comment that “a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party.”⁴⁷³ It is argued that minimum core obligations of ESCR should be considered as non-derogable, and states must comply with them in any circumstances. So, failure in meeting the minimum core obligations of ESCR would constitute a violation.⁴⁷⁴ For instance, if a considerable number of people lack the basic level of food, health care and shelter for their survival in a state, this is a violation of the covenant unless it is evident that “every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations”.⁴⁷⁵ The Maastricht Guidelines also remark that states cannot justify failing to meet the minimum core of ESCR by giving lack of resources as an excuse.⁴⁷⁶ Moreover, meeting the core obligations should not be considered as an end in achieving ESCR, and states need to progress in implementing ESCR to achieve full realisation.⁴⁷⁷ Lastly, setting the standards for the minimum core obligations of each ESCR is arduous. The minimum core obligations are not identified by the CESCR, but it is argued that this could be done through courts and institutions such as the CESCR experts committee.⁴⁷⁸ For instance, as mentioned above, more East Timorese died from hunger and illness compared to killings and executions. This shows that minimum core obligations were not ensured in East Timor during war. So, a future transitional justice process in Turkey must look at whether the state ensured minimum core obligations of ESCR in the context of the Kurdish Question.

⁴⁷¹ *The Maastricht Guidelines*, par.20.

⁴⁷² Dennis and Stewart, *Justiciability of ESCR*, p.492.; Scott and Macklem, *Constitutional Ropes of Sand*, p.77.

⁴⁷³ *The CESCR General Comment 3*, par.10.

⁴⁷⁴ *The CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)* (Contained in Document E/C.12/2000/4), par.47.; Young, K. G. (2008) The minimum core of economic and social rights: A concept in search of content, *Yale Journal of International Law*, Vol.33, No.1, pp.113-175.; Dennis and Stewart, *Justiciability of ESCR*, pp.492-497.; Chapman, *A Violations Approach*, pp.23-66.

⁴⁷⁵ *The CESCR General Comment 3*, par.10.

⁴⁷⁶ *The Maastricht Guidelines*, par.9.

⁴⁷⁷ *OHCHR Professional Training Series*, p.23.; Leckie, *Another Step towards Indivisibility*, p.102.

⁴⁷⁸ Leckie, *Another Step towards Indivisibility*, pp.87-102.; Scott and Macklem, *Constitutional Ropes of Sand*, pp.77-94.; Chapman, *A Violations Approach*, pp.35-46.; Young, *The minimum core of economic and social rights*, pp.164-167.

3. ESCR and Transitional Justice

3.1. Contextualisation of the neglect of ESCR

The first chapter briefly explained that ESCR have been overlooked in transitional justice literature and practice. As illuminated in the first chapter, the field has been influenced by international law and legalism. ESCR and CPR have been treated differently, and the former has often been neglected in transitional justice theory and practice.⁴⁷⁹ Szoke-Burke wrote that: “Transitional justice mechanisms can no longer turn a blind eye to the violation of ESRs.”⁴⁸⁰ In fact, there has been a growing demand from both scholars and practitioners for the inclusion of ESCR in transitional justice, and there is a tendency for a change.⁴⁸¹ This chapter started exploring ESCR and misconceptions about them. This section is going to depict how ESCR violations⁴⁸² have been overlooked in transitional justice and explain the significance of including them in the field. This will also contribute to the main argument of this research which suggests that Turkey should address violations of socioeconomic rights in a future transitional justice process to tackle the Kurdish Question.

3.1.a. Misconceptions of ESCR in transitional justice framework

The reasons for focusing on CPR violations were derived from the misconceptions about ESCR which were broken down in the previous sections. Transitional justice has mainly focused on direct, physical and serious human rights abuses which had immediate damages.⁴⁸³ Since ESCR are considered as vague and aspirational rights which entail only positive obligations, they were often left un(der)addressed in transitional justice. However, it has been depicted that ESCR also entail negative obligations (to respect), and their violations can be direct, serious and physical which may produce immediate damages.⁴⁸⁴ Hecht and Michalowski state that violations of ESCR can be as serious as CPR violations. They asserted that “unjust systems kill far more infants

⁴⁷⁹ Arbour, *Economic and Social Justice*, p.5.; Evans, *Structural Violence*, p.4.; Laplante, *Transitional Justice and Peace Building*, p.333.; Roht-Arriaza, *The new landscape of transitional justice*, p.2.; Alexander, *A Scoping Study*, pp.6-8.; Sharp, *Addressing Economic Violence*, p.796.

⁴⁸⁰ Szoke-Burke, S. (2015) Not Only 'Context': Why Transitional Justice Programs Can No Longer Ignore Violations of Economic and Social Rights, *Texas International Law Journal*, Vol.50, No.2/3, p.473.

⁴⁸¹ Schmid and Nolan, *Do No Harm*, p.363.; Arbour, *Economic and Social Justice*, pp.1-27.; Laplante, *Transitional Justice and Peace Building*, pp.331-355.; Waldorf, *Anticipating the Past*, pp.171-186.; Miller, *Effects of Invisibility*, pp.266-291.; OHCHR, *Transitional Justice and ESCR*, p.1.

⁴⁸² It should be noted that although violations of ESCR and economic crimes are connected to each other, they are not the same. Corruption and plunder of natural resources could be classified as economic crimes, whereas forced eviction and famines as means of war are violations of ESCR. (OHCHR, *Transitional Justice and ESCR*, p.22.; Sharp, *Addressing Economic Violence*, p.782)

⁴⁸³ Szoke-Burke, *Not Only Context*, p.469.; Roht-Arriaza, N. (2014) 'Reparations and Economic, Social, and Cultural Rights' in Sharp, D. (ed) *Justice and Economic Violence in Transition*, New York: Springer, p.109.

⁴⁸⁴ Szoke-Burke, *Not Only Context*, p.475.; Schmid and Nolan, *Do No Harm*, pp.367-373.

through malnutrition and the unavailability of water than they kill adults with bullets and bombs.”⁴⁸⁵

There are many examples of forced evictions and famines (produced by intentional policies) which are striking examples of serious ESCR violations.⁴⁸⁶ As explained earlier, ESCR violations can amount to international crimes such as genocide, war crimes and crimes against humanity.⁴⁸⁷ The example of East Timor is striking as 84,200 out of 102,800 conflict-related deaths resulted from hunger and illness.⁴⁸⁸ Skogly wrote: “If malicious state leaders know that they may be brought to trial for massacring people, they may choose to starve them to death, or inflict illness on them instead.”⁴⁸⁹ In short, violations of ESCR fall within the scope of transitional justice, and there is no rationale for ignoring them in transitional processes.

3.1.b. The importance of addressing root causes

Socioeconomic issues have often been regarded as “context” when they are included in transitional processes. They have been looked at to understand violence rather than an independent matter of fact.⁴⁹⁰ This should not be understood as considering them as context or root causes of conflict is wrong. Looking at root causes of conflict and violence is vital for transitional justice processes.⁴⁹¹ Mani remarked that there is a “responsibility to identify underlying practices of social injustice, marginalization and exploitation that were responsible either directly or indirectly for the violent conflict or crisis” and seeking remedies for these underlying causes is critical in transitional contexts.⁴⁹² Yet, it should be understood that ESCR are not only root causes, background or context of violence.⁴⁹³ As stated earlier, ESCR violations can be discrete and direct with immediate damages. It is important to clarify this as “presenting socioeconomic root causes of conflict as historical context leaves policy change to the discretion

⁴⁸⁵ Hecht, L. and Michalowski, S. (2012) *The Economic and Social Dimensions of Transitional Justice*, Essex Transitional Justice Network (ETJN) Concept Paper, p.1. Available at: <https://www1.essex.ac.uk/tjn/documents/TheeconomicandsocialdimensionsofTJ.pdf> (access date: 19.07.2018).

⁴⁸⁶ Mourey, *Famine and War*, p.551.; Leckie, *Another Step towards Indivisibility*, p.102.; Marcus, *Famine crimes in international law*, pp.245-281.; Skogly, *Crimes Against Humanity – Revisited*, pp.58-80.; van den Herik, *Economic, Social, and Cultural Rights*, pp.343-366.

⁴⁸⁷ Marcus, *the normative development of socioeconomic rights*, pp.53-102.; Drumbl, *Accountability for Property Crimes*, pp.58-80.; OHCHR, *Transitional Justice and ESCR*, p.24.; OHCHR Fact Sheet No.33, p.26.

⁴⁸⁸ The CAVR, *Chega*, p.44.

⁴⁸⁹ Skogly, *Crimes Against Humanity – Revisited*, p.74.

⁴⁹⁰ Sharp, *Addressing Economic Violence*, p.782.

⁴⁹¹ Roht-Arriaza, *Reparations and ESCR*, p.110.; Arbour, *Economic and Social Justice*, p.3.

⁴⁹² Mani, R. (2008) Editorial Dilemmas of Expanding Transitional Justice, or Forging the Nexus between Transitional Justice and Development, *International Journal of Transitional Justice*, Vol. 2, No.3, p.256.

⁴⁹³ Schmid and Nolan, *Do No Harm*, pp.373-376.; Szoke-Burke, *Not Only Context*, p.473.; Sharp, *Addressing Economic Violence*, pp.783-796.

of political leaders, while presenting them as rights violations makes redress and reform a political imperative.”⁴⁹⁴ Sharp explains two ways of addressing the violations of ESCR in the context of transitional justice: a thin approach which suggests that only ESCR violations which were committed during the conflict should be addressed, and a thick approach suggests that not only the ones which took place during the conflict, but also a wider range of structural injustices that existed before the conflict should be addressed in transitional contexts.⁴⁹⁵ For instance, victims of forced evictions may demand compensation as a remedy (a thin approach), while an ethnic or religious group which was marginalised and excluded systematically may ask for the elimination of discrimination as a remedy (a thick approach). So, both discrete ESCR violations and structural violence must be addressed as they are both important for transitional countries.

Furthermore, it is noted that conflicts often take place in poor countries, and they lead to destruction in these societies in terms of human capital, infrastructure and institutions.⁴⁹⁶ Likewise, socioeconomic problems and ESCR violations are common under authoritarian regimes.⁴⁹⁷ Considering that legacies of violence would exacerbate the pre-existing socioeconomic injustices, the vital importance of social justice in transitional contexts could be understood. Victims and survivors expect to feel justice and see improvements in their daily lives after transitions. It is often remarked that without some sort of social justice, transitional justice efforts would be incomplete and futile for people.⁴⁹⁸ In addition, addressing ESCR abuses and eliminating root causes of violence is important to achieve a sustainable peace.⁴⁹⁹

The connection between poverty and conflict has been contentious in academia. Some scholars assert that poverty, exclusion and inequality trigger conflicts; others say there is no relationship between them.⁵⁰⁰ Furthermore, some scholars assert that even if poverty, exclusion and

⁴⁹⁴ Laplante, *Transitional Justice and Peace Building*, p.341.

⁴⁹⁵ Sharp, *Addressing Economic Violence*, p.802.

⁴⁹⁶ Sharp, *Addressing Economic Violence*, p.791; De Greiff, P. (2009) ‘Articulating the Links Between Transitional Justice and Development: Justice and Social Integration’ in De Greiff, P. and Duthie, R. (eds) *Transitional Justice and Development: Making Connections*, New York: Social Science Research Council, pp.29-30.; Szoke-Burke, *Not Only Context*, pp.474-475; Mani, *Editorial Dilemmas of Expanding Transitional Justice*, pp.259-260.; Muvungi, *Donor-Driven Transitional Justice*, p.20.; Laplante, *Transitional Justice and Peace Building*, pp.336-337.

⁴⁹⁷ Szoke-Burke, *Not Only Context*, p.470.; Roht-Arriaza, *Reparations and ESCR*, p.113.; Evans, *Structural Violence*, p.9.

⁴⁹⁸ Mani, *Editorial Dilemmas of Expanding Transitional Justice*, pp.255-265.; Arbour, *Economic and Social Justice*, p.5.; De Greiff, *Articulating the Links*, p.30.; Sharp, *Addressing Economic Violence*, p.808.; OHCHR *Fact Sheet No.33*, p.27.; Evans, *Structural Violence*, p.2.

⁴⁹⁹ Roht-Arriaza, *Reparations and ESCR*, pp.109-110.; Arbour, *Economic and Social Justice*, p.8.; Szoke-Burke, *Not Only Context*, p.467.; OHCHR *Fact Sheet No.33*, p.27.

⁵⁰⁰ Derin-Gure, P. (2011) Separatist Terrorism and the Economic Conditions in South-Eastern Turkey, *Defence and Peace Economics*, Vol.22, No.4, p.394.; Braithwaite, A., Dasandi, N. and Hudson, D. (2016) Does poverty cause conflict? Isolating the causal origins of the conflict trap, *Conflict Management and*

inequality do not directly cause, they contribute to the emergence of conflicts⁵⁰¹ (they may raise the likelihood of conflict).⁵⁰² For example, El Salvador, Yemen, Tunisia and Egypt have witnessed wide-spread violence which was rooted in socioeconomic problems such as unemployment and poverty.⁵⁰³ Likewise, violent revolts have occurred in various transitional countries (Peru, Chile, South Africa and Guatemala) due to socioeconomic injustices. So, if root causes of conflicts are not eliminated and socioeconomic grievances are not tackled in transitional societies, it is difficult to assume that the peace will be sustainable. These problems may lead to another conflict in the future. Yet, it is not always simple to prove causes of a conflict as there are numerous causes of conflicts. Therefore, analysing the context may be helpful for the argument. Rather than seeking to reach universal conclusions, analysing contexts and drawing specific conclusions for those cases could be more sensible.

Excluding socioeconomic dimensions of violence leads to an incomplete account of history. Various scholars agree that addressing CPR violations exclusively prevents understanding the nature of past conflicts and violence properly.⁵⁰⁴ Conflicts have multiple interrelated dimensions (political, economic, social, cultural etc.) and addressing only CPR violations reduces them into one dimension. These dimensions need to be analysed and addressed holistically.⁵⁰⁵ Incomplete

Peace Science, Vol.33, No.1, pp.45-66.; Darrow, M. and Tomas, A. (2005) Power, Capture, and Conflict: A Call for Human Rights Accountability in Development Cooperation, *Human Rights Quarterly*, Vol.27, No.2, pp.471-538.; Collier, P. and Hoeffler, A. (2004) Greed and grievance in civil war, *Oxford Economic Papers*, Vol.56, No.4, pp.563-595.; Szoke-Burke, *Not Only Context*, pp.469-470.; Roht-Arriaza, *Reparations and ESCR*, pp.109-110.; Thoms, O. and Ron, J. (2007) Do Human Rights Violations Cause Internal Conflict?, *Human Rights Quarterly*, Vol.29, No.3, pp.674-705.; Stewart, F. (2007) *Horizontal inequalities & conflict: Understanding group violence in multiethnic societies*, Basingstoke: Palgrave Macmillan.; Malone, D., Berdal, M., and International Peace Academy (2000) *Greed & grievance: Economic agendas in civil wars*, Boulder, Colo.; London: Lynne Rienner.; Waldorf, *Anticipating the Past*, p.175.; Arnsion, C. and Zartman, I. (2005) *Rethinking the economics of war: The intersection of need, creed, and greed*, Washington, D.C.: Woodrow Wilson Center Press.; Sambanis, N. (2004) Poverty and the Organization of Political Violence, *Brookings Trade Forum*, Globalization, Poverty, and Inequality (2004), pp.165-211.; Arbour, *Economic and Social Justice*, pp.8-9.; Murshed, S. M. and Gates, S. (2005) Spatial-horizontal Inequality and the Maoist Insurgency in Nepal, *Review of Development Economics*, Vol.9, No.1, pp.121-134.

⁵⁰¹ Laplante, *Transitional Justice and Peace Building*, pp.336-337; Forman, J. (2002) Achieving Socioeconomic Well-Being in Postconflict Settings, *The Washington Quarterly*, Vol.25, No.4, pp.125-138.; Duthie, R. (2009) 'Introduction' in De Greiff, P. and Duthie, R. (eds) *Transitional Justice and Development: Making Connections*, New York: Social Science Research Council, p.19.

⁵⁰² The World Bank (2003) *World Development Report 2003: Sustainable Development in a Dynamic World Transforming Institutions, Growth, and Quality of Life*, New York: World Bank and Oxford University Press, p.xx.

⁵⁰³ Szoke-Burke, *Not Only Context*, p.470.; Schmid and Nolan, *Do No Harm*, p.363.

⁵⁰⁴ Szoke-Burke, *Not Only Context*, p.469.; Miller, *Effects of Invisibility*, p.266.; Sharp, *Addressing Economic Violence*, pp.782-783.; Sriram, C. L. (2014) 'Liberal Peacebuilding and Transitional Justice: What Place for Socioeconomic Concerns?' in Sharp, D. (ed) *Justice and Economic Violence in Transition*, New York: Springer, pp.27-49.; Carranza, *Plunder and Pain*, pp.310-330.

⁵⁰⁵ Sharp, *Addressing Economic Violence*, p.783.; Miller, *Effects of Invisibility*, p.268.; Boraine, *Transitional Justice: A Holistic Interpretation*, pp.17-28.; Carranza, *Plunder and Pain*, pp.310-330.; Szoke-Burke, *Not Only Context*, p.466.

narratives may prevent a full-fledged redress for past human rights violations and non-repetition of these crimes. To redress past violations comprehensively ESCR violations and root causes of violence need to be included in transitional processes. Lastly, being realistic about addressing ESCR in transitional societies is important as it should not be seen as a panacea which can solve all socioeconomic problems. Inclusion of ESCR in transitional justice mechanisms can only *contribute to* the elimination of socioeconomic problems.⁵⁰⁶ States must tackle socioeconomic problems through long-term policies and development programs. Yet, transitional justice can contribute to these efforts by diagnosing these problems and their reasons. In addition, transitional justice mechanisms can play an important role to buttress these efforts which will be explored in the following sections.

3.2. Transitional justice mechanisms to address ESCR

ESCR violations and root causes of violence need to be addressed through transitional justice mechanisms and there is a need for an analysis to decide how these mechanisms can contribute to this task. Truth commissions, trials, reparations and institutional reforms will be examined in this section. Historically, truth commissions often failed to address ESCR violations.⁵⁰⁷ There are several exceptions to this as truth commissions of Guatemala, East Timor, Sierra Leone and Peru have addressed socioeconomic issues.⁵⁰⁸ Yet, even if truth commissions looked at socioeconomic issues and structural violence, they often considered these problems as background and context rather than rights violations as it happened in South Africa, Guatemala and Peru.⁵⁰⁹ In East Timor, the Commission for Reception, Truth and Reconciliation in East Timor (Portuguese acronym, CAVR) held public hearings on ESCR violations and had a chapter in its final report concerning famine and forced displacement.⁵¹⁰ More importantly, the CAVR described ESCR violations and development issues as violations of the right to an adequate standard of living, the right to adequate food, the right to housing, the right to education and the right to health.⁵¹¹ In Peru, on the other hand, the truth commission considered structural violence and ESCR violations mostly as historical background and root causes of the conflict but did not necessarily describe them as violations of rights.⁵¹² It must be noted that there is an

⁵⁰⁶ Schmid and Nolan, *Do No Harm*, pp.378-379.; Szoke-Burke, *Not Only Context*, p.477.; OHCHR, *Transitional Justice and ESCR*, p.56.

⁵⁰⁷ Laplante, *Transitional Justice and Peace Building*, p.335.; Waldorf, *Anticipating the Past*, pp.175-176.

⁵⁰⁸ Schmid and Nolan, *Do No Harm*, p.370.; OHCHR, *Transitional Justice and ESCR*, pp.18-21.

⁵⁰⁹ Sharp, *Addressing Economic Violence*, pp.793-795.; Schmid and Nolan, *Do No Harm*, p.368.

⁵¹⁰ The CAVR, *Chega*, pp.72-85.

⁵¹¹ The CAVR, *Chega*, pp.143-144.

⁵¹² The CVR, *Hatun Willakuy*.

increasing tendency among truth commissions to address socioeconomic issues since inclusion of ESCR in transitional processes began being promoted.⁵¹³

Since truth commissions receive testimonies from victims and survivors, they are able to shed light on reasons for and dynamics of conflicts and political violence. So, they have a potential to reveal socioeconomic injustices, structural violence and ESCR abuses. Moreover, truth commissions can make recommendations regarding socioeconomic issues to solve these problems.⁵¹⁴ It is claimed that even if states do not implement recommendations of truth commissions regarding ESCR and they do not turn into practice, they would still help in various ways such as raising awareness about these rights in civil society and contributing to the prevention of future violations of ESCR.⁵¹⁵

As mentioned earlier, justiciability of ESCR has been debated and historically ESCR violations have not been adjudicated satisfyingly. It is pointed out that: “Human rights courts can, in principle, adjudicate violations of economic, social and cultural rights, provided that their constitutive instruments refer to these rights.”⁵¹⁶ In fact, some courts (including the Inter-American Court of Human Rights, the Human Rights Chamber for Bosnia and Herzegovina, the Colombian Constitutional Court and the African Commission on Human and Peoples’ Rights) have ruled on violations of the right to housing and right to food.⁵¹⁷ Considering that some ESCR violations constitute international crimes, tribunals (international, hybrid or national) could adjudicate these crimes in transitional contexts. This would also contribute to the non-repetition of crimes, as in adjudicating CPR violations.

Conflicts have severe impacts on people’s socioeconomic conditions and these impacts do not fade away after the end of conflict. Muvingi wrote that: “populations emerging from violence are traumatised and their needs go beyond trials and truth telling. The psychosocial needs of affected populations are not receiving anywhere near the same level of attention as the

⁵¹³ Szoke-Burke, *Not Only Context*, p.473.; Schmid and Nolan, *Do No Harm*, pp.369-370.

⁵¹⁴ Szoke-Burke, *Not Only Context*, p.478.; The CAVR, *Chega*, pp.161-182.; Sharp, D. (2014) ‘Economic Violence in the Practice of African Truth Commissions and Beyond’ in Sharp, D. (ed) *Justice and Economic Violence in Transition*, New York: Springer, pp.92-93.; Hecht and Michalowski, *The Economic and Social Dimensions*, p.1.; Laplante, *Transitional Justice and Peace Building*, pp.334-335. ; Arbour, *Economic and Social Justice*, p.17.; Mani, *Editorial Dilemmas of Expanding Transitional Justice*, p.256.; OHCHR, *Transitional Justice and ESCR*, p.17.; Pasipanodya, T. (2008) A Deeper Justice: Economic and Social Justice as Transitional Justice in Nepal, *International Journal of Transitional Justice*, Vol.2, No.3, pp.392-393.

⁵¹⁵ Szoke-Burke, *Not Only Context*, p.480.; Sharp, *Addressing Economic Violence*, p.803.

⁵¹⁶ OHCHR, *Transitional Justice and ESCR*, p.24.

⁵¹⁷ Szoke-Burke, *Not Only Context*, pp.482-483.; Arbour, *Economic and Social Justice*, pp.15-16.; OHCHR, *Transitional Justice and ESCR*, pp.24-31.

punishment of perpetrators.”⁵¹⁸ As the impacts of conflicts and political violence continue to affect people’s lives, people in transitional societies might prioritise meeting their basic needs over prosecuting the perpetrators.⁵¹⁹ Although ESCR violations have not been remedied through reparations in transitional contexts historically, there are some examples of collective and individual reparations granted for these abuses. Reparations regarding the right to housing, right to health and right to education were granted in Peru, East Timor, Chile and Morocco.⁵²⁰ In fact, reparations have a considerable potential to address socioeconomic issues in transitional societies. Although they cannot solve socioeconomic problems alone, they may help in remedying these problems which could be both causes and consequences of conflicts.⁵²¹ Particularly, collective reparations can contribute to elimination of structural injustices.⁵²²

Institutional reforms, vetting in particular, may play an important role in addressing ESCR violations and root causes of violence.⁵²³ As explained in the first chapter, institutional reforms prevent re-occurrence of violations, and this is also true for ESCR abuses. Eliminating ESCR violators from public offices and reforming malfunctioning institutions which had allowed violations to take place can contribute to protect ESCR. Moreover, Szoke-Burke remarked that “vetting processes can improve the government’s ability to fulfil ESRs by excluding public and private actors whose practices eroded public funds, damaged socioeconomic infrastructure and services”.⁵²⁴ In short, institutional reforms are mainly forward-looking mechanisms focusing on non-repetition of violence, and they could help addressing and protecting ESCR.

⁵¹⁸ Muvingi, *Donor-Driven Transitional Justice*, p.20.

⁵¹⁹ Mani, *Editorial Dilemmas of Expanding Transitional Justice*, p.256.; Schmid and Nolan, *Do No Harm*, p.377.; Waldorf, *Anticipating the Past*, p.175.; Muvingi, *Donor-Driven Transitional Justice*, p.20.; Robins, *Whose voices*, p.324.; Pham, P., Vinck, P., Wierda, M., Stover, E. and di Giovanni, A. (2005) *Forgotten Voices: A Population-Based Survey of Attitudes About Peace and Justice in Northern Uganda*, New York: International Center for Transitional Justice and Human Rights Center.; Pham, P., Vinck, P., Balthazard, M., Hean, S. and Stover, E. (2009) *So We Will Never Forget: A Population-Based Survey on Attitudes About Social Reconstruction and the Extraordinary Chambers in the Courts of Cambodia*, Berkeley, CA: Human Rights Center.; International Center for Transitional Justice- ICTJ (2008) *Nepali Voices: Perceptions of Truth, Justice, Reconciliation, Reparations and the Transition in Nepal*, New York: International Center for Transitional Justice.

⁵²⁰ OHCHR, *Transitional Justice and ESCR*, pp.38-43.

⁵²¹ Szoke-Burke, *Not Only Context*, pp.484-486.; De Greiff, *Articulating the Links*, p.37.; Roht-Arriaza, N. and Orlovsky, K. (2009) ‘A Complementary Relationship: Reparations and Development’ in De Greiff, P. and Duthie, R. (eds) *Transitional Justice and Development: Making Connections*, New York: Social Science Research Council.; Hecht and Michalowski, *The Economic and Social Dimensions*, p.1; Arbour, *Economic and Social Justice*, pp.17-18.; Mani, *Editorial Dilemmas of Expanding Transitional Justice*, p.256.; Schmid and Nolan, *Do No Harm*, p.379.; Pasipanodya, *A Deeper Justice*, pp.394-395.

⁵²² Vandeginste, *Reparation*, p.147.

⁵²³ Szoke-Burke, *Not Only Context*, pp.489-490.; Hecht and Michalowski, *The Economic and Social Dimensions*, p.1.; OHCHR, *Transitional Justice and ESCR*, pp.44-50.

⁵²⁴ Szoke-Burke, *Not Only Context*, p.493.

Finally, it must be kept in mind that addressing socioeconomic issues does not mean that these issues will be tackled or redressed completely. In many countries, addressing violations of CPR through transitional justice mechanisms did not solve these issues. People still might be unsatisfied after these processes.⁵²⁵ The reasons for this resentment might arise from the process itself such as light sentences after trials, or they might arise from the lack of commitment of new regimes to take necessary steps after these processes.⁵²⁶ Being realistic is important to prevent raising false hopes among people and then disappointing them.

3.3. Limitations of transitional justice to address ESCR

Although there have been calls to include ESCR in transitional justice, some scholars raised concerns about this inclusion.⁵²⁷ Waldorf asserts that transitional justice is short-term and legalistic in nature and addressing violations of ESCR should not be included in its framework.⁵²⁸ It is argued that tackling socioeconomic problems requires long-term remedies which must be achieved by states through development programs rather than transitional justice mechanisms.⁵²⁹ Yet inclusion of ESCR in transitional justice is not only about structural violence, there are also countless direct violations of socioeconomic rights such as forced displacements, destruction of food resources or demolition of homes and villages. Moreover, the argument that transitional justice is “legalistic in nature” is not convincing for excluding ESCR from transitional justice because ESCR are also enforceable and justiciable rights as explained above. On the other hand, Mani describes a dilemma of transitional justice: it needs to be expanded to include violations of ESCR but “it is well known that the mandates of existing TJ mechanisms are already overcharged, their responsibilities too heavy, public expectations too unrealistic and finances already too lean.”⁵³⁰ Likewise, Waldorf asserts that transitional justice has already been overwhelmed with a narrow mandate, and widening its mandate may pose “a danger of raising already inflated expectations of what transitional justice mechanisms can accomplish.”⁵³¹ The “overburdening” argument is problematic because there is no legal or moral reason for transitional justice efforts to prioritise CPR over ESCR. Why should redressing CPR violations be

⁵²⁵ Hamber et al., *Telling It Like It Is*, pp.18-42.; Brouneus, *Truth-Telling as Talking Cure*, pp.55-76.; Byrne, *Benefit or Burden*, pp.237–256.; Backer et al., *The Human Face of Justice*.

⁵²⁶ Mendeloff, *Trauma and Vengeance*, p.620.; Kent, *Interrogating the "Gap"*, pp.1031-1032.

⁵²⁷ Waldorf, *Anticipating the Past*, pp.179-180.; McAuliffe, P. (2014) Rhetoric and Realpolitik: Interrogating the Relationship between Transitional Justice and Socio-Economic Justice, *2012/13 Finnish Year Book of International Law*, Vol.23, pp.239-307.; Evans, *Structural Violence*, pp.5-15.; Mani, *Editorial Dilemmas of Expanding Transitional Justice*, p.255.; De Greiff, *Articulating the Links*, p.40.

⁵²⁸ Waldorf, *Anticipating the Past*, p.179.

⁵²⁹ Szoke-Burke, *Not Only Context*, p.474.; De Greiff, *Articulating the Links*, pp.29-31; Waldorf, *Anticipating the Past*, p.179.

⁵³⁰ Mani, *Editorial Dilemmas of Expanding Transitional Justice*, p.255.

⁵³¹ Waldorf, *Anticipating the Past*, pp.179-180.

more appropriate and worthy of concern than ESCR violations in transitional processes? Why does redressing families of victims of extrajudicial killings not overburden transitional justice but redressing families of victims of famine does? In both cases, victims die as a result of acts of warring parties in different ways. So, the death of a person by violating his/her right to food or by killing should be of equal concern, and transitional justice must be concerned with both ESCR and CPR abuses.

McAuliffe raise similar concerns and claims that eliminating structural violence and achieving socioeconomic justice by transforming unjust socioeconomic structures of transitional societies are not really realistic considering the dynamics in transitional countries where redistribution of economic power is not likely to happen easily. He asserts that transitional justice is not likely to have that capacity to make such drastic changes in socioeconomic structures, and assumptions that transitional justice can make such changes is too “ambitious”.⁵³² He also warns that “transitional justice’s greatest impact will generally be in the area of civil and political rights. There is a danger that the socio-economic critique of transitional justice risks stigmatising advances in this area as unduly modest or even as impediments to greater reform.”⁵³³ De Greiff and Evans also stress similar concerns and question the capability of transitional justice mechanisms in terms of their expertise, ability and their funding.⁵³⁴ As argued in the beginning of this chapter, socioeconomic rights are also human rights and addressing them in transitional justice processes does not necessarily require specific expertise and funding. For instance, if a minority group’s access to education is banned by the state, this is a violation of the right to education and non-discrimination principle. Why should lifting this ban require specific expertise and vast resources? Likewise, ESCR abuses are not more complex or vague than CPR abuses.

Schmid and Nolan ask: “why remedying the destruction of people’s homes in armed conflict should be inherently more complex than redressing disappearances or other civil and political rights abuses.”⁵³⁵ So, transitional justice practitioners may well concern with ESCR violations as they do for CPR violations.

Furthermore, resource constraints are also debated as most of the transitional countries lack enough resources and depend on international community and donors. It was remarked that donors have prioritised CPR over ESCR as they claimed that “freedom comes first” in the so-

⁵³² McAuliffe, *Rhetoric and Realpolitik*, pp.239-307.

⁵³³ McAuliffe, *Rhetoric and Realpolitik*, p.245.

⁵³⁴ De Greiff, *Articulating the Links*, pp.30-40.; Evans, *Structural Violence*, p.7.

⁵³⁵ Schmid and Nolan, *Do No Harm*, p.375.

called the “food versus freedom” argument.⁵³⁶ ESCR should not be reduced to “food” since their violations can amount to most serious crimes as explained above. Killing thousands of people by violating their right to food through produced famines should not be considered less serious than a violation of the right to freedom from torture. So, the “freedom comes first” claim is not convincing or reasonable at all.

It has been claimed that addressing socioeconomic issues and expanding these mechanisms’ mandates would produce additional difficulties and undermine the success of these processes.⁵³⁷ However, establishing international tribunals or truth commissions require as many resources as redressing some socioeconomic wrongdoings both in terms of funding and expertise. Lastly, transitional justice can be designed in a realistic manner to address socioeconomic issues. For instance, transitional justice mechanisms can promise to *contribute* to social justice rather than *achieving* socioeconomic justice. This is also the case for addressing CPR violations. Transitional justice mechanisms do not often have the capacity to address *all* CPR violations, or they do not promise to *eliminate* impunity *entirely*. Therefore, transitional justice mechanisms can be adopted to contribute to the elimination of structural injustices and addressing ESCR violations.

3.4. ESCR in the context of development and transitional justice nexus

Addressing socioeconomic problems in transitional justice is closely linked to development. This section will conceptualise the relationship between transitional justice and development and explore the ways to connect these two fields. Post-conflict and post-authoritarian societies are often rife with socioeconomic problems including “poverty, damaged infrastructure, and low levels of governance and social capital.”⁵³⁸ Likewise, a majority of developing countries have experienced conflict.⁵³⁹ Although transitional justice and development are separate fields, they often operate in the same societies and settings⁵⁴⁰ and share the same goal: “improving human

⁵³⁶ Tomasevski, K. (1993) *Development aid and human rights revisited*, London: Pinter, p.86.; Karimova, T. (2016) *Human rights and development in international law*, New York, NY: Routledge, p.83.

⁵³⁷ De Greiff, *Articulating the Links*, p.40; Waldorf, *Anticipating the Past*, p.179.; Szoke-Burke, *Not Only Context*, p.475.; Sharp, *Interrogating the Peripheries*, p.173.; Mani, *Editorial Dilemmas of Expanding Transitional Justice*, p.256.; OHCHR, *Transitional Justice and ESCR*, p.53.

⁵³⁸ Szoke-Burke, *Not Only Context*, p.474.; De Greiff, *Articulating the Links*, pp.29-30.; Roht-Arriaza, *Reparations in the aftermath of repression*, p.129.

⁵³⁹ Todaro, M. P. and Smith, S. C. (2015) *Economic Development (12th edition)*, Harlow, England: Pearson, pp.64-65.; International Center for Transitional Justice Research Unit (2009) *ICTJ Briefing: Transitional Justice and Development*, New York: International Center for Transitional Justice, p.1.

⁵⁴⁰ De Greiff, P. (2014) ‘Transitional Justice and Development’ in Currie-Alder, B., Kanbur, R., Malone, M. and Medhora, R. (eds) *International development: Ideas, experience, and prospects (First ed.)*, New York: Oxford University Press, p.412.; Lenzen, M. (2009) ‘Roads Less Travelled? Conceptual Pathways (and Stumbling Blocks) for Development and Transitional Justice’ in De Greiff, P. and Duthie, R. (eds) *Transitional Justice and Development: Making Connections*, New York: Social Science Research Council,

lives and societies.”⁵⁴¹ While development focuses on the future to achieve it, transitional justice concentrates mostly on the past to redress wrongdoings, even though it should also focus on the future to build a peaceful and stable society.⁵⁴² Development and transitional justice have a potential to be mutually supportive to transform societies during transition.⁵⁴³ Therefore, the relationship between development and transitional justice needs to be analysed. This will contribute to understanding how socioeconomic issues can be dealt with in Turkey’s context, and how transitional justice and development can cooperate with each other to tackle these problems. Before examining this relationship, looking at the linkages between development and human rights would be useful.

3.4.a. Human rights and development

Development is a broad field and conceptualising it is beyond the scope of this chapter. Yet, even briefly, it needs to be explained here. There are various definitions of development in the field: while some mainly focus on economic dimensions of development, others cover broader concepts to define it.⁵⁴⁴ A clear-cut definition is proposed by Kingsbury: “the study of development is concerned with how ‘developing countries’ can improve their living standards and eliminate absolute poverty.”⁵⁴⁵ As the definition suggests, achieving development in developing countries⁵⁴⁶ is about enhancing people’s lives. There have been numerous theories

pp.78-79.; Colvin, C. (2008) Purity and Planning: Shared Logics of Transitional Justice and Development, *International Journal of Transitional Justice*, Vol.2, No.3, p.415.; *ICTJ Briefing: Transitional Justice and Development*, p.1.

⁵⁴¹ Lenzen, *Roads Less Travelled*, p.77.; Duthie, R. (2008) Toward a Development-sensitive Approach to Transitional Justice, *International Journal of Transitional Justice*, Vol.2, No.3, pp.295-296.; *ICTJ Briefing: Transitional Justice and Development*, p.1.; Vinck, P. and Pham, P. (2008) Ownership and Participation in Transitional Justice Mechanisms: A Sustainable Human Development Perspective from Eastern DRC, *International Journal of Transitional Justice*, Vol.2, No.3, pp.398-399.

⁵⁴² Balasco, *The Transitions of Transitional Justice*, p.210.; Buckley-Zistel, *Connecting Transitional Justice and Development*, p.4.; Szoke-Burke, *Not Only Context*, p.468.; Colvin, *Purity and Planning*, pp.417-418.

⁵⁴³ Duthie, *Introduction*, p.22.; Colvin, *Purity and Planning*, pp.412-425.; Waldorf, *Anticipating the Past*, pp.179-180.; Balasco, L. (2017) Reparative development: Re-conceptualising reparations in transitional justice processes, *Conflict, Security & Development*, Vol.17, No:1, pp.1-20.; *ICTJ Briefing: Transitional Justice and Development*, p.1.

⁵⁴⁴ Potter, R. (2008) *Geographies of development: An introduction to development studies (3rd edition)*, Harlow: Pearson-Prentice Hall, p.5.; Todaro and Smith, *Economic Development*, p.16.; Peet, R. and Hartwick, E. R. (2009) *Theories of development: Contentions, arguments, alternatives (2nd edition)*, New York; London: Guilford, pp.1-2.; Dang, G. and Sui Pheng, L. (2015) *Infrastructure investments in developing economies: The case of Vietnam*, Singapore: Springer, p.12.; Allen, T. and Thomas, A. (2000) *Poverty and development into the 21st century (Rev. ed.)*, Oxford: Open University in association with Oxford University Press, p.31.; Sen, A. (1999) *Development as freedom*, New York: Knopf, p.3.; Rist, G. (2014) *The history of development: From Western origins to global faith (Fourth edition)*, London: Zed, pp.8-9.

⁵⁴⁵ Kingsbury, D. (2004) ‘Introduction’ in Kingsbury, D., Remenyi, J., McKay, J. and Hunt, J. (authors) *Key issues in development*, Basingstoke; New York: Palgrave Macmillan, p.1.

⁵⁴⁶ The terminology in development is a complex one. The less developed countries were identified as “Third World” during the Cold War whereas capitalist countries constituted the first world and the socialist countries were considered as the second world. After the end of the Cold War, several different

and understandings since the emergence of the modern concept of development.⁵⁴⁷ Although earlier conceptions mostly focused on economic growth, new understandings of development concern broader issues, such as poverty, inequalities and environment, instead of generating economic growth only.⁵⁴⁸ Broader aims and new understandings of development are formulated in both theory and practice because it has been understood that identifying development as a solely economic phenomenon is incomplete (focusing exclusively on economic growth did not necessarily enhance well-being of most people).⁵⁴⁹ Amartya Sen's work made a huge contribution to this new concept. His approach shifted the objective and focus of development from economic growth to well-being.⁵⁵⁰ In his seminal book *Development as Freedom* he defined development as "a process of expanding the real freedoms that people enjoy."⁵⁵¹ He considers economic growth and income as means for development, not ends in themselves. Achieving development is beyond producing economic growth and increasing incomes; individuals also need "political liberties, social powers, and the enabling conditions of good health, basic education, and the encouragement and cultivation of initiatives."⁵⁵² Therefore, the relationship between human rights and human development is important. Moreover, the linkages between law and development at the institutional level is also being argued both in practice and

terminologies have been used to define economically developed and less developed countries such as: "South vs North", "Global South vs Global North" and "Developed vs Less Developed (or Developing)" (Potter, *Geographies of development*, pp.23-32.; Allen and Thomas, *Poverty and development*, p.6.; Cypher, J. M. (2014) *The Process of Economic Development (fourth edition)*, Abingdon, Oxon; New York: Routledge, pp.28-29 (n.6).)

⁵⁴⁷ Potter, *Geographies of development*, p.6.; Beaudet, P., Haslam, P. A. and Schafer, J. (2012) *Introduction to international development: Approaches, Actors, and Issues (Second edition)*, Don Mills Ontario Canada: Oxford University Press, pp.45-65.; Rist, *History of development*, pp.70-74.

⁵⁴⁸ Potter, *Geographies of development*, pp.114-115.; Todaro and Smith, *Economic Development*, p.119.; Thorbecke, E. (2007) 'The Evolution of the Development Doctrine, 1950-2005' in Mavrotas, G. and Shorrocks, A. (eds) *Advancing Development: Core Themes in Global Economics*, New York: Palgrave Macmillan, pp.10-11.; Allen and Thomas, *Poverty and development*, p.10.; Cypher, *The Process of Economic Development*, p.36.

⁵⁴⁹ Todaro and Smith, *Economic Development*, pp.384-388.; Thorbecke, *The Evolution of the Development Doctrine*, pp.13-14.; Peet and Hartwick, *Theories of development*, pp.3-13.; Dang and Pheng, *Infrastructure investments*, p.13.; Sen, *Development as Freedom*, pp.4-14.; Ozcan, B. and Bjornskov, C. (2011) Social trust and human development (Report), *The Journal of Socio-Economics*, Vol.40, No.6, p.753.; Suri, T., Boozer, M., Ranis, G. and Stewart, F. (2011) Paths to Success: The Relationship Between Human Development and Economic Growth, *World Development*, Vol.39, No.4, p.510.

⁵⁵⁰ Dang and Pheng, *Infrastructure investments*, p.13.; Peet and Hartwick, *Theories of development*, p.3.; Potter, *Geographies of development*, p.13.; Todaro and Smith, *Economic Development*, pp.18-20.; Thorbecke, *The Evolution of the Development Doctrine*, p.17.; Dang and Pheng, *Infrastructure investments*, p.13.

⁵⁵¹ Sen, *Development as Freedom*, p.3.

⁵⁵² Sen, *Development as Freedom*, pp.3-5.

academia.⁵⁵³ Yet, comprehensively exploring these complex arguments is beyond the scope of this chapter.

Development and human rights used to be considered as two separate fields, although their emanation coincided with each other after the World War II.⁵⁵⁴ Development has transformed from a growth-oriented paradigm to human development, and a convergence between human rights and development has become crucial as they have a potential to strengthen each other.⁵⁵⁵ The importance of linking human rights and development has been emphasised for a long period of time, yet, this emphasis had not turned into practice until the mid-1990s.⁵⁵⁶ In 1968, the first World Conference on Human Rights declared: “the achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development”.⁵⁵⁷ Similarly, the United Nations Development Programme (UNDP) published a human development report in 2000 which

⁵⁵³ See: Trubek, D. M. and Galanter, M. (1974) Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States, *Wisconsin Law Review*, No:4, pp.1062-1102.; Lee, Y. (2015) Call for a New Analytical Model for Law and Development, *Law and Development Review*, Vol.8, No.1, pp.1-67.; Mota Prado, M., Coutinho, D. and Schapiro, M. (2016) Law and Development: An Evolving Research Agenda, *Law and Development Review*, Vol.9, No.2, pp.223-231.; Davis, K. E. and Trebilcock, M. J. (2008) The Relationship between Law and Development: Optimists versus Skeptics, *American Journal of Comparative Law*, Vol.56, No.4, pp.895-946.

⁵⁵⁴ Buchanan, R. and Zumbansen, P. (2014) ‘Introduction: Approximating Law and Development, Human Rights and Transitional Justice’ in Buchanan, R. and Zumbansen, P. (eds) *Law in transition: Human rights, development and transitional justice*, Oxford, United Kingdom; Portland, Oregon: Hart Publishing, p.15.; Andreassen, B. A. and Marks, S. P. (2006) ‘Introduction’ in Andreassen, B. A. and Marks, S. P. (eds) *Development as a human right: Legal, political, and economic dimensions*, Boston, Cambridge: Harvard School of Public Health, François-Xavier Bagnoud Center for Health and Human Rights; Distributed by Harvard University Press, p.vi.; Robinson, M. (2005) ‘What Rights Can Add to Good Development Practice’ in Alston, P. and Robinson, M. (eds) *Human rights and development: towards mutual reinforcement*, Oxford: Oxford University Press, p.27.; Shivji, I. (1999) Constructing a New Rights Regime: Promises, Problems and Prospects, *Social & Legal Studies*, Vol.8, No.2, p.259.; Marks, S. P. (2005) ‘The Human Rights Framework for Development: Seven Approaches’ in Sengupta, A., Negi, A. and Basu, M. (eds) *Reflections on the right to development*, New Delhi; London: Sage Publications, p.23.; The United Nations Development Programme – UNDP (2000) *Human Development Report 2000: Human Rights and Human Development*, New York; Oxford: Oxford University Press, p.2.

⁵⁵⁵ Andreassen and Marks, *Introduction*, p.vi.; UNDP *Human Development Report 2000*, p.2.; Centre for Development and Human Rights (2003) *The right to development: A primer; with an introduction by Stephen P. Marks*, New Delhi; Thousand Oaks, California: Sage Publication, p.43.

⁵⁵⁶ Alston, P. and Robinson, M. (2005) ‘The Challenges of Ensuring the Mutuality of Human Rights and Development Endeavours’ in Alston, P. and Robinson, M. (eds) *Human rights and development: towards mutual reinforcement*, Oxford: Oxford University Press, pp.1-7.; Robinson, *What Rights Can Add to Good Development*, pp.32-36.; Alston, P. (2005) Ships Passing in the Night: The Current State of the Human Rights and Development Debate seen through the Lens of the Millennium Development Goals, *Human Rights Quarterly*, Vol.27, No.3, p.798.; Hansen, J. K. and Sano, H. (2006) ‘The Implications and Value Added of a Rights-Based Approach’ in Andreassen, B. A. and Marks, S. P. (eds) *Development as a human right: Legal, political, and economic dimensions*, Boston: Cambridge: Harvard School of Public Health, François-Xavier Bagnoud Center for Health and Human Rights; Distributed by Harvard University Press, p.38.

⁵⁵⁷ The Proclamation of Teheran, *Final Act of the International Conference on Human Rights*, UN doc. A/CONF.32/41 (1968), para.13.

remarked the importance of adopting a human rights approach to development, emphasising that human development and human rights have “a common vision and a common purpose—to secure the freedom, well-being and dignity of all people everywhere.”⁵⁵⁸ Furthermore, the Declaration on the Right to Development was adopted by the UN General Assembly in 1986.⁵⁵⁹ This declaration was based on a view that individuals and collectives have a right to development, and underdevelopment is a violation of human rights.⁵⁶⁰ Yet, the very existence of the right, its conceptualisation and justiciability have been debated both in theory and practice since then.⁵⁶¹ It must be noted that the right to development is different from rights-based approaches to development although they both suggest distinct ways to link human rights and development.⁵⁶² A rights-based approach was defined as:

a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to analyse inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress.⁵⁶³

So, while the right to development links human development and human rights by considering development as a human right, a rights-based approach does so by advocating for adoption of

⁵⁵⁸ UNDP Human Development Report 2000, pp.1-24.

⁵⁵⁹ The United Nations General Assembly (1986) Declaration on the Right to Development, A/RES/41/128. Available at: <http://www.un.org/documents/ga/res/41/a41r128.htm> (access date: 30.07.2018).

⁵⁶⁰ Onazi, O. (2013) *Human rights from community: A rights-based approach to development*, Edinburgh: Edinburgh University Press, p.26.; Marks, S. P. (2004) ‘The Right to Development in Context’ in Centre for Development and Human Rights (2004) *The right to development: A primer; with an introduction by Stephen P. Marks*, New Delhi; Thousand Oaks, Calif.: Sage Publications, p.29.; Marks, *The Human Rights Framework for Development*, pp.35-36.

⁵⁶¹ Vandenbogaerde, A. (2013) The Right to Development in International Human Rights Law: A Call for its Dissolution, *Netherlands Quarterly of Human Rights*, Vol.31, No.2, p.188.; Vandenhoe, W. (2003) The human right to development as a paradox, *Verfassung Und Recht in Übersee / Law and Politics in Africa, Asia and Latin America*, Vol.36, No.3, pp.377-404.; Donnelly, J. (1985) In search of the unicorn: The jurisprudence and politics of the right to development. (Symposium: Development as an Emerging Human Right, California Western School of Law, San Diego, February 22-23, 1985), *California Western International Law Journal*, Vol.15, No.3, pp.473-509.; Villaroman, N. G. (2010) The right to development: Exploring the legal basis of a supernorm, *Florida Journal of International Law*, Vol.22, No.2, pp.299-332.; Sen, A. (2006) ‘Human Rights and Development’ in Andreassen, B. A. and Marks, S. P. (eds) *Development as a human right: Legal, political, and economic dimensions*, Boston, Cambridge: Harvard School of Public Health, François-Xavier Bagnoud Center for Health and Human Rights; Distributed by Harvard University Press, pp.1-5.; Andreassen and Marks, *Introduction*, p.vii.; Marks, *The Human Rights Framework for Development*, pp.36-37.; Onazi, *Human rights from community*, pp.27-28.; Centre for Development and Human Rights (2004) *The right to development: A primer; with an introduction by Stephen P. Marks*, New Delhi; Thousand Oaks, Calif.: Sage Publications, pp.60-61.

⁵⁶² See Marks, *The Human Rights Framework for Development*, pp.23-50 for other approaches to link development and human rights.

⁵⁶³ The Office of the United Nations High Commissioner for Human Rights- OHCHR (2006) *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation*, New York and Geneva: United Nations, p.15.

human rights principles and norms when designing development programs and plans.⁵⁶⁴ Therefore, various international, national and grassroots development actors (such as the United Nations Children's Fund (UNICEF), World Bank, UNDP, Organization for Economic Cooperation and Development (OECD), Oxfam, The Swedish International Development Cooperation Agency (SIDA), CARE and the Department for International Development (DFID)) integrated human rights into their development agendas.⁵⁶⁵

Exploring the linkages between human rights and development deserves a more extended analysis than can be done here. Whether and how they affect and complement each other has been debated both in theory and practice.⁵⁶⁶ Crudely put, human rights principles and norms such as equity, non-discrimination, empowerment, accountability and transparency could be useful for development research and practice.⁵⁶⁷ On the other hand, development may reinforce human rights as it has a long tradition of analysing and investigating development progress and projects. These methods could be useful for human rights analysis and policy choices.⁵⁶⁸ Moreover, human development can reinforce human rights by analysing the conditions and improving the society in which these rights are going to be realised.⁵⁶⁹ This would also help in designing a realistic and attainable transitional justice process because unkept promises often lead to disappointments in transitional societies.

As mentioned above, economic, political and social freedoms are closely linked to each other.⁵⁷⁰ It is asserted that there is a correlation between development and human rights protection.⁵⁷¹

⁵⁶⁴ Marks, *The Human Rights Framework for Development*, pp.27-37.; OHCHR, *FAQ on a Human Rights-Based Approach to Development Cooperation*.

⁵⁶⁵ Robinson, *What Rights Can Add to Good Development*, pp.29-30.; Organisation for Economic Co-operation and Development – OECD (2006) *The Development Dimension: Integrating Human Rights into Development: Donor Approaches, Experiences and Challenges*, Paris: OECD Publishing, p.3.; Gready, P. and Ensor, J. (2005) 'Introduction' in Gready, P. and Ensor, J. (eds) *Reinventing development?: Translating rights-based approaches from theory into practice*, London: Zed, p.1.

⁵⁶⁶ See McInerney-Lankford, S. and Sano, H. (2010) *Human Rights Indicators in Development an Introduction*, Washington: The International Bank for Reconstruction and Development/The World Bank.; Alston, P. and Robinson, M. (2005) *Human rights and development: towards mutual reinforcement*, Oxford: Oxford University Press.; Forsythe, D. (1989) *Human rights and development: International views*, Basingstoke: Macmillan.; OECD, *The Development Dimension: Integrating Human Rights into Development*.

⁵⁶⁷ The United Nations Economic and Social Council (2001) *Fourth report of the independent expert on the right to development, Mr. Arjun Sengupta, submitted in accordance with Commission resolution 2001/9*, Document No: E/CN.4/2002/WG.18/2, par.26-32.; Robinson, *What Rights Can Add to Good Development*, pp.38-41.; Hansen and Sano, *The Implications and Value*, pp.40-42.; UNDP *Human Development Report 2000*, pp.21-22.; McInerney-Lankford and Sano, *Human Rights Indicators in Development*, pp.7-9.

⁵⁶⁸ UNDP *Human Development Report 2000*, pp.23-24.

⁵⁶⁹ Lenzen, *Roads Less Travelled*, pp.80-81.; UNDP *Human Development Report 2000*, pp.23-24.

⁵⁷⁰ Sen, *Development as Freedom*, pp.10-11.

⁵⁷¹ De Greiff, *Transitional Justice and Development*, p.418.; The World Bank (2011) *World Development Report 2011: Conflict, Security, and Development*, Washington, DC: The World Bank.

A low level of income is often associated with low levels of protection of CPR, and vice versa.⁵⁷² Similarly, individuals with greater capabilities (in terms of education, wealth, etc.) are more likely to protect their human rights which is often not the case for people in poverty.⁵⁷³ In fact, this correlation is also evident at the institutional level because human rights have become an indicator of development.⁵⁷⁴ Human rights will not be fully ensured in a society which is rife with socioeconomic inequalities and poverty; conversely, human development is not likely to be successful in a country where there is no accountability, transparency and rule of law.⁵⁷⁵

3.4.b. *Transitional justice and development*

Although transitional justice and development used to be disconnected, there is a growing attention towards the linkages between them recently.⁵⁷⁶ Before exploring whether and how transitional justice and development should be linked, it must be noted that broader understandings of the two fields are going to be taken into consideration in this study. Since ESCR are closely related to development goals, broader understandings of transitional justice which seek to address ESCR abuses are more relevant to development.⁵⁷⁷ Likewise, broader understandings of development are relevant to transitional justice rather than the conventional one which mainly focuses on economic growth. While transitional justice has common concerns with the former, it does not directly concern generating economic growth.⁵⁷⁸ Economic growth is important for transitional states, but it is not directly related to transitional justice's goals.

⁵⁷² Alston and Robinson, *The Challenges of Ensuring the Mutuality*, pp.5-14.; UNDP Human Development Report 2000, p.20.; ICTJ Briefing: *Transitional Justice and Development*, p.1.

⁵⁷³ Robinson, *What Rights Can Add to Good Development*, p.36.; The World Bank (2001) *Annual Report 2001*, No:25225 Volume 1, Washington, DC: World Bank, p.59.

⁵⁷⁴ McInerney-Lankford and Sano, *Human Rights Indicators in Development*, pp.51-82.

⁵⁷⁵ Buchanan and Zumbansen, *Introduction: Approximating Law and Development*, p.13.; Sen, *Development as Freedom*, pp.15-16.; Rittich, K. (2004) The future of law and development: Second generation reforms and the incorporation of the social (Globalization, Law & Development Conference), *Michigan Journal of International Law*, Vol.26, No.1, pp.199-243.; Mani, *Editorial Dilemmas of Expanding Transitional Justice*, pp.260-261.

⁵⁷⁶ Mani, *Editorial Dilemmas of Expanding Transitional Justice*, pp.253-265.; De Greiff, *Articulating the Links*, pp.28-75.; Colvin, *Purity and Planning*, pp.412-425.; De Greiff, P. and Duthie, R. (2009) *Transitional Justice and Development: Making Connections*, New York: Social Science Research Council.; Duthie, R. (2014) 'Transitional Justice, Development, and Economic Violence' in Sharp, D. (ed) *Justice and Economic Violence in Transition*, New York: Springer, pp.165-201.; Buckley-Zistel, *Connecting Transitional Justice and Development*, pp.1-13.; Colvin, *Purity and Planning*, p.412.

⁵⁷⁷ Duthie, *Toward a Development-sensitive Approach*, p.309.; Mani, R. (2007) *Looking Back and Moving Forward The Nexus between Development and Transitional Justice Building a Future on Peace and Justice (Nuremberg, 25 – 27 June 2007 Workshop 3, Expert Paper)*, Working Group on Development and Peace, p.8.; Alexander, *A Scoping Study*, p.47.

⁵⁷⁸ Duthie, *Toward a Development-sensitive Approach*, p.294.; De Greiff, *Transitional Justice and Development*, p.412.; Laplante, *Transitional Justice and Peace Building*, p.338.; Mani, *Editorial Dilemmas of Expanding Transitional Justice*, p.264.

As explained earlier, many post-conflict and post-authoritarian societies are rife with socioeconomic problems and structural injustices (such as poverty, inequality, discrimination and marginalisation), and leaving these problems and injustices un(der)addressed pose a risk to sustainable peace.⁵⁷⁹ Transitional justice mechanisms need to address ESCR violations and eliminate socioeconomic problems and structural injustices (including poverty, discrimination, marginalisation) which are also concerns of development.⁵⁸⁰ If socioeconomic problems are not tackled, they negatively affect development efforts as well. If peace is not ensured “development gains are eroded, under threat, or impossible to achieve with equity for society at large.”⁵⁸¹ Therefore, prevention of future violence and ensuring safety and security are of great importance to both fields.

Even if a state does not violate ESCR intentionally (as in forced displacements), conflicts and political violence still negatively affect well-being of people, damage institutions and hinder development progress.⁵⁸² It is stated that “massive and systematic violations may cause poverty, deepen inequality, weaken institutions, destroy infrastructure, impoverish governance, increase insecurity, deplete social capital, and so on.”⁵⁸³ Although development and transitional justice often neglect them, they need to tackle these problems (particularly structural inequalities) to prevent recurrence of violence.⁵⁸⁴ Both communities deal with similar problems from different

⁵⁷⁹ Muvingi, *Donor-Driven Transitional Justice*, p.12.; Boraine, A. (2001) *A country unmasked: South Africa's Truth and Reconciliation Commission*, Capetown; Oxford: Oxford University Press.; Laplante, *Transitional Justice and Peace Building*, pp.334-343.; OHCHR *Fact Sheet No.33*, p.27.; Selim, Y. and Murithi, T. (2011) Transitional Justice and Development: Partners for Sustainable Peace in Africa?, *Journal of Peacebuilding & Development*, Vol.6, No.2, pp.58-61.; Mani, R. (2002) *Beyond Retribution: Seeking Justice in the Shadows of War*, Cambridge: Polity Press, pp.8-9.; Alexander, *A Scoping Study*, pp.48-50.; Vinck and Pham, *Ownership and Participation*, p.410.

⁵⁸⁰ Duthie, *Toward a Development-sensitive Approach*, pp.301-304.; Arbour, *Economic and Social Justice*, p.3.; Sancho, H. (2014) *Development Trends: using transitional justice to promote development*, The Swedish International Development Cooperation Agency-SIDA, p.3.; ICTJ *Briefing: Transitional Justice and Development*, p.1.

⁵⁸¹ Lenzen, *Roads Less Travelled*, p.82.

⁵⁸² De Greiff, *Transitional Justice and Development*, p.416.; Baddeley, M. (2011) *Civil War and Human Development: Impacts of Finance and Financial Infrastructure*, Cambridge Working Papers in Economics (CWPE) 1127.; Stewart, F. (1993) War and underdevelopment: Can economic analysis help reduce the costs?, *Journal of International Development*, Vol.5, No.4, pp.357-380.; Alexander, *A Scoping Study*, p.6.; Dancy, G. and Wiebelhaus-Brahm, E. (2015) Bridge to Human Development or Vehicle of Inequality? Transitional Justice and Economic Structures, *International Journal of Transitional Justice*, Vol.9, No.1, p.55.

⁵⁸³ De Greiff, *Articulating the Links*, p.30.

⁵⁸⁴ De Greiff, *Transitional Justice and Development*, p.413.; Mani, *Looking Back and Moving Forward*, p.2.; Crocker, D. A. (2014) Development and global ethics: five foci for the future, *Journal of Global Ethics*, Vol.10, No.3, p.250.; Dancy and Wiebelhaus-Brahm, *Bridge to Human Development*, pp.52-53.; Laplante, *Transitional Justice and Peace Building*, pp.334-338.

perspectives but if these two fields can be coordinated, better results can be produced.⁵⁸⁵ Moreover, analysing the root causes of developmental problems can provide insights to the advantage of both processes as these causes may overlap to some extent.⁵⁸⁶ Like transitional justice, development should also concern root causes of violence and development problems; it needs to concern the transformation of the structures which enabled violence.⁵⁸⁷ Development needs to analyse root causes and refrain from furthering existing inequalities to prevent future violence.⁵⁸⁸ Although preventing future violence is not a main concern of development, it must avoid deepening root causes of conflict because a future conflict would undermine development efforts. Therefore, there is a growing tendency in development donors to put an emphasis on the promotion of rule of law and transitional justice sensitive development projects.⁵⁸⁹

Exploring how transitional justice and development can reinforce each other is important to better understand the linkages between them. Conflict and political violence often lead to “a generalized weakening of agency, trust, and social capital, not only for victims but for society as a whole.”⁵⁹⁰ Levels of trust diminish both in state institutions and among people in transitional societies, and this affects the social coordination and development progress.⁵⁹¹ There is a significant correlation between level of trust and economic growth and development.⁵⁹² Transitional justice concerns the reintegration of poor, excluded and marginalised people into their societies and reassurance of their agency.⁵⁹³ It also aims at restoring trust in people who

⁵⁸⁵ Duthie, *Toward a Development-sensitive Approach*, pp.305-306.; Sancho, *Development Trends*, pp.3-14.; Mani, *Looking Back and Moving Forward*, p.8.; ICTJ Briefing: *Transitional Justice and Development*, p.1.; Sirleaf, M. (2008) *Report on the JICA and ICTJ Workshop on “Transitional Justice and Development in Africa”: Enhancing Socio-Economic Justice in Societies in Transition: Case Studies on the African Continent*, Japan International Cooperation Agency (JICA) and International Center for Transitional Justice (ICTJ), pp.4-5.

⁵⁸⁶ Duthie, *Toward a Development-sensitive Approach*, pp.305-306.; Buchanan and Zumbansen, *Introduction: Approximating Law and Development*, pp.13-14.

⁵⁸⁷ Junne, G. and Verkoren, W. (2005) *Postconflict development: Meeting new challenges*, Boulder, Colo.: Lynne Rienner Publishers, p.6.; Alexander, A *Scoping Study*, pp.1-64.; Lenzen, *Roads Less Travelled*, pp.78-79.; Sancho, *Development Trends*, pp.5-7.; Mani, *Looking Back and Moving Forward*, pp.1-11.

⁵⁸⁸ Mani, *Looking Back and Moving Forward*, pp.6-7.; Uvin, P. (1998) *Aiding violence: The development enterprise in Rwanda*, West Hartford, Conn.: Kumarian Press.; Miller, *Effects of Invisibility*, p.289.

⁵⁸⁹ Muck and Wiebelhaus-Brahm, *Patterns of Transitional Justice Assistance*, pp.4-5.; Oomen, *Donor-Driven Justice and its Discontents*, p.890.; Sancho, *Development Trends*, pp.3-4.; ICTJ Briefing: *Transitional Justice and Development*, p.7.; McEvoy and McGregor, *Transitional Justice From Below*, p.2.

⁵⁹⁰ De Greiff, *Transitional Justice and Development*, pp.416-419.

⁵⁹¹ Sancho, *Development Trends*, pp.2-3.; ICTJ Briefing: *Transitional Justice and Development*, p.2.

⁵⁹² De Greiff, *Transitional Justice and Development*, p.417.; Ozcan and Bjornskov, *Social trust and human development*, pp.753-760.; Dearmon, J. and Grier, K. (2009) Trust and development (Report), *Journal of Economic Behavior & Organization*, Vol.71, No.2, pp.210-220.

⁵⁹³ Laplante, *Transitional Justice and Peace Building*, pp.349-350.; Orr, R. (2002) Governing When Chaos Rules: Enhancing Governance and Participation, *The Washington Quarterly*, Vol.25, No.4, p.145.; Leebaw, *The Irreconcilable Goals of Transitional Justice*, p.112.; De Greiff, *Transitional Justice and Development*, p.420.

lost their trust in state institutions which have critical importance for development efforts.⁵⁹⁴ Therefore, transitional justice can contribute to development by empowering people (particularly victims), reinstilling trust both in institutions and among people, increasing social capital, fostering civil society and promoting rule of law.⁵⁹⁵ As shown in the third chapter, this is also significant for Turkey as there is a low level of trust among victims towards the state, and this needs to be tackled for eliminating socioeconomic problems and enhancing development.

All transitional justice mechanisms have a potential to reinforce development efforts indirectly but reparations (both individual and collective) have a great potential to directly contribute to development.⁵⁹⁶ Collective reparations (provision of health care, education etc.) are akin to development programs, and there is a tendency to see reparations and development programs as substitutes for each other.⁵⁹⁷ Although they may resemble each other and offer similar benefits, they are different. Unlike development programs, reparations require the recognition of victims and the acknowledgement of responsibility for the past human rights violations.⁵⁹⁸ Rather than replacing one another, development and transitional justice communities should cooperate in the design and implementation of reparations.⁵⁹⁹

Furthermore, development can reinforce transitional justice in various ways. Firstly, development can contribute to transitional justice efforts by depicting what is attainable in those circumstances as it may have a better grasp of the conditions (financial and institutional) of the transitional society.⁶⁰⁰ Likewise, development can provide “funding and technical

⁵⁹⁴ Lenzen, *Roads Less Travelled*, p.80.; De Greiff, *Transitional Justice and Development*, pp.413-419.; Sancho, *Development Trends*, pp.2-3.; Roht-Arriaza, N. and Orlovsky, K. (2009) *A Complementary Relationship: Reparations and Development*, Research Brief, International Center for Transitional Justice, pp.1-4.

⁵⁹⁵ De Greiff, *Transitional Justice and Development*, pp.420-422.; Duthie, *Toward a Development-sensitive Approach*, pp.298-302.; Alexander, *A Scoping Study*, pp.48-53.; Selim and Murithi, *Transitional Justice and Development*, p.60.; Paulson, J. (2006) The Educational Recommendations of Truth and Reconciliation Commissions: Potential and Practice in Sierra Leone, *Research in Comparative and International Education*, Vol.1, No.4, p.347.; Sancho, *Development Trends*, pp.2-14.; Dancy and Wiebelhaus-Brahm, *Bridge to Human Development*, pp.56-57.

⁵⁹⁶ Sancho, *Development Trends*, pp.3-5.; ICTJ Briefing: *Transitional Justice and Development*, pp.3-8.; Dancy and Wiebelhaus-Brahm, *Bridge to Human Development*, pp.56-65.; Roht-Arriaza and Orlovsky, *A Complementary Relationship*, pp.1-4.; Cobián, R. A. and Reátegui, F. (2009) *Toward Systemic Social Transformation: Truth Commissions and Development*, Research Brief, International Center for Transitional Justice.; Duthie, *Introduction*, p.20.

⁵⁹⁷ Waldorf, *Anticipating the Past*, p.177.; Sancho, *Development Trends*, p.5.; ICTJ Briefing: *Transitional Justice and Development*, pp.4-5.; OHCHR, *Transitional Justice and ESCR*, p.39.

⁵⁹⁸ Roht-Arriaza and Orlovsky, *A Complementary Relationship*, pp.1-4.; ICTJ Briefing: *Transitional Justice and Development*, p.4.; Waldorf, *Anticipating the Past*, p.178.; Miller, *Effects of Invisibility*, p.285.

⁵⁹⁹ ICTJ Briefing: *Transitional Justice and Development*, p.5.; Roht-Arriaza and Orlovsky, *A Complementary Relationship*, pp.1-4.

⁶⁰⁰ Lenzen, *Roads Less Travelled*, pp.80-81.; ICTJ Briefing: *Transitional Justice and Development*, pp.2-3.

expertise and assistance.”⁶⁰¹ It was remarked that “successful transitions often depend on progress in development.”⁶⁰² So, achieving development and improvement in people’s lives could be an important indicator for transitional justice.⁶⁰³ Unlike transitional justice, development is a long-term struggle, and integrating transitional justice with development could “ensure a continued commitment and focus on transitional justice over time.”⁶⁰⁴ Finally, progress in broader concepts of development could be useful in eliminating socioeconomic problems and structural inequalities which would also contribute to prevention of conflict and political violence.⁶⁰⁵

The first chapter’s section 3.2.a illustrated that participation and local ownership is important in transitional justice and a grassroots approach can be more promising than top-down practices. Development has been concerned with participation and consultation matters for a long time, and it can contribute to transitional justice by sharing its expertise.⁶⁰⁶ Grassroots and participatory development has accumulated a considerable expertise both in theory and practice as it has been promoted and implemented for several decades.⁶⁰⁷ So, grassroots and participatory development approaches could reinforce transitional justice efforts by sharing their expertise.⁶⁰⁸ A grassroots development model can be promising as it can address needs of people on the ground and focus on redistribution and sustainability. Meaningful participation of locals can help to design and implement effective solutions to socioeconomic problems.⁶⁰⁹

There is a growing literature on the interrelationship between transitional justice and development, but this has not turned into practice considerably.⁶¹⁰ Although “potential synergies” of these fields often come into focus, there are also tensions, trade-offs and

⁶⁰¹ Duthie, *Toward a Development-sensitive Approach*, pp.296-302.; *ICTJ Briefing: Transitional Justice and Development*, p.2.

⁶⁰² *ICTJ Briefing: Transitional Justice and Development*, p.2.

⁶⁰³ De Greiff, *Articulating the Links*, p.30.

⁶⁰⁴ Sancho, *Development Trends*, p.13.

⁶⁰⁵ Mani, *Beyond Retribution*, pp.129-130.; Alexander, *A Scoping Study*, pp.48-50.; Vinck and Pham, *Ownership and Participation*, p.410.

⁶⁰⁶ *ICTJ Briefing: Transitional Justice and Development*, p.5.; Duthie, *Introduction*, pp.20-22.

⁶⁰⁷ The World Bank (1996) *The World Bank Participation Sourcebook*, Washington DC: World Bank.; Willis, K. (2005) *Theories and Practices of Development*, London: Routledge, pp.93-114.; McInerney-Lankford and Sano, *Human Rights Indicators in Development*, p.36.

⁶⁰⁸ Lundy and McGovern, *The Role of Community*, p.110.; Duthie, *Introduction*, p.20.

⁶⁰⁹ Sharp, *Addressing Economic Violence*, p.799.; Laplante, *Transitional Justice and Peace Building*, p.353.; McChesney, *Promoting and Defending ESCR*, p.22.; Szoke-Burke, *Not Only Context*, pp.487-489.; Roht-Arriaza and Orlovsky, *A Complementary Relationship*, pp.184-191.; Roht-Arriaza, *Reparations and ESCR*, p.120.; Hordijk, M. A, (2009) Peru’s Participatory Budgeting: Configurations of Power, Opportunities for Change, *The Open Urban Studies Journal*, Vol.2, p.43.; Laplante, *Transitional Justice and Peace Building*, pp.342-354.; Darrow and Tomas, *Power, Capture, and Conflict*, p.506.

⁶¹⁰ Sancho, *Development Trends*, pp.2-3.

competition between the two fields for limited resources in transitional societies.⁶¹¹ As development concerns “generic collective” rather than individuals, a tension may occur between development programs and demands of victims who expect to be recognised and redressed.⁶¹² Moreover, this tension can also be observed between victims and other citizens, as the latter may prioritise development projects on education, health and employment over transitional justice mechanisms.⁶¹³ Furthermore, some scholars consider transitional justice as an impediment to development for various reasons such as diverting away necessary resources from development programs, punishing skilled labour for crimes and daunting investments.⁶¹⁴ Yet, these claims are not supported by empirical evidence, and the arguments, for and against, mostly depend on theoretical analyses.⁶¹⁵ So, their impacts on each other and the distinctions between two fields need to be explored.⁶¹⁶ To conclude, there is a true potential for the cooperation of these two fields. So, rather than ignoring this potential due to aforementioned tensions, ways must be sought to eliminate these tensions so that these two fields can contribute to peace and reconciliation efforts.

4. Conclusion

This chapter provided the conceptualisation of ESCR in international law and an analysis of the arguments surrounding the neglect of these rights. Then, ESCR are scrutinised in the context of transitional justice. Finally, the connection between transitional justice and development is explained. The analysis concerning ESCR depicted that there is no legal or empirical basis to justify the neglect of ESCR in international law and transitional justice. The importance of addressing ESCR violations and structural injustices in transitional contexts is also elaborated. To achieve sustainable piece, remedying the causes of violence is necessary. It is noted that even though there is a growing tendency to address economic violations in transitional justice processes, it remains a blind spot in the field.⁶¹⁷ As explained in the first chapter, transitional justice has been dominated by legalism and influenced by international law. Therefore, both theory and practice of transitional justice has been framed from a narrow legalistic and state-

⁶¹¹ Buchanan and Zumbansen, *Introduction: Approximating Law and Development*, p.17.; Mani, *Editorial Dilemmas of Expanding Transitional Justice*, p.253.; ICTJ Briefing: *Transitional Justice and Development*, p.8.; Boettke, P. J. and Coyne, C. J. (2007) *Political Economy of Forgiveness, Society*, Vol.44, No.2, pp.53-59.; Olsen et al., *At What Cost*, p.168.; Waldorf, *Anticipating the Past*, p.174.

⁶¹² Colvin, *Purity and Planning*, p.418.; Dancy and Wiebelhaus-Brahm, *Bridge to Human Development*, pp.59-60.

⁶¹³ Colvin, *Purity and Planning*, p.418.; Miller, *Effects of Invisibility*, p.285.

⁶¹⁴ Dancy and Wiebelhaus-Brahm, *Bridge to Human Development*, pp.52-54.; Boettke and Coyne, *Political Economy of Forgiveness*, p.55.

⁶¹⁵ Dancy and Wiebelhaus-Brahm, *Bridge to Human Development*, pp.54-60.

⁶¹⁶ Colvin, *Purity and Planning*, p.414.

⁶¹⁷ Sharp, *Addressing Economic Violence*, p.782.

centric perspective. Yet, transitional contexts are complex, and these processes require a variety of disciplines and expertise such as history, economics, education, development, religion and psychology. Recently, the field is becoming more interdisciplinary.⁶¹⁸ Therefore, connecting transitional justice and development can make an important contribution to achieve the well-being of transitional societies. However, it is really important to distinguish the provinces in which both fields operate and identify how these two fields can reinforce each other in an efficient way.

⁶¹⁸ Bell, C. (2009) Transitional Justice, Interdisciplinarity and the State of the 'Field' or 'Non-Field', *International Journal of Transitional Justice*, Vol.3, No.1, pp.5-27.; Sharp, *Addressing Economic Violence*, p.788.

Chapter 3: The Kurdish Question

1. Introduction

This chapter is divided into two parts. The first part gives the historical background of the Kurdish Question to understand what the causes of the conflict are. It argues that even though the Kurdish Question is inherently political, socioeconomic problems and ESCR violations are both among root causes and consequences of the conflict. The second part deals with the human rights abuses in general and ESCR abuses in particular. This part explains that forced displacement has been one of the most significant and wide-spread human rights violations in the Kurdish Question. Forced displacement caused numerous human rights violations, particularly ESCR violations (including of the right to housing, the right to adequate standard of living and the right to education) in Turkey. The Kurdish internally displaced persons (IDPs)⁶¹⁹ have wide-ranging socioeconomic problems such as poverty, unemployment and poor housing due to ESCR violations. The forced migration will be explored in detail in this chapter's section 3.2, but it should be noted that forced migration creates numerous problems and puts people in precarious situations. IDPs lack international legal protection as they are not refugees. There is no binding international instrument for the protection of IDPs. The Guiding Principles on International Displacement was presented to the UN in 1998, and the principles aim to address the needs of the IDPs and to protect their human rights.⁶²⁰ Yet, this document is not binding, and there is no separate agency to enforce these principles. Due to these shortcomings, the implementation of the principles has not been successful and the IDPs are still in need of an efficient protection.⁶²¹ This is also the case in Turkey and the Kurdish IDPs are in need of protection and redress for the abuses they have been subjected to.

The governments have taken some steps to address the problems arising from past wrongs, but they have been limited. By providing the historical background and detailing human rights violations through a socioeconomic lens, the chapter emphasises the importance of tackling socioeconomic problems in the Kurdish Question and suggests that the government must pursue transitional justice and address both CPR and ESCR violations.

⁶¹⁹ IDPs are defined by the UN as: "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border." (Guiding Principles on Internal Displacement, Article 2.)

⁶²⁰ Guiding Principles on Internal Displacement, Introductory Note to the Guiding Principles, par.1-3.

⁶²¹ Ayata and Yukseker, *A belated awakening*, pp.10-11.

2. Background of the problem

As stated earlier, the Kurdish Question is an identity-based political problem, but socioeconomic matters are central to it. By exploring the historical development of the problem, the root causes of the conflict can be understood well. Understanding the root causes of the conflict is critical for considering transitional justice in the context of the Kurdish Question.

The Kurdish people never had their own independent state in history and they had lived under the rule of the Ottoman Empire and the Persian Empire for the past five hundred years.⁶²² Today the largest percentage of their population live in Turkey, Iran, Iraq and Syria.⁶²³ Although population censuses do not classify ethnicity of the population in Turkey, the Kurds are the largest minority in the country.⁶²⁴ Under the Ottoman rule, the Kurds had autonomous emirates which were independent in internal affairs since the 16th century.⁶²⁵ The Ottoman Empire was multi-ethnic and multi-cultural and it provided a space for different ethnic groups to coexist together.⁶²⁶ The Ottoman Empire joined the First World War and it was defeated. Then, the Turkish War of Independence took place and the new Turkish Republic was established in 1923.⁶²⁷ The founders of Turkey promised Kurds before the foundation of the Republic that their

⁶²² Saatci, M. (2002) Nation-States and Ethnic Boundaries: Modern Turkish Identity and Turkish-Kurdish Conflict, *Nations and Nationalism*, Vol.8, No.4, p.556.; Izady, M. (1992) *The Kurds: A Concise Handbook*, Washington, DC: Taylor & Francis, p.3.; Gunter, M. (2008) *The Kurds Ascending: The Evolving Solution to the Kurdish Problem in Iraq and Turkey*, New York: Palgrave Macmillan, p.1.

⁶²³ Tezcur, G. M. (2015) Electoral Behavior in Civil Wars: The Kurdish Conflict in Turkey, *Civil Wars*, Vol.17, No.1, p.74.; Abbas, T. and Yigit, I. H. (2016) Perspectives on Ethno-National Conflict Among Kurdish Families with Members in the PKK, *Terrorism and Political Violence*, Vol.28, No.2, p.298.; Gunter, *The Kurds Ascending*, p.1.

⁶²⁴ Mutlu, S. (1996) Ethnic Kurds in Turkey: A Demographic Study, *International Journal of Middle East Studies*, Vol.28, No.4, pp.517-541.; Koc, I., Hancioglu, A. and Cavlin, A. (2008) Demographic Differentials and Demographic Integration of Turkish and Kurdish Populations in Turkey, *Population Research and Policy Review*, Vol.27, No.4, pp.447-457.; KONDA Research and Consultancy (2011) *Biz Kimiz'10: Kürt Meselesi'nde Algı ve Beklentiler Araştırması Bulgular Raporu*, Istanbul: KONDA, p.12.; Gunes, C. (2012) Unblocking the Impasse in Turkey's Kurdish Question, *Peace Review*, Vol.24, No.4, p.463.; Dixon, J. C. and Ergin, M. (2010) Explaining Anti-Kurdish Beliefs in Turkey: Group Competition, Identity, and Globalization, *Social Science Quarterly*, Vol.91, No.5, p.1330.; Gunter, *The Kurds Ascending*, p.2.; Amicam, N. (2003) *Turkey: Facing A New Millenium*, New York: Manchester University Press, p.41.

⁶²⁵ Barkey, H. J. and Fuller, G. E. (1998) *Turkey's Kurdish Question*, New York: Rowman & Littlefield, pp.6-7.; Yegen, M. (1999) The Kurdish Question in Turkish State Discourse, *Journal of Contemporary History*, Vol.34, No.4, p.562.; Yildiz, K. (2005) *The Kurds in Turkey EU Accession and Human Rights*, London: Pluto Press, p.6.

⁶²⁶ McDowall, D. (2007) *A Modern History of the Kurds*, London and New York: I. B. Tauris, p.1.; Barkey and Fuller, *Turkey's Kurdish Question*, pp.6-7.; Yavuz, M. H. (2001) Five stages of the construction of Kurdish nationalism in Turkey, *Nationalism and Ethnic Politics*, Vol.7, No.3, p.5.

⁶²⁷ Yadirgi, V. (2017) *The Political Economy of the Kurds of Turkey: From the Ottoman Empire to the Turkish Republic*, Cambridge: Cambridge University Press, p.163.; Robins, P. (1993) The Overlord State: Turkish Policy and the Kurdish Issue, *International Affairs (Royal Institute of International Affairs 1944-)*, Vol.69, No.4, p.659.

ethnic and cultural rights would be recognised by the new state.⁶²⁸ However, the promised multi-ethnic state never emerged, the new Republic was a Turkish nation-state as the founders aimed to establish a modern and homogenous state similar to the Western ones.⁶²⁹

The founders of the Republic considered ethnic, religious and linguistic diversity as a problem which could lead to instability and could be an obstacle to progress as these groups could revolt for independence.⁶³⁰ They declared that all the citizens of the Republic were “Turkish” and all other ethnic groups had to deny their ethnic identities.⁶³¹ They banned education and publication in other languages, shut all the traditional Kurdish schools, changed the Kurdish names of cities and villages to Turkish ones, and eradicated “Kurdistan” (which was the name of the Kurdish region) from maps and official documents.⁶³² The names of nearly 15,000 places (35-36%) were changed between 1940 and 2000. Although there have been various reasons for changing the names such as preventing confusion, one of the main reasons was replacing non-Turkish names with Turkish ones.⁶³³ These policies also targeted other ethnic groups (such as Circassians, Laz, Chechens, Arabs and Bosnians), yet, the relationships these ethnic groups had with the state have not been violent.⁶³⁴ The new regime was harsh in repressing the Kurdish

⁶²⁸ Zeydanlioglu, W. (2008) “‘The White Turkish Man’s Burden’: Orientalism, Kemalism and the Kurds in Turkey’ in Rings, G and Ife, A. (eds) *Neo-colonial Mentalities in Contemporary Europe? Language and Discourse in the Construction of Identities*, Newcastle upon Tyne: Cambridge Scholars Publishing, p.162.; Yegen, M. (2007) Turkish nationalism and the Kurdish question, *Ethnic and Racial Studies*, Vol.30, No.1, pp.126-127.

⁶²⁹ Ergin, M. (2014) The racialization of Kurdish identity in Turkey, *Ethnic and Racial Studies*, Vol.37, No.2, pp.326-327.; Keyman, F. (2012) Rethinking the ‘Kurdish question’ in Turkey: Modernity, citizenship and democracy, *Philosophy and Social Criticism*, Vol.38, No.4-5, pp.470-471.

⁶³⁰ Muller, M. (1996) ‘Nationalism and the Rule of Law in Turkey: The Elimination of Kurdish Representation During the 1990s’ in Olson, R. (ed) *The Kurdish nationalist movement in the 1990s : Its impact on Turkey and the Middle East*, Lexington, Ky.: University Press of Kentucky, p.175.; Cizre, U. (2001) ‘Turkey’s Kurdish problem: borders, identity, and hegemony’ in O’Leary, B., Lustick I. S. and Callaghy, T. M. (eds.) *Right-sizing the state: the politics of moving borders*, Oxford: Oxford University Press, pp.226–229.; Somer, M. (2004) Turkey’s Kurdish Conflict: Changing Context, and Domestic and Regional Implications, *Middle East Journal*, Vol.58, No.2, p.240.

⁶³¹ Canefe, N. (2002) Turkish nationalism and ethno-symbolic analysis: the rules of exception, *Nations and Nationalism*, Vol.8, No.2, pp.146-147.; Saatci, *Nation-States and Ethnic Boundaries*, p.557.; Zeydanlioglu, W. (2012) Turkey’s Kurdish language policy, *International Journal of the Sociology of Language*, No.217, p.105.

⁶³² Kirisci, K. and Winrow, G. M. (1997) *The Kurdish Question and Turkey: An Example of a Trans-state Ethnic Conflict*, London: Frank Cass, pp.95-96.; Zeydanlioglu, *Turkey’s Kurdish language policy*, pp.101-103.; Sagnic, C. (2010) Mountain Turks: State ideology and the Kurds in Turkey, *Information, Society and Justice*, Vol.3, No.2, p.130.; Taspinar, O. (2005) *Kurdish nationalism and political Islam in Turkey: Kemalist identity in transition*, New York; London: Routledge, pp.79-80.

⁶³³ Tuncel, H. (2000) Türkiye’de Ismi Degistirilen Koyler (Renamed Villages in Turkey), *Firat University Journal of Social Science*, Vol.10, No:2, p.27.; Amicam, *Turkey: Facing A New Millenium*, p.33.; Nisanyan, S. (2011) *Hayali Coğrafyalar: Cumhuriyet Döneminde Türkiye’de Değiştirilen Yeradları*, Istanbul: TESEV Publications, p.50.

⁶³⁴ Mango, A. (1999) Atatürk and the Kurds, *Middle Eastern Studies*, Vol.35, No.4, p.20.; Somer, *Turkey’s Kurdish Conflict: Changing Context*, pp.240-241.

identity, particularly language. Some Kurds were fined for each word they used if they spoke Kurdish. Any form of expression of Kurdish culture, traditions, language and folklore were prohibited.⁶³⁵ It is stated that these assimilationist policies stirred up nationalism among Kurds which ended up with the construction of Kurdish national identity.⁶³⁶

Due to the state's oppression, the Shaykh Said rebellion took place in 1925, and other rebellions (the 1930-1931 Agri and 1937-1938 Dersim rebellions) followed this, but all of them suppressed brutally by the state.⁶³⁷ Yavuz claims that the Turkish state constructed a discourse about the Kurds after these rebellions. The Kurds were framed as economically and socially backwards, religiously fanatic and a threat to the national integrity of the Republic.⁶³⁸ After these rebellions, there were no other revolts until the 1980s. Also, there was no social movement or mobilisation in the Kurdish society until the 1960s due to the state's strict control in the region.⁶³⁹ The harsh assimilationist policies were slightly alleviated by the Democrat Party (DP), a centre-right political party, which came to power in 1950.⁶⁴⁰ They adopted a liberal approach to the economy and some developments took place in the economy. But the substantial gap between Kurdish and western provinces of the country in terms of economic development was widened.⁶⁴¹ During

⁶³⁵ Zeydanlioglu, *The White Turkish Man's Burden*, p.162.; Kendal, N. (1993) 'Kurdistan in Turkey' in Chailand, G. (ed) *A People Without a Country: The Kurds and Kurdistan*, New York: Olive Branch Press, pp.73-74.; Zeydanlioglu, *Turkey's Kurdish language policy*, pp.101-105.; Aslan, S. (2007) "Citizen Speak Turkish!": A Nation in the Making, *Nationalism And Ethnic Politics*, Vol.13, No.2, pp.245-272.; Nisan, M. (2002) *Minorities in the Middle East*, London: Mcfarland & Company Inc, p. 47.

⁶³⁶ Exploring the formation of the Kurdish identity in-depth is beyond the scope of this chapter but there is an extensive literature on the subject. See: Tezcur, G. M. (2010) When democratization radicalizes: The Kurdish nationalist movement in Turkey, *Journal of Peace Research*, Vol.47, No.6, pp.775-789.; Romano, D. (2006) *The Kurdish Nationalist Movement*, New York: Cambridge University Press.; Gourlay, W. (2018) Oppression, Solidarity, Resistance: The Forging of Kurdish Identity in Turkey, *Ethnopolitics*, Vol.17, No.2, pp.130-146.; Bajalan, D. and Karimi, S. (2015) *Studies in Kurdish history: Empire, ethnicity and identity*, London; New York: Routledge.; Gunes, C. (2012) *The Kurdish National Movement in Turkey: From Protest to Resistance*, Milton Park, Abingdon, Oxon; New York: Routledge.; Maxwell, A. and Smith, T. (2015) Positing "not-yet-nationalism": limits to the impact of nationalism theory on Kurdish historiography, *Nationalities Papers*, Vol.43, No.5, pp.771-787.

⁶³⁷ Entessar, N. (1992) *Kurdish Ethnonationalism*, Boulder, CO: Lynne Rienner Publishers, pp.83-87.; Bruinessen, M. (1992) *Agha, Shaikh and State: The Social and Political Structures of Kurdistan*, London: Zed Books, pp.265-305.; Romano, *The Kurdish Nationalist Movement*, pp.105-107.; Keyman, *Rethinking the Kurdish question*, p.471.

⁶³⁸ Yavuz, *Five stages of the construction*, p.8.; Ergin, *The racialization of Kurdish identity*, pp.325-327.

⁶³⁹ Ozen, H. (2015) Latent dynamics of movement formation: The Kurdish case in Turkey (1940s–1960s), *Current Sociology*, Vol.63, No.1, p.61.; Marcus, A. (2007) *Blood and Belief: The PKK and the Kurdish Fight for Independence*, New York; London: New York University Press, p.18.; Haddad, S. (2001) The Kurds in Turkey: Context and Current Status, *Migracijske I Etničke Teme*, Vol.17, No.1, p.92.

⁶⁴⁰ Ozcan, A. K. (2006) *Turkey's Kurds A theoretical analysis of the PKK and Abdullah Ocalan*, Abingdon: Routledge, p.74.; Kreyenbroek, P. G. (2005) 'On the Kurdish language' in Kreyenbroek, P. G. and Sperl, S. (eds) *The Kurds: A Contemporary Overview*, London and New York: Routledge, p.58.

⁶⁴¹ Saatci, *Nation-States and Ethnic Boundaries*, p.558.; Natali, D. (2005) *The Kurds and the state: Evolving national identity in Iraq, Turkey, and Iran (1st ed., Modern intellectual and political history of the Middle East)*, Syracuse, N.Y.: Syracuse University Press, pp.98-99.

the 1950s, 1960s and 1970s the Kurdish Question was interpreted through an economic and development discourse (as a regional backwardness problem).⁶⁴² In 1960, a military coup toppled the Democrat Party and a new wave of oppressive and assimilative policies were initiated by the military regime such as imprisoning and exiling of the prominent Kurdish figures and sending Kurdish children into boarding schools, where they had to speak Turkish exclusively.⁶⁴³ There have been increasing calls from the Kurds for the recognition of their political, cultural and linguistic rights since the 1970s but these demands were silenced by the state.⁶⁴⁴

In 1980, another coup took place and the military regime adopted repressive policies to assimilate Kurds.⁶⁴⁵ Zeydanlioglu states that “the systematic repression and assimilation of the Kurds reached its peak with the 1980 coup”.⁶⁴⁶ The military regime jailed almost 81,000 Kurdish dissidents who were exposed to systematic torture in prisons.⁶⁴⁷ In addition, newspapers, publishing houses and NGOs were shut down; the Kurdish language was prohibited; and the Kurdish towns and villages renamed with Turkish names.⁶⁴⁸ Yet, these policies strengthened the Kurdish identity politics rather than eliminating it; the oppressive policies of the military regime strengthened the separatist movement and the PKK was established.⁶⁴⁹ The state played an important role in the strengthening of the PKK because the oppression of the military coup pushed people to supporting the PKK.⁶⁵⁰ The People’s Labour Party (Halkin Emek Partisi) was formed in 1990 as the first pro-Kurdish political party, and seven more parties followed this until

⁶⁴² Yegen, *The Kurdish Question in Turkish State Discourse*, p.564.; Keyman, *Rethinking the Kurdish question*, p.471.; Ergin, *The racialization of Kurdish identity*, p.327.

⁶⁴³ Zeydanlioglu, *The White Turkish Man’s Burden*, pp.165-167.; Barkey and Fuller, *Turkey’s Kurdish Question*, p.14.; Besikci, İ. (1970) *Dogu Anadolu’nun Duzeni: Sosyo-Ekonomik ve Etnik Temeller*, Istanbul: E Yayinlari, pp.400-404.; Entessar, *Kurdish Ethnonationalism*, pp.87-89.; Ozcan, *Turkey’s Kurds*, p.74.

⁶⁴⁴ Gunter, M. (2004) The Kurdish Question in Perspective, *World Affairs*, Vol.166, No.4, p.200.

⁶⁴⁵ Barkey, H. and Fuller, G. (1997) Turkey’s Kurdish Question: Critical Turning Points and Missed Opportunities, *Middle East Journal*, Vol.51, No.1, p.73.; Yavuz, *Five stages of the construction*, p.10.; Gurses, M. (2010) Partition, Democracy, and Turkey’s Kurdish Minority, *Nationalism and Ethnic Politics*, Vol.16, No.3-4, p.341.

⁶⁴⁶ Zeydanlioglu, *The White Turkish Man’s Burden*, p.166.

⁶⁴⁷ McDowall, *A Modern History of the Kurds*, pp.416-424.; Zeydanlioglu, *The White Turkish Man’s Burden*, pp.166-167.; Updegraff, R. (2012) The Kurdish Question, *Journal of Democracy*, Vol.23, No.1, p.122.; Bozarslan, H. (2001) Human rights and the Kurdish issue in Turkey: 1984–1999, *Human Rights Review*, Vol.3, No.1, p.46.; Nisan, *Minorities in the Middle East*, p.48.

⁶⁴⁸ Zeydanlioglu, *The White Turkish Man’s Burden*, pp.166-167.; Updegraff, *The Kurdish Question*, p.122.; Marcus, *Blood and Belief*, p.85.

⁶⁴⁹ Barkey and Fuller, *Turkey’s Kurdish Question*, pp.21-22.; Romano, *The Kurdish Nationalist Movement*, pp.109-111.

⁶⁵⁰ Bozarslan, *Human rights and the Kurdish issue*, p.46.

today as the Constitutional Court in Turkey kept closing them, accusing the parties of “links with PKK and the promotion of separatism”.⁶⁵¹

During the 1990s, the alienation between Kurds and the state escalated, and Turkish nationalism and Kurdish discontent increased accordingly.⁶⁵² It has been explained that there was a self-censorship in the Turkish media, and the information was controlled by the state, therefore, the Turkish public did not really know what was going on in the Kurdish regions. Therefore, there was no considerable debate and pressure from the public regarding the policies concerning the Kurdish Question.⁶⁵³ Until the 1990s, “Kurd”, as a word, did not even appear in the newspapers.⁶⁵⁴ The cultural demands of the Kurds were often perceived and described as a threat to the unity of the state by the state elite.⁶⁵⁵ The state’s oppression pushed Kurds to a more hard-line stance against the state, and the Kurdish actors were also provocative at times.⁶⁵⁶ The numbers of recruits to the PKK rose after the state’s indiscriminate violence and oppression. For instance, the PKK had many new recruits after the Maras Massacre which took place in 1978 and resulted in the death of 111 Alevite Kurds.⁶⁵⁷ Likewise, when the local authorities in Hakkari banned Newroz, the traditional Kurdish spring festival, and then violently responded to the demonstrations in 2008, around a dozen students from that province joined the PKK one after another.⁶⁵⁸

In 1999, Abdullah Ocalan, the founder and long-time leader of the PKK, was captured, the PKK declared a ceasefire and the European Union (EU) announced Turkey’s candidacy for membership.⁶⁵⁹ These developments paved the way for reforms for strengthening democracy

⁶⁵¹ Todorova, *Turkish Security Discourses*, p.111.; Gunes, *Unblocking the Impasse*, p.467.

⁶⁵² Yegen, *Turkish nationalism and the Kurdish question*, p.136.; Updegraff, *The Kurdish Question*, pp.121-122.

⁶⁵³ Barkey and Fuller, *Critical Turning Points*, pp.77-78.; Waldman, S. A. and Caliskan, E. (2017) *The New Turkey and Its Discontents*, New York: Oxford University Press, p.3.

⁶⁵⁴ Belge, C. (2016) Civilian Victimization and the Politics of Information in the Kurdish Conflict in Turkey, *World Politics*, Vol.68, No.2, p.282.; Somer, M. (2005) Resurgence and Remaking of Identity: Civil Beliefs, Domestic and External Dynamics, and the Turkish Mainstream Discourse on Kurds, *Comparative Political Studies*, Vol.38, No.6, pp.599-601.

⁶⁵⁵ Kardas, T. and Balci, A. (2016) Inter-societal security trilemma in Turkey: understanding the failure of the 2009 Kurdish Opening, *Turkish Studies*, Vol.17, No.1, p.162.

⁶⁵⁶ Tezcur, *When democratization radicalizes*, p.778.; Entessar, *Kurdish Ethnonationalism*, p.9.; Robins, *The Overlord State*, pp.666-667.; Yanmis, M. (2016) *Resurgence of the Kurdish Conflict in Turkey: How Kurds View It (Rethink Paper 25)*, Washington DC: Rethink Institute, pp.27-31.; Abbas and Yigit, *Perspectives on Ethno-National Conflict*, p.311.; Celik, A. B. (2005) “I miss my village!”: Forced Kurdish migrants in Istanbul and their representation in associations, *New Perspectives on Turkey*, Vol.32, pp.142-143.

⁶⁵⁷ Phillips, D. L. and Kouchner, B. (2015) *The Kurdish spring: A new map of the Middle East*, New Brunswick, New Jersey: Transaction Publishers, pp.51-52.

⁶⁵⁸ Tezcur, *When democratization radicalizes*, p.778.

⁶⁵⁹ Nisan, *Minorities in the Middle East*, p.52.

and searching for a peaceful solution to the Kurdish Question.⁶⁶⁰ Yet, although the PKK declared a ceasefire after the capture of Ocalan, it continued its activities.⁶⁶¹ The PKK will be analysed in the following section more broadly. Yet, before moving there it must be remarked that the Turkish state had refused to acknowledge the ethno-political aspect of the Kurdish question until the 1990s by conceiving it as a socioeconomic and security/terrorism problem.⁶⁶² There has been a continuing demand for the recognition of the Kurdish identity but the Turkish State denied it from the 1920s to 1990s as one of the state's main policies was assimilation of the Kurds to tackle the Kurdish Question.⁶⁶³ Although the state abandoned the denial of Kurdish identity since the 1990s, this does not mean that the Kurdish identity has been recognised in a positive way.⁶⁶⁴

Woefully, the Kurdish Question was not really discussed in academia, in media or in civil society due to the state ideology, policies and oppression.⁶⁶⁵ The Turkish media played an important yet negative role regarding the Kurdish Question, as they adopted the state discourse and often represented the Kurds in a negative way by linking them to terrorism and separatism.⁶⁶⁶ Similarly, the Kurdish Question had been considered as a developmental or security problem in Turkish academia until the late 1990s rather than an ethnic one, but a liberal approach has come to identify the problem as "the longstanding assimilationist state tradition" after the developments in Turkey's European Union process.⁶⁶⁷

⁶⁶⁰ Gurses, *Partition, Democracy*, p.341.; Todorova, *Turkish Security Discourses*, p.111.

⁶⁶¹ Tezcur, *Electoral Behavior in Civil Wars*, p.75.

⁶⁶² Ergil, D. (2000) The Kurdish question in Turkey, *Journal of Democracy*, Vol.11, No.3, pp.122-135.; Nykanen, J. (2013) Identity, Narrative and Frames: Assessing Turkey's Kurdish Initiatives, *Insight Turkey*, Vol.15, No.2, p.85.; Sarigil, Z. and Fazlioglu, O. (2014) Exploring the roots and dynamics of Kurdish ethno-nationalism in Turkey, *Nations and Nationalism*, Vol.20, No.3, p.439.; Beriker-Atiyas, N. (1997) The Kurdish Conflict in Turkey: Issues, Parties and Prospects, *Security Dialogue*, Vol.28, No.4, pp.443-444.; Sarigil, Z. (2010) Curbing Kurdish ethno-nationalism in Turkey: an empirical assessment of pro-Islamic and socio-economic approaches, *Ethnic and Racial Studies*, Vol.33, No.3, p.538.

⁶⁶³ Zeydanlioglu, *The White Turkish Man's Burden*, p.170.; Yegen, *The Kurdish Question in Turkish State Discourse*, p.555.; Ergin, *The racialization of Kurdish identity*, pp.324-327.; Belge, C. (2011) State Building and the Limits of Legibility: Kinship Networks and Kurdish Resistance in Turkey, *International Journal of Middle East Studies*, Vol.43, No.1, p.99; Yegen, M. (2009) "Prospective-Turks" or "Pseudo-Citizens:" Kurds in Turkey, *Middle East Journal*, Vol.63, No.4, pp.597-615.

⁶⁶⁴ Ergin, *The racialization of Kurdish identity*, pp.328-338.

⁶⁶⁵ Sagnic, *Mountain Turks*, p.132.; Barkey and Fuller, *Turkey's Kurdish Question*, pp.118-121.; Dixon and Ergin, *Explaining Anti-Kurdish Beliefs*, p.1330.

⁶⁶⁶ Coban, S. (2013) Turkey's 'War and Peace': The Kurdish Question and the Media, *Critique*, Vol.41, No.3, pp.452-455.; Karakoc, J. (2011) A critical note on 'exclusive recognition', *Ethnic and Racial Studies*, Vol.34, No.4, p.734.

⁶⁶⁷ Saracoglu, C. (2009) 'Exclusive recognition': the new dimensions of the question of ethnicity and nationalism in Turkey, *Ethnic and Racial Studies*, Vol.32, No.4, pp.640-644.

2.1. The PKK insurgency

The PKK deserves particular attention since it is a party of the current conflict and understanding the dynamics of its emergence and existence may contribute to finding a solution to the problem. The PKK was established in 1978 but its first military operations emerged in 1984.⁶⁶⁸ The PKK was founded by Abdullah Ocalan, who then has become “the symbol of the Kurdish struggle”.⁶⁶⁹ The insurgency led by the PKK has been the longest-lasting Kurdish rebellion in Turkey. The primary aim of the PKK was the establishment of an independent Kurdish state.⁶⁷⁰ The PKK resorted to violence to achieve its goals, and it has been responsible for many violent attacks targeting state officials, civilians (both Turks and Kurds) and infrastructure including schools, bridges and hospitals.⁶⁷¹ The PKK is also responsible for internal displacement⁶⁷² which has been one of the most widespread violations of human rights.⁶⁷³ The PKK violated both CPR (such as violating the right to life) and ESCR (the right to housing, the right to education etc.) of people including the Kurds. Since the organisation adopted terrorist tactics such as killing people and destroying buildings and infrastructure, it has been identified as a terrorist organisation by the UN, NATO and the UK.⁶⁷⁴ The financing of the PKK has been strong, yet these financial sources have been contentious. While the organisation asserts that it is financed by the contribution of its supporters and patron states, the Turkish state claims that its financial resources are from extortion, kidnapping, burglary, robbery and drug trafficking.⁶⁷⁵

⁶⁶⁸ Nisan, *Minorities in the Middle East*, pp.48-49.; Gurbey, G. (1996) ‘The development of the Kurdish nationalist movement in Turkey since the 1980s’ in Olson, R. (ed) *The Kurdish nationalist movement in the 1990s: Its impact on Turkey and the Middle East*, Lexington, Ky.: University Press of Kentucky, p.23.

⁶⁶⁹ Nisan, *Minorities in the Middle East*, p.52.; Ibrahim, F. and Gurbey, G. (2000) *The Kurdish Conflict in Turkey: Obstacles and Chances for Peace and Democracy*, New York: St. Martin’s Press, p.198.

⁶⁷⁰ Barkey and Fuller, *Turkey’s Kurdish Question*, pp.21-23.; Yanmis, *Resurgence of the Kurdish Conflict*, p.4.

⁶⁷¹ Yavuz, *Five stages of the construction*, p.12.; Barkey and Fuller, *Turkey’s Kurdish Question*, pp.28-29.; Celik, A. B., Celikkan, M., Balta, E., Mutluer, N. and Korkut, L. (2015) ‘The trajectory of the Peace Process’ in Celik, A. B., Celikkan, M., Balta, E., Mutluer, N. and Korkut, L. (eds) *Towards A Resolution: An Assessment of Possibilities, Opportunities and Problems*, Istanbul: Turkey Peace Assembly, p.8.

⁶⁷² Internal displacement, forced migration and forced displacement are going to be used interchangeably in this study.

⁶⁷³ Bozarslan, *Human rights and the Kurdish issue*, p.51.; Belge, *Civilian Victimization and the Politics*, p.292.

⁶⁷⁴ Cagaptay, S. and Yolbulan, C. (2016) ‘The Kurds in Turkey: A Gloomy Future’ in Torelli, S. M. (ed) *Kurdistan An Invisible Nation*, Milano: The Italian Institute for International Political Studies (ISPI), p.54.

⁶⁷⁵ Barkey and Fuller, *Turkey’s Kurdish Question*, p.30.; Beriker-Atiyas, *The Kurdish Conflict in Turkey*, p.440.; Ergil, D. (2007) ‘PKK: Partiya Karkerê Kurdistan’ in Heiberg, M., O’Leary B. and Tirman, J. (eds.) *Terror Insurgency and State: Ending Protracted Conflicts*, Pennsylvania: University of Pennsylvania Press, pp.340-341.; Ocal, N. and Yildirim, J. (2010) Regional effects of terrorism on economic growth in Turkey: A geographically weighted regression approach, *Journal of Peace Research*, Vol.47, No.4, p.479.; Waldman and Caliskan, *The New Turkey*, p.167.

When the PKK committed violent acts and adopted brutal methods in the early years of its foundation, the Kurdish people showed antipathy towards the organisation but the generalised state coercion on the Kurdish people after 1980 turned the PKK into being perceived as a defender of the Kurdish identity.⁶⁷⁶ The PKK operations and the state's response exacerbated problems in the lives of Kurdish people. The PKK's aim in escalating the conflict was getting more support from the Kurds by radicalising them.⁶⁷⁷ When the PKK initiated its military operations, the state established a military unit named "the village guards" in 1985 to fight with the PKK.⁶⁷⁸ The purpose of forming the unit was "to organize those familiar with local conditions as auxiliaries to the armed forces in trying to confront the PKK."⁶⁷⁹ So, the state recruited and armed citizens in the region to fight alongside the Turkish army against the PKK.⁶⁸⁰ Yet, the system led to divisions in the region as the Kurds were divided as pro-government and pro-PKK.⁶⁸¹ The ones who refused to be village guards are labelled as PKK-sympathisers, although this was not necessarily the case, and sometimes these people were displaced for this reason.⁶⁸² The Kurds who joined the Village Guards and their families have become the target of the PKK.⁶⁸³

The PKK has always represented itself as the only advocate of the Kurdish people and monopolised the Kurdish political sphere, even though it is not possible to find out how many Kurds support the PKK and to what extent they approve the methods of the organisation.⁶⁸⁴ Because of the domination of the PKK and its hostility against its rivals, only few Kurds could object to it outspokenly. The PKK and Ocalan have oppressed alternative movements which would advocate the rights and interests of the Kurds.⁶⁸⁵ The PKK adopted the same means when it came to its internal critics: they were suppressed ferociously, and it was made difficult to leave

⁶⁷⁶ Bozarslan, *Human rights and the Kurdish issue*, p.46.; Bruinessen, *Agha, Shaikh and State*, p.46.; Heper, M. (2007) *The State and Kurds in Turkey the Question of Assimilation*, Basingstoke; New York: Palgrave Macmillan, p.115.

⁶⁷⁷ Barkey and Fuller, *Turkey's Kurdish Question*, p.28.

⁶⁷⁸ Belge, *Civilian Victimization and the Politics*, pp.295-299.; Bruinessen, *Agha, Shaikh and State*, p.46.

⁶⁷⁹ Robins, *The Overlord State*, p.664.

⁶⁸⁰ Celik et al., *Towards A Resolution*, pp.43-44.; Gurcan, M. (2015) Arming civilians as a counterterror strategy: The case of the village guard system in Turkey, *Dynamics of Asymmetric Conflict*, Vol.8, No.1, pp.1-22.

⁶⁸¹ Belge, *Civilian Victimization and the Politics*, p.299.; Paker, E. B. and Akca, I. (2013) Askerler, Köylüler ve Paramiliter Güçler: Türkiye'de Köy Koruculuğu Sistemi, *Toplum ve Bilim*, Vol.126, pp.7-35.; Celik et al., *Towards A Resolution*, pp.44-45.

⁶⁸² Belge, *Civilian Victimization and the Politics*, p.299.; Celik et al., *Towards A Resolution*, pp.47-48.; Waldman and Caliskan, *The New Turkey*, pp.168-169.

⁶⁸³ Belge, *State Building and the Limits of Legibility*, pp.107-108.; Robins, *The Overlord State*, p.664.; Waldman and Caliskan, *The New Turkey*, p.168.

⁶⁸⁴ Barkey and Fuller, *Turkey's Kurdish Question*, p.43.; Tezcur, *When democratization radicalizes*, p.778.

⁶⁸⁵ Barkey and Fuller, *Turkey's Kurdish Question*, pp.43-44.; Yavuz, *Five stages of the construction*, p.12.; Bruinessen, *Agha, Shaikh and State*, p.46.

the organisation.⁶⁸⁶ For instance, Osman Ocalan, Abdullah Ocalan's brother, and a group of high-ranking PKK members quit the organisation and launched PWD (Partiya Welatparezen Demokrat) in 2004. The PWD openly criticised the PKK, and the members of the group, particularly the leading figures, were killed by the PKK death squads in 2004 and 2005.⁶⁸⁷ In 2014, some conservative Kurds in the region were targeted by the PKK as they "refused to submit to its leadership."⁶⁸⁸ The elimination of its rivals damages the PKK's claim that it legitimately represents the Kurdish interests.

2.2. The Justice and Development Party (JDP) period in the Kurdish Question

The Justice and Development Party (Adalet ve Kalkinma Partisi in Turkish) era deserves a more detailed explanation since the governing party adopted a non-conventional approach towards the Kurdish Question and conducted a peace process to solve the issue. Despite its deficits, the JDP government took important steps to redress both CPR and ESCR violations (including the right to education, the right to housing and the right to health) in the Kurdish Question which will be explored in this section. Contrary to the traditional approach, the JDP adopted a more liberal approach to the Kurdish Question when it was elected in 2002. The government has handled the Kurdish Question seriously and seemed determined to tackle the problem.⁶⁸⁹ Recep Tayyip Erdogan, the founder and the leader of the JDP, stated that the Turkish state had made severe mistakes in dealing with the Kurdish Question and claimed that it should be resolved by democratic means.⁶⁹⁰ Although the Turkish state has had meetings with the PKK and Ocalan since the 1990s, the officials had never acknowledged these meetings. In 2012, Erdogan acknowledged these meetings for the first time in history.⁶⁹¹

⁶⁸⁶ White, P. (2000) *Primitive Rebels or Revolutionary Modernizers?: The Kurdish National Movement in Turkey*, London; New York: Zed Books, p.148.; Bozarslan, *Human rights and the Kurdish issue*, p.52.; Ozcan, *Turkey's Kurds*, pp.173-174.; Criss, N. B. (1995) The nature of PKK terrorism in Turkey, *Studies in Conflict & Terrorism*, Vol.18, No.1, p.19.

⁶⁸⁷ Tezcur, *When democratization radicalizes*, p.781.

⁶⁸⁸ Yavuz, M. H. and Ozcan, N. A. (2015) Turkish Democracy and the Kurdish Question, *Middle East Policy*, Vol.22, No.4, p.75.

⁶⁸⁹ Efezil, E. (2011) Analysis of the AKP Government's Policy Toward the Kurdish Issue, *Turkish Studies*, Vol.12, No.1, p.28.; Updegraff, *The Kurdish Question*, p.126.

⁶⁹⁰ Tezcur, *When democratization radicalizes*, p.779.; Kirisci, K. (2011) The Kurdish Issue in Turkey: Limits of European Union Reform, *South European Society and Politics*, Vol.16, No.2, p.341.; Park, B. (2016) Regional turmoil, the rise of Islamic State, and Turkey's multiple Kurdish dilemmas, *International Journal*, Vol.71, No.3, p.462.

⁶⁹¹ Aras, B. and Duman, Y. (2014) *The Kurdish Peace Process and Presidential Elections in Turkey*, Policy Brief for the Global Europe Program, Woodrow Wilson International Center for Scholars, Wilson Center, p.3.

Turkey's candidacy for the EU also had an important impact on the reforms introduced in Turkey under the JDP rule.⁶⁹² When the JDP came to power, it attempted to enhance human rights and democracy and bring more pluralism to the country.⁶⁹³ The EU imposed numerous conditions for Turkey's accession process including improving human rights and rule of law, tackling the Kurdish Question, solving the problems of internally displaced persons and respecting minority rights.⁶⁹⁴ The JDP's agenda and the requirements for the EU accession process corresponded to each other. Thereby, in 2003 and 2004, the JDP adopted five important harmonisation packages which eased the oppression of the Kurdish culture and language and opened a space for the government to take further steps to tackle the Kurdish Question.⁶⁹⁵

The JDP government introduced many reforms such as lifting the bans on the usage of the Kurdish language by establishing Kurdish language departments at universities, providing Kurdish language classes as an elective course in schools and founding a Kurdish TV channel.⁶⁹⁶ The publications in Kurdish increased after 2002.⁶⁹⁷ These reforms could be considered important steps to realise ESCR of the Kurdish people.⁶⁹⁸ Yet, although reforms have been introduced to alleviate the oppression of the Kurds, they did not entirely tackle the problems of the Kurdish people.⁶⁹⁹ Their language rights, cultural rights as well as other human rights are not fully protected by the state; for instance, they cannot have education in their mother tongue and there are restrictions on their freedom of expression and their right to take part in cultural life.⁷⁰⁰ Still, coupled with the reforms, there were considerable improvements in general in terms of human rights when the JDP first came to power. The number of human rights violations

⁶⁹² Gunes, *Unblocking the Impasse*, p.465.; Keyman, *Rethinking the Kurdish question*, p.470.; Kirisci, *The Kurdish Issue in Turkey*, pp.333-349.; Todorova, *Turkish Security Discourses*, p.111.

⁶⁹³ Gunes-Ayata, A. (2003) From Euro-scepticism to Turkey-scepticism: changing political attitudes on the European Union in Turkey, *Journal of Southern Europe and the Balkans*, Vol.5, No.2, p.217.; Pusane, O. K. (2014) Turkey's Kurdish Opening: Long Awaited Achievements and Failed Expectations, *Turkish Studies*, Vol.15, No.1, p.85.

⁶⁹⁴ Celik, A. B. (2005) Transnationalization of Human Rights Norms and Its Impact on Internally Displaced Kurds, *Human Rights Quarterly*, Vol.27, No.3, p.988.; Unver, H. A. (2015) *Turkey's Kurdish question: Discourse and politics since 1990*, London: Routledge, Taylor & Francis Group, pp.157-158.

⁶⁹⁵ Pusane, *Turkey's Kurdish Opening*, p.85.; Tezcur, *When democratization radicalizes*, pp.778-779.; Ergin, *The racialization of Kurdish identity*, p.325.; Zeydanlioglu, *Turkey's Kurdish language policy*, pp.114-115.

⁶⁹⁶ Cagaptay and Yolbulan, *The Kurds in Turkey*, p.55.; Tezcur, *When democratization radicalizes*, p.779.; Yegen, *Prospective-Turks or Pseudo-Citizens*, p.615.; Zeydanlioglu, *Turkey's Kurdish language policy*, p.114.; Yildiz, *The Kurds in Turkey*, p.23.

⁶⁹⁷ Malmisanij, M. (2006) *The Past and the Present of Book Publishing in Kurdish Language in Turkey*, Sofia: Next Page Foundation, p.22.; Tezcur, *When democratization radicalizes*, p.779.

⁶⁹⁸ The right to education, the right to take part in cultural life and to enjoy the benefits of scientific progress and its applications.

⁶⁹⁹ Zeydanlioglu, *Turkey's Kurdish language policy*, pp.114-120.

⁷⁰⁰ Gardi, *From Suppression to Secession*, pp.61-108.

decreased significantly after 2003.⁷⁰¹ Akturk noted that the JDP's approach "constituted a radical break with previous state policies" despite its shortcomings.⁷⁰²

There were also some improvements in the region's economy and in the Kurdish citizens' lives as the private sector was promoted to invest in the region⁷⁰³ and the JDP "has promoted the building of private hospitals, supported small and medium-sized businesses, and developed agriculture beyond subsistence levels."⁷⁰⁴ The government also made significant investment in education in the region.⁷⁰⁵ These improvements should be considered as significant steps to protect and promote socioeconomic rights of the Kurdish people. Creating jobs and improving health and education services improved the enjoyment of socioeconomic rights (the right to an adequate standard of living, the right to education, the right to work and the right to health) of the people in the region.

Although democratic reforms were being introduced in Turkey, the PKK decided to resort to violence again by breaking its unilateral ceasefire (which was declared in 1999) in June 2004, blaming the military operations conducted by the Turkish security forces.⁷⁰⁶ Two other ceasefires were declared in 2005 and 2006. Yet, they were not long-lasting. The first one was broken by the Turkish army, the second one was broken by the PKK.⁷⁰⁷ In 2009, another ceasefire was declared by the PKK, and the government and the PKK commenced negotiations for the peace process in Oslo.⁷⁰⁸ The JDP government initiated a "Democratic Opening" to solve the Kurdish Question by democratic reforms, yet the government faced veto from the main political

⁷⁰¹ "Data are compiled from the annual publications of the Human Rights Association of Turkey. (www.ihd.org.tr)" (Tezcur, *When democratization radicalizes*, p.780.)

⁷⁰² Akturk, S. (2018) One nation under Allah? Islamic multiculturalism, Muslim nationalism and Turkey's reforms for Kurds, Alevis, and non-Muslims, *Turkish Studies*, Vol.19, No.4, pp.523-524.

⁷⁰³ Sarihan, A. (2013) 'The Two Periods of the PKK Conflict: 1984-1999 and 2004-2010' in Bilgin, F. and Sarihan, A. (eds) *Understanding Turkey's Kurdish Question*, Lanham: Lexington Books, p.95.

⁷⁰⁴ Updegraff, *The Kurdish Question*, p.124.; Yavuz and Ozcan, *Turkish Democracy and the Kurdish Question*, p.79.; Tezcur, G. M. (2013) Prospects for Resolution of the Kurdish Question: A Realist Perspective, *Insight Turkey*, Vol.15, No.2, p.78.; Gurses, *Partition, Democracy*, p.342.

⁷⁰⁵ Kayaoglu, A. (2014) Socioeconomic impact of conflict: state of emergency ruling in Turkey, *Defence and Peace Economics*, Vol.27, No.1, p.135.

⁷⁰⁶ Pusane, *Turkey's Kurdish Opening*, p.85.; Cagaptay and Yolbulan, *The Kurds in Turkey*, p.44.; Celik, A. B. and Blum, A. (2007) Track II Interventions and the Kurdish Question in Turkey: an analysis using a theories of change approach, *International Journal of Peace Studies*, Vol.12, No.2, p.65.; Celik et al., *Towards A Resolution*, pp.8-9.

⁷⁰⁷ Celik et al., *Towards A Resolution*, pp.8-9.

⁷⁰⁸ Todorova, *Turkish Security Discourses*, pp.111-112.; Tezcur, *Prospects for Resolution*, p.71.; Park, *Regional turmoil*, p.462.; Unver, *Turkey's Kurdish question*, p.160.

parties in the parliament, and this rejection and multiple other reasons prevented the initiative from being developed.⁷⁰⁹

Unfortunately, the ceasefire was broken once again by the PKK, and the conflict and violence escalated dramatically in 2012.⁷¹⁰ In 2013, the PKK declared a new ceasefire and both the government and Ocalan announced that the peace process was launched.⁷¹¹ Yet, the peace process lost its momentum gradually because both sides had difficulties in trusting each other and they were not ready to compromise enough to achieve peace.⁷¹² After June elections in 2015 several pro-Kurdish Peoples' Democratic Party (Halkların Demokratik Partisi) municipalities announced self-governance and rejected working with the central government.⁷¹³ Breaking the ceasefire, the PKK and its youth branches decided to bring the armed conflict into city centres as they dug ditches and set up entrenchments and barricades in the Kurdish provinces' streets.⁷¹⁴ Yanmis conducted a study in the region (with both opinion leaders and ordinary citizens) which depicts that a majority of the people (67.6%) disapproved of the barricades and entrenchments.⁷¹⁵ A greater majority (88.2%) think that both the PKK's barricade activities and the state's counter operations are harmful.⁷¹⁶ It was noted that "the chaos resulted in the deaths of 50 individuals, the widescale trashing and burning of government buildings, and the looting of stores and business."⁷¹⁷ The government responded by taking military actions in these provinces. Because of these problems, the peace process was halted, and clashes have been

⁷⁰⁹ Gunes, *Unblocking the Impasse*, p.465.; Keyman, *Rethinking the Kurdish question*, pp.474-475.; Updegraff, *The Kurdish Question*, p.124.; Kirisci, *The Kurdish Issue in Turkey*, pp.344-345.; Nykanen, *Identity, Narrative and Frames*, p.87.; Aydinli, E. and Ozcan, N. A. (2011) The Conflict Resolution and Counterterrorism Dilemma: Turkey Faces its Kurdish Question, *Terrorism and Political Violence*, Vol.23, No.3, pp.442-444.; Park, *Regional turmoil*, p.463.

⁷¹⁰ International Crisis Group (2012) *Turkey: The PKK and a Kurdish Settlement*, Europe Report No.219, p.i.; Tezcur, *Prospects for Resolution*, p.71.; Pusane, *Turkey's Kurdish Opening*, p.87.; Tezcur, *Electoral Behavior in Civil Wars*, p.77.

⁷¹¹ Celik et al., *Towards A Resolution*, pp.8-11.; Todorova, *Turkish Security Discourses*, p.112.; Cagaptay and Yolbulan, *The Kurds in Turkey*, p.44.; Park, *Regional turmoil*, p.463.

⁷¹² Larrabee, F. S. (2016) Turkey and the Changing Dynamics of the Kurdish Issue, *Survival*, Vol.58, No.2, p.69.; International Crisis Group (2014) *Turkey and the PKK: Saving the Peace Process*, Europe Report No.234.; Gunter, M. (2014) The Turkish-Kurdish peace process stalled in neutral (Commentary)(Report), *Insight Turkey*, Vol.16, No.1, pp.20-21.; Karakoc, *A critical note*, p.734.; Park, *Regional turmoil*, pp.463-464.

⁷¹³ Yavuz and Ozcan, *Turkish Democracy and the Kurdish Question*, p.76.

⁷¹⁴ Cagaptay and Yolbulan, *The Kurds in Turkey*, pp.53-59.; Yavuz and Ozcan, *Turkish Democracy and the Kurdish Question*, pp.80-85.; Yanmis, *Resurgence of the Kurdish Conflict*, p.6.

⁷¹⁵ Yanmis, *Resurgence of the Kurdish Conflict*, pp.17-18.

⁷¹⁶ Yanmis, *Resurgence of the Kurdish Conflict*, p.22.

⁷¹⁷ Yavuz and Ozcan, *Turkish Democracy and the Kurdish Question*, p.80.

taking place since July 2015.⁷¹⁸ The state discourse has transformed back to a security/terror one regarding Kurdish Question after the escalation of violence since 2015.⁷¹⁹

It was noted that the demands of the Kurds have changed since the 2000s as they demand autonomy in the Kurdish region, rather than an independent state, and they want their identity to be recognised and respected.⁷²⁰ Yet, Ozkirimli remarks that the demands of the Kurds are countered by Turkish nationalism as they mutually consolidate each other (when the Kurdish claims increase, the Turkish nationalism increases too) and this resulted in a stalemate in the country.⁷²¹ On the other hand, Islam has been a critical element in the JDP's Kurdish policy as the government considered it a "cement" to end the conflict because Islam could have a unifying function in the society as it did during the Ottoman Empire.⁷²² It has been argued that the Islamic approach (to overcome Kurdish nationalism and insurgency by promoting Islam) cannot tackle the Kurdish Question exclusively, yet it has a potential to contribute to the solution as Islam promotes multi-culturalism.⁷²³ There are several studies on the relationship between religion and ethnic-nationalism regarding the Kurdish Question, yet, the results contrast with each other. While some claim that religion has a positive impact on ethno-nationalism, others assert the opposite.⁷²⁴

2.3. Economic marginalisation of the Kurdish region

As stated earlier, the Turkish state denied the ethno-political dimension of the Kurdish Question and often considered it from a developmental perspective claiming that the Kurdish unrest was rooted in the under-development of the region. Although this was not the case, it does not mean

⁷¹⁸ Todorova, *Turkish Security Discourses*, pp.113-117.

⁷¹⁹ Todorova, *Turkish Security Discourses*, pp.117-118.; Yanmis, *Resurgence of the Kurdish Conflict*, p.4.

⁷²⁰ Gurses, *Partition, Democracy*, pp.341-342.; Baser, Z. and Celik, A. B. (2014) Imagining peace in a conflict environment: Kurdish youths' framing of the Kurdish issue in Turkey, *Patterns of Prejudice*, Vol.48, No.3, p.283.; Waldman and Caliskan, *The New Turkey*, p.177.; Heper, *The State and Kurds*, pp.157-158.

⁷²¹ Ozkirimli, U. (2014) Multiculturalism, recognition and the "Kurdish question" in Turkey: the outline of a normative framework, *Democratization*, Vol.21, No.6, p.1056.

⁷²² Unver, *Turkey's Kurdish question*, p.155.; Yavuz, M. H. and Ozcan, N. A. (2006) The Kurdish question and Turkey's justice and development party, *Middle East Policy*, Vol.13, No.1, p.103.; Pusane, *Turkey's Kurdish Opening*, p.85.; Efezil, *Analysis of the AKP Government's Policy*, p.31.; Park, *Regional turmoil*, pp.453-454.

⁷²³ Sarigil, *Curbing Kurdish ethno-nationalism*, pp.535-537.; Sarigil and Fazlioglu, *Exploring the roots*, pp.441-442.; Yavuz M. H. (1998) A preamble to the Kurdish question: the politics of Kurdish identity, *Journal of Muslim Minority Affairs*, Vol.18, No.1, pp.12-13.

⁷²⁴ Sarigil, *Curbing Kurdish ethno-nationalism*, p.542.; Gurses, M. (2015) Is Islam a Cure for Ethnic Conflict? Evidence from Turkey, *Politics and Religion*, Vol.8, No.1, pp.135-154.; Sarigil and Fazlioglu, *Exploring the roots*, p.446.; Sarigil, Z. and Fazlioglu, O. (2013) Religion and ethno-nationalism: Turkey's Kurdish issue, *Nations and Nationalism*, Vol.19, No.3, pp.562-563.; Ekmekci, F. (2011) Understanding Kurdish ethno-nationalism in Turkey: socio-economy, religion, and politics, *Ethnic and Racial Studies*, Vol.34, No.9, pp.1608-1617.

that under-development and socioeconomic problems have no significance in the Kurdish Question. The Kurdish Question is multidimensional and socioeconomic problems are among the root causes of the problem.⁷²⁵ The previous chapters emphasised the importance of understanding the root causes of unrest to solve the conflict. It was noted that: “In understanding conflict, it is imperative to examine the sources of discontent and animosity.”⁷²⁶ Therefore, exploring the socioeconomic roots of the Kurdish Question is critical to finding a full-fledged and sustainable solution.

Although the region has large mineral deposits (chrome, iron, copper, oil etc.) and there is a mining industry which is run by the state,⁷²⁷ the region’s economy has lagged behind the Turkish economy since the foundation of the Republic.⁷²⁸ Geography and socioeconomic dynamics also played a role in the region’s economy. The Kurds have often inhabited the isolated areas, and they have adopted an agrarian lifestyle.⁷²⁹ The region is rugged and mountainous, and it is far from trade centres such as Istanbul and Izmir.⁷³⁰ Due to its mountainous nature, the land in the Kurdish region was not very productive for farming, and the agriculture was mainly at subsistence level.⁷³¹ In addition, the agricultural lands have been dominated by large (Kurdish) land owners since the 16th century. So, the peasants did not own the land most of the time and they sold their labour to the landlords through sharecropping or renting.⁷³² These unfavourable circumstances culminated in gaps between the region and the rest of the country in terms of socioeconomic conditions. Ensaroglu and Kurban state that the region has been rife with poverty and deprivation due to “discriminatory economic policies adopted since the founding of the Republic, an ongoing armed conflict lasting more than 20 years, forced migration, and the problem in Northern Iraq”.⁷³³

⁷²⁵ Sirkeci, I. (2000) Exploring the Kurdish population in the Turkish context, *Genus*, Vol.56, No.1/2, p.151.; Icduygu, A., Romano, D. and Sirkeci, I. (1999) The ethnic question in an environment of insecurity: The Kurds in Turkey, *Ethnic and Racial Studies*, Vol.22, No.6, p.992.

⁷²⁶ Jeong, H. (2008) *Understanding Conflict and Conflict Analysis*, Los Angeles, CA.; London: SAGE Publications, p.4.

⁷²⁷ Kendal, *Kurdistan in Turkey*, p.43.

⁷²⁸ Cagaptay and Yolbulan, *The Kurds in Turkey*, pp.51-52.; Natali, *The Kurds and the state*, pp.81-82.; White, *Primitive Rebels*, pp.97-98.; Robins, *The Overlord State*, p.663.

⁷²⁹ Barkey and Fuller, *Turkey’s Kurdish Question*, p.6.; Natali, *The Kurds and the state*, p.82.

⁷³⁰ Natali, *The Kurds and the state*, p.82.

⁷³¹ White, *Economic marginalization of Turkey’s Kurds*, p.142.; Bruinessen, *Agha, Shaikh and State*, pp.11-19.

⁷³² Kendal, *Kurdistan in Turkey*, p.42.; White, *Economic marginalization of Turkey’s Kurds*, pp.139-142.; Bruinessen, *Agha, Shaikh and State*, p.16.

⁷³³ Ensaroglu and Kurban, *A Roadmap for a Solution*, p.20.

Kurds inhabited in the poorest and least developed parts of the countries they live in⁷³⁴ and their main source of income has been agriculture and livestock.⁷³⁵ The Kurdish region in Turkey has hardly been connected to the rest of the country.⁷³⁶ There were no railways until the late 1930s and no highways until the 1950s in the Kurdish region. Even then, few railways and highways were built for the benefit of the state such as linking large cities which had military bases.⁷³⁷ Turkey's modernisation project created regional differences in terms of economy, education, urbanisation and communication in the new Republic.⁷³⁸ For instance, Kendal states: "In 1946, out of the 43,263 companies, factories and workshops registered under Turkish labour legislation, only 2,427 were in Kurdistan, representing 5.6% of the total."⁷³⁹ Unfortunately, these discrepancies among the regions continue to exist and they affect the enjoyment of ESCR of people in the Kurdish region as will be shown in detail below. In 2011, the CESCR also highlighted these disparities in its concluding observations regarding Turkey and recommended that the state must enhance the conditions in disadvantaged regions to ensure that everyone enjoys their ESCR fully.⁷⁴⁰

After the foundation of the new Republic, the Turkish economy was integrated into the world economy and commenced its own industrialisation process.⁷⁴¹ The railways were built but they were not distributed evenly; the railways and industrialisation activities were concentrated on western part of the country where establishing trade networks was more convenient.⁷⁴² Moreover, due to the rebellions, the state "established a tight military control in the Kurdish regions which included the imposition of a special administrative system as well as its economic,

⁷³⁴ Zubaida, S. (2005) 'Introduction' in Kreyenbroek, P. G. and Sperl, S. (eds) *The Kurds: A Contemporary Overview*, London and New York: Routledge, p.2.; Sahin, I. and Gulmez, Y. (2000) Efficiency of Education: The Case in Eastern and South-Eastern Turkey, *Social Indicators Research*, Vol.49, No.2, p.231.

⁷³⁵ Gunter, *The Kurdish Question in Perspective*, pp.197-199.; Mousseau, D. Y. (2012) An inquiry into the linkage among nationalizing policies, democratization, and ethno-nationalist conflict: the Kurdish case in Turkey, *The Journal of Nationalism and Ethnicity*, Vol.40, No.1, p.56.; Bruinessen, *Agha, Shaikh and State*, pp.15-16.

⁷³⁶ Bruinessen, *Agha, Shaikh and State*, p.20.

⁷³⁷ Cagaptay and Yolbulan, *The Kurds in Turkey*, p.51.; Kendal, *Kurdistan in Turkey*, p.44.

⁷³⁸ White, *Primitive Rebels*, pp.97-98.; Yavuz, *Five stages of the construction*, pp.1-2.; Natali, *The Kurds and the state*, pp.77-82.; Bell, S. and Huebler, F. (2011) *The hidden crisis: Armed conflict and education: The quantitative impact of conflict on education*, Think piece commissioned for the EFA Global Monitoring Report 2011, UNESCO, 2011/ED/EFA/MRT/PI/50, pp.22-25.

⁷³⁹ Kendal, *Kurdistan in Turkey*, p.43.

⁷⁴⁰ The Committee on Economic, Social and Cultural Rights (2011) *Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant - Concluding observations of the Committee on Economic, Social and Cultural Rights: Turkey*, Geneva: CESCR, para.13.

⁷⁴¹ Natali, *The Kurds and the state*, pp.81-82.

⁷⁴² White, *Economic marginalization of Turkey's Kurds*, p.143.; Keyder, C. (1981) *The definition of a peripheral economy: Turkey 1923-1929*, New York: Cambridge University Press, p.29.; Natali, *The Kurds and the state*, p.82.

political, and cultural isolation from the rest of the country.”⁷⁴³ These policies raised the question of whether the marginalisation of the Kurdish region was deliberate or not. Some scholars think this was intentional as they claim that governments avoided investing there, and the region was impoverished and internally colonised by the state through extracting raw materials.⁷⁴⁴ Kirisci and Winrow, on the other hand, assert that the low-level of development in the Kurdish region was not the result of an intentional policy of the state because the Black Sea region (which does not have a considerable Kurdish population) is also under-developed compared to western regions. Moreover, they depict that the state allocated a higher proportion of public spending and public investment expenditures to the Kurdish region compared to the other regions. However, they acknowledged that this spending and investment could not enhance the socioeconomic conditions in the region due to several factors such as lack of private investment and conflicts in the region.⁷⁴⁵ Heper also noted that governments intended to achieve development in the region as they considered this as a solution to the Kurdish Question since 1933.⁷⁴⁶ Although unravelling the truth is important, it should be acknowledged that whether or not these policies were deliberate “economic backwardness has hampered eastern Turkey’s integration into the rest of the country”⁷⁴⁷ and “Kurds live in an environment of insecurity both materially and non-materially.”⁷⁴⁸

As mentioned previously, the Democrat Party adopted a liberal economic approach and the country experienced various developments. The Kurdish region also benefited from this liberalisation to some extent as the government has built roads, hospitals and schools in the region.⁷⁴⁹ Yet as noted earlier, this did not eliminate the regional disparities. The people in the region were maintaining their lives by subsistence level farming but when the mechanisation of agriculture started in the 1950s, they started losing their jobs.⁷⁵⁰ Many people left the region and moved to urban centres in search of jobs.⁷⁵¹ The Democrat Party and following governments

⁷⁴³ Ozen, *Latent dynamics of movement*, p.61.

⁷⁴⁴ Nisan, *Minorities in the Middle East*, p.42.; Kendal, *Kurdistan in Turkey*, pp.44-45.; Haddad, *The Kurds in Turkey*, pp.93-94.; Yanmis, *Resurgence of the Kurdish Conflict*, p.4.; Besikci, I. (2004) *International Colony Kurdistan*, Reading: Taderon Press.

⁷⁴⁵ Kirisci and Winrow, *The Kurdish Question and Turkey*, pp.122-126.

⁷⁴⁶ Heper, *The State and Kurds*, p.5.

⁷⁴⁷ Ergil, *PKK: Partiya Karkerê Kurdistan*, p.324.

⁷⁴⁸ Icduygu et al., *The ethnic question in an environment*, p.993.

⁷⁴⁹ Haddad, *The Kurds in Turkey*, p.92.; Natali, *The Kurds and the state*, pp.93-94.

⁷⁵⁰ White, *Economic marginalization of Turkey's Kurds*, p.150.; Romano, *The Kurdish Nationalist Movement*, p.42.; Natali, *The Kurds and the state*, pp.94-101.

⁷⁵¹ Celik, *I miss my village*, p.139.; Ergil, *The Kurdish question in Turkey*, p.125.

were concerned with the under-development of the region and designed economic programs and made investments to achieve development in the region but they were not successful.⁷⁵²

The Southeast Anatolia Project (Güneydoğu Anadolu Projesi, GAP), which was initiated in 1975, has been the most prominent development project which was designed for the region. Although the project aimed at achieving development and improving people's lives through energy production, agriculture, irrigation, education and infrastructure, the state also considered it as a tool to tackle the Kurdish Question.⁷⁵³ The state assumed that the GAP would help to alleviate the tensions in the region but it failed to understand that the Kurdish Question was not merely a socioeconomic and under-development issue, therefore, the political dimension of the issue cannot be tackled through such efforts.⁷⁵⁴ Anyhow, the project received criticisms regarding its beneficiaries and environmental impact, and it also caused the displacement of many Kurds.⁷⁵⁵ Like other economic programs and projects, the GAP was far from being successful in improving the lives of the Kurds.⁷⁵⁶

It is important to realise that the initial disadvantaged conditions of the Kurdish region also affected the region's development process. The lack of infrastructure, low-level of industrialisation and political turmoil also aggravated the development because the region could not attract enterprise and capital.⁷⁵⁷ The prevailing poverty in the region has led to further unemployment and deprivation. This marginalisation in the economy and society has been

⁷⁵² Mousseau, *An inquiry into the linkage*, p.57.; Sarigil and Fazlioglu, *Exploring the roots*, p.439.; Bilgel, F. and Karahasan, B. C. (2017) The Economic Costs of Separatist Terrorism in Turkey, *Journal of Conflict Resolution*, Vol.61, No.2, p.473.; Aydınli, E. (2002) Between Security and Liberalization: Decoding Turkey's Struggle with the PKK, *Security Dialogue*, Vol.33, No.2, p.218.; Yildirim, J. and Ocal, N. (2013) Analysing the Determinants of Terrorism in Turkey Using Geographically Weighted Regression, *Defence and Peace Economics*, Vol.24, No.3, p.206.

⁷⁵³ Jongerden, J. (2010) Dams and Politics in Turkey: Utilizing Water, Developing Conflict, *Middle East Policy*, Vol.17, No.1, pp.138-140.; Derin-Güre, *Separatist Terrorism and the Economic Conditions*, p.393.; Mousseau, *An inquiry into the linkage*, p.57.; Robins, *The Overlord State*, p.663.; Ünver, *Turkey's Kurdish question*, p.116.

⁷⁵⁴ Jongerden, *Dams and Politics in Turkey*, pp.140-141.; Phillips and Kouchner, *The Kurdish spring*, p.61.; Kirisci, K. (1998) 'Turkey, Regional Profile Europe' in Hampton, J. (ed) *Internally Displaced People: A Global Survey*, London: Earthscan Publications, p.199.

⁷⁵⁵ Robins, *The Overlord State*, p.664.; Haddad, *The Kurds in Turkey*, p.94.; White, *Economic marginalization of Turkey's Kurds*, pp.150-151.; White, *Primitive Rebels*, pp.110-112.; Yadirgi, *The Political Economy of the Kurds of Turkey*, pp.254-258.

⁷⁵⁶ White, *Economic marginalization of Turkey's Kurds*, pp.150-151.; Yildiz, K., Bernu, R. and Stevenson, J. (2010) *The Situation of Kurdish Children in Turkey: Fact-finding Mission and Research Report*, London: Kurdish Human Rights Project, p.23.; Cabuk, N. (2003) Güney Doğu Anadolu'da Yoksulluğun Sosyal Göstergeleri, *Ankara Üniversitesi Dil ve Tarih Coğrafya Fakültesi Dergisi*, Vol.43, No.2, pp.41-65.

⁷⁵⁷ White, *Economic marginalization of Turkey's Kurds*, p.148.; Bruinessen, *Agha, Shaikh and State*, pp.19-20.; Kendal, *Kurdistan in Turkey*, p.44.; Kirisci, K. (1996) Turkey and the Kurdish Safe-Haven in Northern Iraq, *Journal of South Asian and Middle Eastern Studies*, Vol.19, No.3, p.28.

exacerbated since the 1980s because of the conflicts.⁷⁵⁸ Bilgel and Karahasan conducted a study to investigate the effects of the conflict on GDP, and their “findings suggest that in the post-terrorism period extending until 2001, the real GDP declined on average by 6.6 percent relative to a synthetic Eastern and Southeastern Anatolia without terrorism.”⁷⁵⁹ Moreover, the state implemented the state of emergency in the Kurdish region due to the conflicts for 15 years. Kayaoglu depicts that the state of emergency ruling had a serious negative impact on development, employment and education investments.⁷⁶⁰ Therefore, let alone ending the conflict, Kayaoglu remarked that the state of emergency exacerbated the insurgency due to the aggravation of the socioeconomic conditions of the region. Many people whose lives were impacted by the emergency rule (as in forced displacement) began to side with the PKK.⁷⁶¹ These negative circumstances in the region had a huge impact on people’s enjoyment of their socioeconomic rights including the right to work, the right to an adequate standard of living and the right to education.

Indeed, forced migration had a negative impact on the economy for various reasons. Kirisci explains that the IDPs had to sell off their livestock to move from their villages. The region lost revenue from tourism as the sector nearly vanished due to the conflict. Moreover, unemployment levels were exacerbated as many capital owners shut their businesses and left the region for western Turkey.⁷⁶² Agriculture and livestock were the main sources of income, and both activities were seriously damaged due to forced displacement.⁷⁶³ These negative impacts must be considered as a violation of the right to work and the right to an adequate standard of living as people lost their livelihoods. Moreover, only a limited number of the Kurdish IDPs received assistance from the state, which was inadequate as it was limited to food and some materials for simple housing, whereas many others were left without any assistance.⁷⁶⁴ This is a violation of the right to humanitarian assistance which is defined in the

⁷⁵⁸ White, *Economic marginalization of Turkey's Kurds*, p.146.; Natali, *The Kurds and the state*, pp.112-113.; Robins, *The Overlord State*, p.663.; Saracoglu, *Exclusive recognition*, p.649.

⁷⁵⁹ Bilgel and Karahasan, *The Economic Costs of Separatist Terrorism*, p.469.

⁷⁶⁰ Kayaoglu, *Socioeconomic impact of conflict*, pp.134-135.

⁷⁶¹ Kayaoglu, *Socioeconomic impact of conflict*, p.135.; Tezcur, *Electoral Behavior in Civil Wars*, p.76.; Abbas and Yigit, *Perspectives on Ethno-National Conflict*, pp.303-304.; Wise Men Center for Strategic Studies (Bilge Adamlar Stratejik Araştırmalar Merkez, BILGESAM) (2009) *Güneydoğu Sorununun Sosyolojik Analizi (Teknik Rapor)*, Ankara: BILGESAM, p.59.

⁷⁶² Kirisci, *Turkey Regional Profile*, p.199.; Natali, *The Kurds and the state*, pp.113-114.

⁷⁶³ Gurses, M. (2012) Environmental Consequences of Civil War: Evidence from the Kurdish Conflict in Turkey, *Civil Wars*, Vol.14, No.2, p.261.; Natali, *The Kurds and the state*, pp.112-113.

⁷⁶⁴ Kirisci, *Turkey Regional Profile*, p.199.

Guiding Principles on Internal Displacement.⁷⁶⁵ The state was required to provide humanitarian assistance to people who were forcibly displaced.

2.4. Relative deprivation of the Kurds

Regional differences in development are often interpreted as discrimination by the Kurdish people and paved the way for nationalist movements.⁷⁶⁶ It must be noted that the elimination of discrimination in enjoying ESCR is an immediate obligation of states according to the ICESCR.⁷⁶⁷ Non-discrimination is an important principle in enjoying human rights and it is also identified in the Guiding Principles on Internal Displacement.⁷⁶⁸ Analysing the discrimination issue is critical in the Kurdish Question because this perception both leads to unrest among some people and it is a violation of the ICESCR which needs to be dealt with.

Some scholars claim that the Kurdish Question can be related to relative deprivation theory.⁷⁶⁹ The relative deprivation theory suggests that “as the perceived discrepancy or gap between the ‘ought’ and the ‘is’ increases, the intensity of discontent also increases”⁷⁷⁰ and this discontent may lead to peaceful or violent protests and rebellions.⁷⁷¹ It is explained that when economic inequalities intersect with ethnic lines and suppression of ethnic identities, this may pave the

⁷⁶⁵ Guiding Principles on Internal Displacement, Principle 3(2): “Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.”

⁷⁶⁶ Gokalp, D. (2010) A gendered analysis of violence, justice and citizenship: Kurdish women facing war and displacement in Turkey, *Women's Studies International Forum*, Vol.33, p.568.; Yavuz, *Five stages of the construction*, p.2.; Sirkeci, *Exploring the Kurdish population*, p.172.; Mousseau, *An inquiry into the linkage*, pp.45-55.; Celik, *I miss my village*, p.148.; Sarigil, *Curbing Kurdish ethno-nationalism*, pp.538-539.; Sarigil and Fazlioglu, *Exploring the roots*, pp.446-451.

⁷⁶⁷ International Covenant on Economic, Social and Cultural Rights, Article 2(2).

⁷⁶⁸ Guiding Principles on Internal Displacement, Principle 1(1), Principle 4(1), Principle 18(2).

⁷⁶⁹ Ozcelik, S. (2006) Theories, Practices, and Research in Conflict Resolution and Low-Intensity Conflicts: The Kurdish Conflict in Turkey, *The Journal of Conflict Studies*, Vol.26, No.2, pp.133-153.; Yavuz, *Five stages of the construction*, pp.1-24.; Sarigil and Fazlioglu, *Exploring the roots*, pp.436-458.

⁷⁷⁰ Sarigil and Fazlioglu, *Exploring the roots*, p.440.

⁷⁷¹ For relative deprivation theory, see: Gurr, T. (1970) *Why Men Rebel*, Princeton: Princeton University Press.; Walker, I. and Smith, H. (2002) *Relative Deprivation: Specification, Development, and Integration*, Cambridge: Cambridge University Press.; Gurr, T. (1993) Why Minorities Rebel: A Global Analysis of Communal Mobilization and Conflict Since 1945, *International Political Science Review*, Vol.14, No.2, pp.161-201.; Brush, S. G. (1996) Dynamics of theory change in the social sciences: Relative deprivation and collective violence, *Journal of Conflict Resolution*, Vol.40, No.4, pp.523-545.; Smith, H., Pettigrew, T., Pippin, G. and Bialosiewicz, S. (2012) Relative deprivation: A theoretical and meta-analytic review, *Personality and Social Psychology Review: An Official Journal of the Society for Personality and Social Psychology*, Vol.16, No.3, pp.203-232.

way for ethnic mobilisation and aggression.⁷⁷² Yet, socioeconomic and structural inequalities alone do not lead to ethnic conflict, there are other catalysts.⁷⁷³

It was noted that the perception of deprivation does not always reflect the reality. However, even though the perceptions are subjective, they might produce discontent and frustration which are often driving forces for ethnic and political mobilisation.⁷⁷⁴ For instance, members of an ethnic minority may believe that they are left underdeveloped by the state because of their ethnicity. In reality, their perception might be false because their deprivation may rise from some other reasons rather than the state's deliberate policies. Yet, this does not necessarily change their perception. Moreover, Derin-Gure claims that "it is not the absolute economic conditions in south-eastern Turkey but it is the economic conditions in the area relative to the rest of the country that matters in terms of separatist terrorism."⁷⁷⁵ This approach also suggests that the perception of "relative deprivation" might be more important than the reality of socioeconomic conditions regarding ethno-nationalist mobilisation.

Sarigil and Fazlioglu's study, which is based on a survey which was conducted by a public opinion research company with 6516 respondents, suggests that 47% of the Kurds in Turkey believe that Kurds are discriminated against by the state.⁷⁷⁶ Another study which was conducted by Wise Men Center for Strategic Studies (BILGESAM, Turkish acronym) in 2009 depicts that 51% of Kurds believe that there is discrimination against them.⁷⁷⁷ It was pointed out that the eastern part of the country has always been poorer than the rest due to its remoteness and rugged nature. The Turks who reside in the northeast Turkey are also poor like the Kurds in the southeast, but they did not interpret this relative deprivation as an ethnic one.⁷⁷⁸ According to Sarigil and Fazlioglu's study "the perception of discrimination is one of the strongest and most consistent determinants of ethno-nationalist orientation among Kurds."⁷⁷⁹ Their study suggests that socioeconomic improvements and growth alone may not suppress ethno-nationalist tensions.⁷⁸⁰ Income level does not always have a significant impact on supporting ethno-political

⁷⁷² Christie, D. J. (1997) Reducing Direct and Structural Violence: The Human Needs Theory, *Peace and Conflict: Journal of Peace Psychology*, Vol.3, No.4, p.318.; Icduygu et al., *The ethnic question in an environment*, pp.991-1010.; Sarigil, *Curbing Kurdish ethno-nationalism*, p.538.; Sarigil and Fazlioglu, *Exploring the roots*, p.440.

⁷⁷³ Entessar, *Kurdish Ethnonationalism*, p.6.; Icduygu et al., *The ethnic question in an environment*, p.991.

⁷⁷⁴ Gurr, *Why Men Rebel*, p.24.

⁷⁷⁵ Derin-Gure, *Separatist Terrorism and the Economic Conditions*, p.395.

⁷⁷⁶ Sarigil and Fazlioglu, *Exploring the roots*, p.440.

⁷⁷⁷ BILGESAM, *Güneydoğu Sorununun Sosyolojik Analizi*, p.44.

⁷⁷⁸ Cagaptay and Yolbulan, *The Kurds in Turkey*, p.52.

⁷⁷⁹ Sarigil and Fazlioglu, *Exploring the roots*, p.437.

⁷⁸⁰ Sarigil and Fazlioglu, *Exploring the roots*, p.438.

nationalism. For instance, Quebec in Canada and the Basque Country in Spain are economically advanced regions. Yet there are still ethno-political tensions. Therefore, ethno-nationalist tensions and conflicts cannot be tackled without addressing political aspirations.⁷⁸¹ It must be noted that almost half of the Kurds perceive that they are being discriminated against and even though this perception might be subjective, the state needs to address this perception and look for the ways in which this perception can be eliminated.⁷⁸² Even though the Kurdish Question is not only a socioeconomic problem and it includes political and cultural demands, the state needs to tackle socioeconomic problems to have a full-fledged solution.⁷⁸³ As Ensaroglu and Kurban noted, even though the Kurdish Question is political, it damaged the social sphere most.⁷⁸⁴ Therefore, to tackle the Kurdish Question successfully and sustainably, the economic and social demands of the Kurds must be recognised as well as civil and political demands.⁷⁸⁵

Socioeconomic injustices become more critical regarding the Kurdish youth. Numerous scholars pointed out that young Kurds who are frustrated with socioeconomic inequalities and unemployment are more prone to radical forms of ethno-nationalism and joining the PKK.⁷⁸⁶ This is also linked to the argument about the relationship between socioeconomic status and ethno-nationalism. While some scholars assert that people with higher socioeconomic status are less likely to support ethno-nationalist movements, others claim the opposite or assert that there is no link between them.⁷⁸⁷ The state also assumed that there was a negative relationship between socioeconomic status and ethno-nationalism and wanted to prevent people from supporting the PKK by promoting economic development in the region; it was believed that the Kurdish people, particularly the youth, could be de-radicalised.⁷⁸⁸ Although it is difficult to reach a conclusive decision on this issue, there is merit in tackling the socioeconomic problems in the

⁷⁸¹ Sarigil and Fazlioglu, *Exploring the roots*, pp.449-450.

⁷⁸² Gurses, *Partition, Democracy*, p.345.

⁷⁸³ Yavuz, *Five stages of the construction*, p.20.

⁷⁸⁴ Ensaroglu and Kurban, *A Roadmap for a Solution*, p.29.

⁷⁸⁵ Yildiz, *Turkey's Kurdish Conflict: Pathways to Progress*, p.170.; Gurses, *Partition, Democracy*, p.345.

⁷⁸⁶ Kirisci and Winrow, *The Kurdish Question and Turkey*, p.126.; Sarigil and Fazlioglu, *Exploring the roots*, p.448.; Yavuz, *Five stages of the construction*, pp.11-12.; Romano, *The Kurdish Nationalist Movement*, pp.88-89; Bilgel and Karahasan, *The Economic Costs of Separatist Terrorism*, p.462.; Mousseau, *An inquiry into the linkage*, p.56.; Villellas, A. (2011) *Turkey and The Kurdish Question: Reflecting on Peace Building*, Report by Escola de Cultura de Pau, Agencia Catalana de Cooperacio al Desenvolupament, p.11.; Abbas and Yigit, *Perspectives on Ethno-National Conflict*, pp.303-304.; Celik et al., *Towards A Resolution*, pp.35-36.; Yanmis, *Resurgence of the Kurdish Conflict*, p.26.

⁷⁸⁷ Sarigil, *Curbing Kurdish ethno-nationalism*, p.545.; Aydinli, *Between Security and Liberalization*, p.218.; Ekmekci, *Understanding Kurdish ethno-nationalism*, p.1614.; Derin-Gure, *Separatist Terrorism and the Economic Conditions*, pp.396-405.; Yildirim and Ocal, *Analysing the Determinants of Terrorism*, pp.195-209.; BILGESAM, *Güneydoğu Sorununun Sosyolojik Analizi*, p.96.

⁷⁸⁸ Phillips and Kouchner, *The Kurdish spring*, pp.60-61.; Derin-Gure, *Separatist Terrorism and the Economic Conditions*, pp.394-405.

region. Eliminating discrepancies in the enjoyment of ESCR can contribute to preventing the Kurdish youth from adopting radical forms of ethno-nationalism. Yet it must be kept in mind that there are many factors and reasons for joining the PKK⁷⁸⁹ and addressing socioeconomic problems alone cannot tackle the Kurdish Question and prevent people from joining the PKK.⁷⁹⁰

3. The human rights abuses and the significance of ESCR violations

The PKK-led conflict has been going on for more than 30 years and myriad human rights violations have been committed during this period.⁷⁹¹ It is noted that “[t]he real physical and human cost of the insurrection has fallen disproportionately on the residents of the southeast.”⁷⁹² Belge states that activists, family members of the PKK militants, lawyers, party officials, journalists and ordinary people were detained and beaten for participating in protests and demonstrations, joining human rights organisations and pro-Kurdish political parties and writing for pro-Kurdish newspapers.⁷⁹³ There have been serious human rights violations against Kurdish people including enforced disappearances, deaths in detention, burning villages and forcibly evacuating residents during the 1990s.⁷⁹⁴ These gross human rights violations were committed when the state commenced its counterinsurgency campaign against the PKK’s violent campaign.⁷⁹⁵ The civilian casualties were less than battle deaths (about 5000 civilian deaths compared to 35,000 battle deaths).⁷⁹⁶ Much of the Kurdish population was governed by an emergency rule with extraordinary powers between 1987 and 2002.⁷⁹⁷ Belge stated that “[w]ithout emergency rule, the widespread use of coercive practices such as torture,

⁷⁸⁹ Abbas and Yigit, *Perspectives on Ethno-National Conflict*, p.306.; BILGESAM, *Güneydoğu Sorununun Sosyolojik Analizi*, p.87.; Ozeren, S., Sozer, M. A. and Basibuyuk, O. (2012) A Field Study on Factors that Affect Individuals’ Decision to Join the Terrorist Organization: The PKK/KCK Case, *International Journal of Security and Terrorism*, Vol.3, No.2, pp.57-83.

⁷⁹⁰ Gurses, *Partition, Democracy*, p.345.; McGarry, J. (1995) Explaining ethnonationalism: The flaws in Western thinking, *Nationalism and Ethnic Politics*, Vol.1, No.4, p.137.

⁷⁹¹ Aras, R. (2013) *The formation of Kurdishness in Turkey: Political violence, fear and pain*, New York: Routledge.

⁷⁹² Barkey and Fuller, *Critical Turning Points*, p.78.

⁷⁹³ Belge, *Civilian Victimization and the Politics*, p.281.

⁷⁹⁴ Gunes and Zeydanlioglu, *Introduction: Turkey and the Kurds*, p.5.; Celik et al., *Towards A Resolution*, p.8.; Gurbey, *The development of the Kurdish nationalist movement*, p.18.

⁷⁹⁵ Taqi, I. (2001) Adjudicating disappearance cases in Turkey: An argument for adopting the Inter-American Court of Human Rights’ approach, *Fordham International Law Journal*, Vol.24, No.3, p.966.; Jongerden, J. (2007) *The Settlement Issue in Turkey and the Kurds: An Analysis of Spatial Policies, Modernity and War*, Leiden; Boston: Brill, p.254.

⁷⁹⁶ Belge, *Civilian Victimization and the Politics*, p.280.

⁷⁹⁷ Tezcur, *Electoral Behavior in Civil Wars*, p.75.; Belge, *Civilian Victimization and the Politics*, p.284.; Bozarslan, *Human rights and the Kurdish issue*, p.48; Celik et al., *Towards A Resolution*, pp.6-7.

extrajudicial killings, unidentified murders, disappearances, and village burnings and evacuations would not have been possible.”⁷⁹⁸

There are different figures about the disappearances, unidentified murders and extrajudicial killings during the conflict. In 2013, the Human Rights Inquiry Committee of the Turkish Parliament prepared a comprehensive report on the violations of the right to life during the conflict between the state and the PKK.⁷⁹⁹ The report states that 2872 unidentified murders, 1945 extrajudicial killings, 1147 deaths in detention and 940 enforced disappearances took place between 1980 and 2011 based on the data of the Human Rights Association and Human Rights Foundation of Turkey.⁸⁰⁰ The village guard system also led to some human rights abuses and causes unrest in the society, with some village guards also involved in crimes.⁸⁰¹ For instance, one study reveals that some people were forced to displace because of the pressure of village guards.⁸⁰² Likewise, one of the reasons that prevents IDPs from returning their villages is village guards.⁸⁰³

Every neighbourhood and family has been affected by the violence one way or another.⁸⁰⁴ A whole generation was born into the state of emergency conditions and these young people grew up listening to the stories of their families’ suffering in addition to their own frustration.⁸⁰⁵ These children suffer from serious traumas because of the conflict environment, and they need to be rehabilitated.⁸⁰⁶ Baser and Celik wrote: “some Kurdish intellectuals have argued that they are the last generation with whom the Turkish state can peacefully negotiate because the young

⁷⁹⁸ Belge, *Civilian Victimization and the Politics*, pp.284-289.

⁷⁹⁹ Türkiye Büyük Millet Meclisi (TBMM) (The Human Rights Inquiry Committee of the Turkish Parliament) report (2013) *Teror ve Sıddet Olayları Kapsamında Yaşam Hakkı İhlallerini İnceleme Raporu*, Ankara: TBMM.

⁸⁰⁰ TBMM report (2013), *Teror ve Sıddet Olayları Kapsamında Yaşam Hakkı*, p.74.

⁸⁰¹ Ozkirimli, U. (2013) Vigilance and Apprehension: Multiculturalism, Democracy, and the ‘Kurdish Question’ in Turkey, *Middle East Critique*, Vol.22, No.1, p.39.; Beriker-Atiyas, *The Kurdish Conflict in Turkey*, pp.440-441.; Belge, *Civilian Victimization and the Politics*, pp.298-299.; Celik et al., *Towards A Resolution*, pp.44-45.

⁸⁰² Hacettepe Üniversitesi Nüfus Etütleri Enstitüsü (HUNEE) (Hacettepe University Institute of Population Studies) (2006) *Türkiye Goc ve Yerinden Olmus Nüfus Arastirmasi*, Ankara: HUNEE, p.129.

⁸⁰³ HUNEE, *Türkiye Goc ve Yerinden Olmus Nüfus Arastirmasi*, p.88.; Celik and Blum, *Track II Interventions*, p.68.; Celik et al., *Towards A Resolution*, pp.47-49.; Claridge, L. and Vine, C. (2006) *The Status of Internally Displaced Kurds in Turkey: Return and Compensation Rights – An Update*, (Fact- Finding Mission Report), London: Kurdish Human Rights Project (KHRP), pp.26-27.

⁸⁰⁴ Yavuz, *Five stages of the construction*, p.13.

⁸⁰⁵ Yavuz, *Five stages of the construction*, p.14.; Abbas and Yigit, *Perspectives on Ethno-National Conflict*, pp.303-304.; Bilgin, R. (2014) The Problem with Children Growing in the Environment of Conflict and Violence, *Firat University Journal of Social Science*, Vol.24, No.1, pp.135-151.

⁸⁰⁶ Bilgin, *The Problem with Children*, pp.135-151.; Baser and Celik, *Imagining peace in a conflict environment*, p.271.

generation of today will not be as peaceful as they are.”⁸⁰⁷ The Kurdish youth is quite frustrated and radical as mentioned above and it is not surprising considering that they grew up in an environment in which human rights abuses became an everyday practice and the daily lives of the Kurdish people have been shaped by the war-like conditions.⁸⁰⁸

Although the PKK criticised the state for its human rights violations, it also killed civilians, executed so-called collaborators and applied forced recruitment, displacement and taxation.⁸⁰⁹ Likewise, the PKK committed wide-scale human rights abuses among its own members such as torture and killings.⁸¹⁰ The PKK also put people in a position to choose a side between the state and itself considering the former as an “enemy”.⁸¹¹ Civilians were often caught between two fires as both sides of the conflict oppressed them.⁸¹²

3.1. Economic, Social and Cultural Rights

Violations of ESCR and other socioeconomic consequences of the conflict had a huge impact on people’s lives in the Kurdish region. Yet, before examining ESCR violations, socioeconomic impacts of the Kurdish Question will be analysed to lay the foundation and understand the socioeconomic context. The conflict between the PKK and the state shaped public opinion in Turkey about the Kurdish Question.⁸¹³ Numerous scholars remarked that there has been an increasing anti-Kurdish discourse in Turkish society due to the conflict, and ethnicity-based divisions have been aggravated since the mid-1990s.⁸¹⁴ For instance, the funerals of soldiers who lost their lives in these conflicts led to the rise of the Turkish right and of prejudice against Kurds.⁸¹⁵ In western cities, Kurds and Turks started to compete in social and economic life which also pushed some Turks to identify Kurds with the PKK.⁸¹⁶ Similarly, some Turkish public servants and soldiers had become reluctant to serve in the Kurdish region.⁸¹⁷ Although the Kurds demand

⁸⁰⁷ Baser and Celik, *Imagining peace in a conflict environment*, p.271.

⁸⁰⁸ Bozarslan, *Human rights and the Kurdish issue*, p.50.; Yukseker, D. (2007) ‘Internal Displacement in the Province of Diyarbakır: Return, Urban Issues, and Implementation of the Compensation Law’ in Kurban, D. et al. *Coming to Terms with Forced Migration: Post-Displacement Restitution of Citizenship Rights in Turkey*, Istanbul: TESEV Publications, pp.188-190.

⁸⁰⁹ Sarihan, *The Two Periods of the PKK*, pp.89-93.; Bozarslan, *Human rights and the Kurdish issue*, pp.47-51.

⁸¹⁰ Criss, *The nature of PKK terrorism*, p.19.; Bozarslan, *Human rights and the Kurdish issue*, p.52.

⁸¹¹ Bozarslan, *Human rights and the Kurdish issue*, p.51.

⁸¹² Belge, *State Building and the Limits of Legibility*, p.108.; Ergil, *The Kurdish question in Turkey*, p.128.

⁸¹³ Stefanovic, D., Loizides, N. and Parsons, S. (2014) Home is Where the Heart Is? Forced Migration and Voluntary Return in Turkey’s Kurdish Regions, *Journal of Refugee Studies*, Vol.28, No.2, p.281.

⁸¹⁴ Celik, *I miss my village*, p.142.; Saracoglu, *Exclusive recognition*, p.641.; Yavuz and Ozcan, *Turkish Democracy and the Kurdish Question*, p.83.; Yavuz and Ozcan, *The Kurdish question and JDP*, p.103.; Yegen, *Prospective-Turks or Pseudo-Citizens*, pp.597-615.

⁸¹⁵ Sagnic, *Mountain Turks*, pp.131-132.; Barkey and Fuller, *Turkey’s Kurdish Question*, p.116.

⁸¹⁶ Barkey, H. (1993) Turkey’s Kurdish Dilemma, *Survival*, Vol.35, No.4, pp.57-58.

⁸¹⁷ Robins, *The Overlord State*, p.665.

democratic autonomy and cultural rights rather than independence, the Turkish people believe that the PKK want an independent state, and it is not easy to change their beliefs on this.⁸¹⁸ Although two large-scale public opinion polls depict that Turks and Kurds are considerably integrated with each other socially through neighbour, professional, friendship and family relations,⁸¹⁹ Cilingir depicts that there has been an “increase of the fracture between Turks and Kurds, particularly in terms of marriage and neighbor relations.”⁸²⁰ This increase is likely to be a result of the escalation of the conflict.

There have been some community-level tensions between Turks and Kurds, particularly in western regions.⁸²¹ Saracoglu claims that there had not been a considerable tension between the Kurds and Turks until 2000 because people did not associate the PKK with Kurds even though there were bloody conflicts. Yet, this has changed since the 2000s due to various factors, such as the migration of the Kurds to western Anatolia, and there has been an increasing anti-Kurdish manifestation among people, particularly in western cities, due to the identification of the Kurds with the PKK.⁸²² He also asserts that this negative discourse is mainly produced by the social interactions of people through “superficial contacts” with Kurds rather than political and historical discourses.⁸²³ Karakoc, however, contradicts Saracoglu’s assertion by remarking that the negative sentiments against the Kurdish people are rooted in the nationalist Turkish state discourse which has been imposed on people through state institutions and media.⁸²⁴ There are other studies which suggest there is a considerable rise in negative sentiments against the Kurdish people among Turkish citizens.⁸²⁵

⁸¹⁸ Efeğil, *Analysis of the AKP Government's Policy*, p.36.; Sarigil and Fazlioglu, *Exploring the roots*, p.443.

⁸¹⁹ KONDA, *Biz Kimiz’10*, pp.45-46.; Aras, B. et al. (2009) *Türkiye’nin Kurt Sorunu Algisi*, Ankara: SETA and POLLMARK, pp.126-138.

⁸²⁰ Cilingir, Y. S. (2016) *Social Cohesion for Economic Growth (Evaluation Note)*, Economic Policy Research Foundation of Turkey (TEPAV), p.6.

⁸²¹ Celik and Blum, *Track II Interventions*, p.65.; Ergin, *The racialization of Kurdish identity*, pp.322-323.; Saracoglu, C. (2010) The changing image of the Kurds in Turkish cities: middle-class perceptions of Kurdish migrants in İzmir, *Patterns of Prejudice*, Vol.44, No.3, pp.239-260.; Gambetti, Z. (2007) Linc girişimleri, neoliberalizm ve güvenlik devleti, *Toplum ve Bilim*, No.109, pp.7-34.; Celik, *I miss my village*, pp.141-145.; Yavuz and Ozcan, *The Kurdish question and JDP*, p.103.; Celik et al., *Towards A Resolution*, p.27.

⁸²² Saracoglu, *Exclusive recognition*, pp.641-655.

⁸²³ Saracoglu, *Exclusive recognition*, p.642.

⁸²⁴ Karakoc, *A critical note*, pp.730-736.

⁸²⁵ Dixon and Ergin, *Explaining Anti-Kurdish Beliefs*, pp.1329-1348.; KONDA, *Biz Kimiz’10*, pp.45-46.; Saracoglu, *Exclusive recognition*, pp.641-642.; Bilali, R., Çelik, A. and Ok, E. (2014) Psychological asymmetry in minority-majority relations at different stages of ethnic conflict, *International Journal of Intercultural Relations*, Vol.43, pp.253-264.; Yegen, *Prospective-Turks or Pseudo-Citizens*, pp.597-615.

Linguistic rights, particularly using the Kurdish language in education, have been one of the most important demands of the Kurds.⁸²⁶ Language often has a critical role in ethnic conflicts⁸²⁷ and it is also the case for the Kurds as it is probably “the most visible and symbolic indicator of cultural identity.”⁸²⁸ Many of the demands concerning the Kurdish language such as giving children Kurdish names, broadcasting in Kurdish and establishing institutions to teach Kurdish have been solved by the JDP government.⁸²⁹ Yet, education in the Kurdish language has not been approved by the government and it continues to be a prominent argument between the state and the Kurds.⁸³⁰

The conflict led to numerous violations of ESCR in the region. Conflicts have demolished the means of living such as agriculture and stockbreeding.⁸³¹ This should be considered as a violation of the right to work and the right to an adequate standard of living because losing their means of living led to poverty and unemployment for the victims. More than 3000 villages and hamlets were evacuated; schools and medical care centres were closed in the region which affected thousands of people.⁸³² As many medical centres were closed, this negatively affected the enjoyment of the right to health in the region. Enrolment rates, the number of schools and teachers had already been relatively low compared to the other regions, and due to conflicts, more than a million children were left without basic education.⁸³³ It should be acknowledged that the enjoyment of the right to education has been negatively affected by the conflict and children’s right to education was violated. Losing their means of living and being displaced in urban centres culminated in poverty and deprivation for the Kurdish people. Forced

⁸²⁶ Olson, R. (2011) *The Kurdish nationalist movements in Turkey, 1980 to 2011: Oppression, resistance, war, education in the mother tongue and relations with the Kurdistan Regional Government*, Costa Mesa, CA.: Mazda Publishers, p.19.; Baser and Celik, *Imagining peace in a conflict environment*, p.280.; Yanmis, *Resurgence of the Kurdish Conflict*, p.39.; Ozkirimli, *Vigilance and Apprehension*, pp.35-36.; Ozkirimli, *Multiculturalism, recognition and the “Kurdish question*, pp.1058-1059.; Kreyenbroek, *On the Kurdish language*, pp.53-64.

⁸²⁷ Ross, M. H. (2004) ‘Ritual and the Politics of Reconciliation’ in Bar-Siman-Tov, Y. (ed) *From Conflict Resolution to Reconciliation*, New York: Oxford University Press, pp.218-219.; Marcus, *Blood and Belief*, p.85.

⁸²⁸ Ozkirimli, *Vigilance and Apprehension*, p.39.

⁸²⁹ Olson, *The Kurdish nationalist movements in Turkey, 1980 to 2011*, p.19.

⁸³⁰ Heper, *The State and Kurds*, p.136.; Olson, *The Kurdish nationalist movements in Turkey, 1980 to 2011*, pp.20-25.

⁸³¹ Gurses, *Environmental Consequences of Civil War*, p.261.; Natali, *The Kurds and the state*, pp.112-113.

⁸³² Beriker-Atiyas, *The Kurdish Conflict in Turkey*, p.439.; Belge, *Civilian Victimization and the Politics*, p.281.

⁸³³ Mousseau, *An inquiry into the linkage*, p.56.; Beriker-Atiyas, *The Kurdish Conflict in Turkey*, p.439.; Yildiz et al., *The Situation of Kurdish Children in Turkey*, pp.61-76.; Keyder, C. and Ustundag, N. (2006) ‘Dogu ve Guneydogu Anadolu’nun Kalkinmasinda Sosyal Politikalar’ in Kurmus, O. et al. *Dogu ve Guneydogu Anadolu’da Sosyal ve Ekonomik Oncelikler*, Istanbul: TESEV Publications, pp.90-148.; Baser and Celik, *Imagining peace in a conflict environment*, pp.269-270.

displacement has been the most prevalent violation of human rights since the conflict has started.⁸³⁴ Moreover, forced displacement has been accompanied by other socioeconomic problems such as unemployment, health and education related problems etc. Therefore, forced displacement deserves an extended analysis.

3.2. Forced migration

Yukseker states that:

Internal displacement during the 1990s has caused indelible sociological realities in Turkey whose effects can still be felt. These realities include urban poverty, deprivation of educational opportunities, participation of women and children in the labor force under very unfavourable conditions, lack of access to healthcare services, and health problems related to migration and to sudden urbanization.⁸³⁵

As stated above, internal displacement's effects range from unemployment to child labour, and addressing forced migration is critical to tackle socioeconomic problems in the Kurdish Question. Before analysing the forced migration in Turkey, it is important to briefly contextualise forced migration and internally displaced persons.

IDPs have become a serious problem since the end of the Cold War.⁸³⁶ The worldwide figures increased from 1.2 million on 1982⁸³⁷ to 48.5 million as of May 2018.⁸³⁸ As mentioned in the introduction, IDPs lack efficient protection and they face serious human rights abuses. The relationship between displacement and human rights violations is multifaceted: human rights violations often lead to displacement; displacement itself is a violation of human rights and displacement enables other human rights violations to take place as it "often leaves its victims vulnerable to other human rights violations."⁸³⁹ As IDPs are displaced within their countries' borders, the international community often considers the issue as an internal problem of states which cannot be intervened without the consent of the states.⁸⁴⁰ This approach leaves IDPs unprotected because their own countries rarely take responsibility and act to solve their

⁸³⁴ Belge, *Civilian Victimization and the Politics*, p.281.; Ayata and Yukseker, *A belated awakening*, p.19.

⁸³⁵ Yukseker, D. (2007) 'Research Findings on Internal Displacement in Turkey: National Reports' in Kurban, D. et al. *Coming to Terms with Forced Migration: Post-Displacement Restitution of Citizenship Rights in Turkey*, Istanbul: TESEV Publications, p.157.

⁸³⁶ Phuong, C. (2004) *The international protection of internally displaced persons*, Cambridge: Cambridge University Press, p.3.; Stavropoulou, M. (1998) Displacement and Human Rights: Reflections on UN Practice, *Human Rights Quarterly*, Vol.20, No.3, pp.515-554.

⁸³⁷ Ayata and Yukseker, *A belated awakening*, p.7.

⁸³⁸ Internal Displacement Monitoring Centre - IDMC (2018) *Global Report on Internal Displacement 2018*, Geneva: IDMC, p.V.

⁸³⁹ Duthie, R. (2011) Transitional Justice and Displacement, *International Journal of Transitional Justice*, Vol.5, No.2, pp.243-244.; Stavropoulou, *Displacement and Human Rights*, pp.516-517.

⁸⁴⁰ Phuong, *The international protection of internally displaced persons*, pp.208-234.

problems considering many forced displacements take place because of ethnic conflicts and identity crises.⁸⁴¹ In short, IDPs are often excluded from both national and international protection.⁸⁴² Although problems and needs of IDPs may differ, it is often assumed by international organisations that IDPs have similar issues and wants.⁸⁴³ It is important to analyse the specific context and identify the problems and needs of the IDPs, and then a solution plan can be designed. There is a wide and still growing literature on IDPs but exploring it is beyond the scope of this study.

Returning to the forced displacement in the Kurdish Question, internal displacement has been “one of the most sustained and widespread (and still ongoing) violations of human rights in Turkey.”⁸⁴⁴ The nearby cities in the south-eastern region and large cities in other regions such as Istanbul, Ankara, Izmir, Adana and Mersin have become the main destinations for Kurdish IDPs.⁸⁴⁵ Istanbul has become a city with the biggest Kurdish population in Turkey due to migration.⁸⁴⁶ In 1997, an investigation commission was formed by thirteen members of the Turkish Parliament (the Grand National Assembly of Turkey, *Türkiye Büyük Millet Meclisi*, TBMM), from five political parties, to inquire into the forced migration cases. The Turkish Parliament Investigation Commission published its report in 1998 which has been a significant resource on the issue since then.⁸⁴⁷ The report states that the total number of the evacuated villages and hamlets was 3428 as of 1997.⁸⁴⁸ There are different figures for the number of people who were forcibly displaced in the country. According to the TBMM report (1997), around 378,000 people were forcibly displaced.⁸⁴⁹ Various national and international NGOs claim different figures from one to four million people.⁸⁵⁰ Since there is not enough specific data about

⁸⁴¹ Ayata and Yukseker, *A belated awakening*, pp.7-8.; Celik, *Transnationalization of Human Rights Norms*, p.975.; Phuong, *The international protection of internally displaced persons*, pp.208-211.

⁸⁴² Phuong, *The international protection of internally displaced persons*, pp.208-234.

⁸⁴³ Ayata and Yukseker, *A belated awakening*, p.13.

⁸⁴⁴ Ayata and Yukseker, *A belated awakening*, p.19.

⁸⁴⁵ Celik, *Transnationalization of Human Rights Norms*, p.980.; Celik, *I miss my village*, p.140.

⁸⁴⁶ Cagaptay and Yolbulan, *The Kurds in Turkey*, p.66.; Ergil, *The Kurdish question in Turkey*, p.125.

⁸⁴⁷ Türkiye Büyük Millet Meclisi (TBMM) (1997) *Doğu ve Güneydoğu Anadolu’da Bosaltılan Yerleşim Birimleri Nedeniyle Göç Eden Yurttaşlarımızın Sorunlarının Araştırılarak Alınması Gereken Tedbirlerin Tespit Edilmesi Amacıyla Kurulan Meclis Araştırması Komisyonu Raporu (10/25)*, (Report of the Parliamentary Investigation Commission Established with the Aim to Investigate the Problems of our Citizens who migrated due to the Evacuation of Settlements in East and Southeast Anatolia and to Assess the Measures Need to be Taken (10/25)), Ankara: TBMM.

⁸⁴⁸ TBMM report (1997), *Doğu ve Güneydoğu Anadolu’da Bosaltılan Yerleşim Birimleri*, p.13.

⁸⁴⁹ TBMM report (1997), *Doğu ve Güneydoğu Anadolu’da Bosaltılan Yerleşim Birimleri*, p.30.

⁸⁵⁰ Goral, O. S. (2016) ‘Urban Anxieties and Kurdish Migrants: Urbanity, Belonging, and Resistance in Istanbul’ in Ozbay, C. (ed) *The Making of Neoliberal Turkey*, Surrey, England; Burlington, Vermont: Ashgate, p.113.; Celik, *I miss my village*, p.140.; Unalan, T., Celik, A. B. and Kurban, D. (2007) ‘Internal Displacement in Turkey: the Issue, Policies, and Implementation’ in Kurban, D. et al. *Coming to Terms with Forced Migration: Post-Displacement Restitution of Citizenship Rights in Turkey*, Istanbul: TESEV

IDPs, it is difficult to determine the number of IDPs.⁸⁵¹ Ayata and Yukseker state that the underlying reason for different figures of IDPs in Turkey is the varying definitions of IDPs. When the state only considers people whose villages or hamlets are forcibly evicted as IDPs, the NGOs also include the people who had to migrate because of insecurity, armed clashes and threats from different actors such as the security forces, the PKK or the village guards.⁸⁵²

The TBMM commission's report (1997) stated the reasons of forced migration in the region as:

- 1) people leaving their villages because of the collapse of animal husbandry and agriculture – a result of the ban on the use of pastures, and because of military operations/armed clashes; because of pressure exercised by the Kurdistan Workers' Party (Partiya Karkerên Kurdistan – "PKK") on villages in which there were village guards; and because of the intensification of military operations in villages that were regarded with suspicion by the security forces due to their refusal to become village guards; 2) the eviction by the PKK of certain villages and hamlets whose inhabitants accepted to become village guards; and 3) the eviction by security forces of villages whose inhabitants refused to become village guards, whose security could not be provided, or who were thought to aid the PKK.⁸⁵³

It was noted that security forces often displaced people "to cut off logistic support to PKK militants."⁸⁵⁴ Yet, it is claimed that cutting off the logistic support may not be the actual reason as some correlations were observed between displaced villages and their political profile such as voting patterns (voting for pro-Kurdish political parties) and not-enlisting for the village guard system (this often was considered as allegiance with the PKK).⁸⁵⁵ Belge states that the evacuations took place when the Turkish army failed to restore order in the villages.⁸⁵⁶ People also left their homes as they were caught between the security forces and the PKK.⁸⁵⁷ It is explained that in some cases, people had time, although insufficient, to arrange their migration process as they were given notice in advance; in other cases, they were evacuated abruptly as their houses were destroyed or burnt. In the former, people could at least sell their assets and

Publications, p.83.; Human Rights Watch (HRW) (2002) *Displaced and Disregarded: Turkey's Failing Village Return Program*, Vol.14, No.7, pp.1-78.

⁸⁵¹ Unalan et al., *Internal Displacement in Turkey*, p.83.; Sagnic, *Mountain Turks*, p.131.; Jongerden, *The Settlement Issue in Turkey*, pp.79-80.

⁸⁵² The Human Rights Association (IHD), the Human Rights Foundation (TIHV), Association for Solidarity with the Oppressed (Mazlum-Der) and the Association for Solidarity with Migrants (Göç-Der) conducted various activities, such as conferences, surveys, petitions etc., concerning the IDPs in Turkey. (Ayata and Yukseker, *A belated awakening*, pp.15-18.)

⁸⁵³ Unalan et al., *Internal Displacement in Turkey*, p.81.

⁸⁵⁴ Ayata and Yukseker, *A belated awakening*, p.17.

⁸⁵⁵ Gokalp, *A gendered analysis of violence*, p.562.; Belge, *Civilian Victimization and the Politics*, pp.275-306.

⁸⁵⁶ Belge, *Civilian Victimization and the Politics*, p.281.

⁸⁵⁷ Celik, *I miss my village*, p.139.; Kirisci, *Turkey Regional Profile*, p.198.

animals even for a little money, but in the latter, they lost all their belongings.⁸⁵⁸ In many cases, the belongings of the IDPs were destroyed to prevent people from returning.⁸⁵⁹ Burning the houses is a clear violation of the right to housing, the IDPs should have been provided with protection, humanitarian assistance and compensation.

Most of the time people were displaced beyond the law, and the extra-legality of the displacement left people without financial assistance from the state.⁸⁶⁰ The Kurdish IDPs did not get support from the state, they only received support from other Kurds, the Kurdish political party (People's Democracy Party) and some NGOs.⁸⁶¹ This also makes forced displacement different from economic migration. As explained before, there was a migration wave from the region to the large urban centres after the 1950s due to economic reasons.⁸⁶² Unlike economic migration, forced migration often breaks off the social/material bonds and personal relations which IDPs had with their hometowns or villages.⁸⁶³ The Kurdish IDPs experienced these difficulties as most of them did not have anyone left in their places of origin to support them.⁸⁶⁴ Lastly, after the collapse of the peace process in July 2015, armed clashes took place in the Kurdish cities and towns for ten months. During these clashes (in 2015 and 2016), nearly 500,000 people were displaced in the Kurdish region and many of them still could not return to their homes. The government did not design "a comprehensive plan as to how the residents would be able to return to their homes."⁸⁶⁵

⁸⁵⁸ Celik, A. B. (2007) 'Evaluation of Fieldwork Conducted in the Province of Batman: The Socio-Economic Consequences of Internal Displacement and Obstacles to Return' in Kurban, D. et al. *Coming to Terms with Forced Migration: Post-Displacement Restitution of Citizenship Rights in Turkey*, Istanbul: TESEV Publications, p.208.; Abbas and Yigit, *Perspectives on Ethno-National Conflict*, pp.302-303.

⁸⁵⁹ Ayata and Yukseker, *A belated awakening*, p.16.; Gurbey, *The development of the Kurdish nationalist movement*, p.18.; Nigogosian, A. (1996) 'Turkey's Kurdish Problem in the 1990s: Recent Trends' in Olson, R. (ed) *The Kurdish nationalist movement in the 1990s: Its impact on Turkey and the Middle East*, Lexington, Ky.: University Press of Kentucky, p.42.

⁸⁶⁰ Belge, *Civilian Victimization and the Politics*, p.289.; Ayata and Yukseker, *A belated awakening*, pp.18-19.; Abbas and Yigit, *Perspectives on Ethno-National Conflict*, pp.302-303.

⁸⁶¹ Wedel, H. (2000) 'Migration and Displacement: Kurdish Migrants in Istanbul in the 1990s' in Ibrahim, F. and Gurbey, G. (eds) *The Kurdish Conflict in Turkey: Obstacles and Chances for Peace and Democracy*, New York: St. Martin's Press, p.193.; Unal, A. Z. (2013) "Yerinden Olmuslar"ın Yoksullugunu Yeniden Ureten Habitus (Habitus That Reproduces the Poverty of the "Internally Displaced Persons"), *KMU Sosyal ve Ekonomik Arastirmalar Dergisi*, Vol.15, No.25, p.107.; Jongerden, *The Settlement Issue in Turkey*, pp.84-85.

⁸⁶² Celik, *I miss my village*, pp.139-140.; Romano, *The Kurdish Nationalist Movement*, pp.42-43.

⁸⁶³ Celik, *I miss my village*, p.141.

⁸⁶⁴ Celik, *I miss my village*, p.142.

⁸⁶⁵ Amnesty International (2016) *Displaced and Dispossessed: Sur Residents' Right to Return Home*, London: Amnesty International.; Amnesty International (2018) *Amnesty International Report 2017/2018: The State of the World's Human Rights*, London: Amnesty International, p.371.

3.2.a. The problems of IDPs

Turkey has been criticised by national and international human rights organisations for failing to respect and protect the rights of the Kurdish IDPs by violating their right to life and property and failing to provide them food, shelter and medical-care.⁸⁶⁶ Many IDPs have an intense feeling of victimisation.⁸⁶⁷ The studies conducted on IDPs in Turkey reveal that the most critical problems are urban problems such as poverty, unemployment, housing, healthcare and education.⁸⁶⁸ Lack of language skills also have a negative impact on their lives in metropolis as they have difficulties in schools, hospitals etc.⁸⁶⁹ Due to the under-development and conflicts, southeastern and eastern regions had already been disadvantaged in terms of education, healthcare, infrastructure and income before the forced migration. However, these problems exacerbated due to the displacements of large numbers of people. These problems significantly affected their enjoyment of socioeconomic rights. This also contributes to the perception of discrimination among these people as there is a considerable difference among regions in terms of enjoyment of socioeconomic rights.

The unexpected growth in population due to forced migration creates serious problems concerning infrastructure, housing, transportation and public health problems in the cities which receive large numbers of IDPs.⁸⁷⁰ For instance, Diyarbakir has been one of the main destinations for IDPs since the forced migration started. The city's population was around 380,000 in 1991 and it increased to approximately 800,000 in five years.⁸⁷¹ Numerous problems have arisen from forced displacement such as the increasing infant mortality rates and infectious diseases, the shortage of classrooms and healthcare facilities, and the inadequacy of piped water and sewage systems.⁸⁷² This is not to say that these problems did not exist before the forced migration. Yet, the waves of IDPs deteriorated the situation in urban centres. Since the IDPs did not have the

⁸⁶⁶ Human Rights Watch, Amnesty International, Immigrants Association for Social Cooperation and Culture (Göç Edenler Sosyal Yardımlaşma ve Kültür Derneği - GÖÇ-DER), The Human Rights Association (IHD) have published numerous reports since the 1990s to raise awareness about forced migration.

⁸⁶⁷ Stefanovic et al., *Home is Where the Heart Is*, p.280.

⁸⁶⁸ Ayata and Yukseker, *A belated awakening*, p.20.; Wedel, *Migration and Displacement*, pp.192-193.; Goral, *Urban Anxieties and Kurdish Migrants*, p.112.; Yildiz et al., *The Situation of Kurdish Children in Turkey*, pp.35-77.; Yukseker, D. (2007) 'Internal Displacement and Social Exclusion: Problems Encountered by Internally Displaced Persons in the Provinces of Istanbul and Diyarbakir' in Kurban, D. et al. *Coming to Terms with Forced Migration: Post-Displacement Restitution of Citizenship Rights in Turkey*, Istanbul: TESEV Publications, pp.256-276.

⁸⁶⁹ Goral, *Urban Anxieties and Kurdish Migrants*, pp.120-121.

⁸⁷⁰ TBMM report (1997), *Dogu ve Guneydogu Anadolu'da Bosaltilan Yerlesim Birimleri*, pp.26-30.

⁸⁷¹ Yukseker, *Research Findings on Internal Displacement in Turkey*, p.151.

⁸⁷² Ayata and Yukseker, *A belated awakening*, p.20.; Yildiz et al., *The Situation of Kurdish Children in Turkey*, pp.40-41.; TBMM report (1997), *Dogu ve Guneydogu Anadolu'da Bosaltilan Yerlesim Birimleri*, pp.22-25.

means to find formal housing, they often built or rented *gecekondu*s which often produce slums and “marginalized spaces”.⁸⁷³

Most of the Kurdish IDPs’ livelihoods depended on farming and livestock breeding before displacement. As they could not continue these activities in the urban centres, they have become unskilled labour after displacement.⁸⁷⁴ They had few socioeconomic assets such as social and financial capital; they arrived in their destination cities with poor education and, sometimes, lack of language skills.⁸⁷⁵ A majority of these migrants were already extremely impoverished, and when they fled from their homes, they often arrived in these cities without means to survive.⁸⁷⁶ The IDPs incurred financial losses because they had to abandon their means of livelihood such as livestock and land.⁸⁷⁷ Therefore, the Kurdish IDPs live in poor socioeconomic circumstances and they often suffer from poverty and unemployment.⁸⁷⁸ There is also an “extremely wide socio-economic gap between migrants from Eastern Anatolia and the rest of the city population.”⁸⁷⁹ It is well-documented that there is a significant link between forced displacement and poverty.⁸⁸⁰ These socioeconomic problems are closely linked to ESCR violations as well as the underdevelopment of the region since the foundation of the republic. The violations of the right to housing, the right to work, and the right to an adequate standard of living exacerbated the initial socioeconomic problems in the region.

Forced migration has a serious impact on children.⁸⁸¹ Since IDPs suffer from poverty and unemployment, children of the IDPs often drop out of their schools to work and support their

⁸⁷³ “Gecekondu settlements, literally “built over night”, are illegally constructed without land titles, construction plans and licences.” (Wedel, *Migration and Displacement*, p.184).; Wedel, *Migration and Displacement*, pp.184-185.; Natali, *The Kurds and the state*, pp.98-99.; Goral, *Urban Anxieties and Kurdish Migrants*, p.112.; Saracoglu, *The changing image of the Kurds*, p.245.

⁸⁷⁴ Sirkeci, *Exploring the Kurdish population*, p.160.; Celik, *Evaluation of Fieldwork*, p.208.

⁸⁷⁵ Celik, *I miss my village*, p.141.; Ozbay, F. (1997) Migration and Intra-Provincial Movements in Istanbul Between 1985-1990, *Bogazici Journal*, Vol.11, No. 1-2, pp.115-150.

⁸⁷⁶ Saracoglu, *The changing image of the Kurds*, p.254.; Goral, *Urban Anxieties and Kurdish Migrants*, p.120; Celik, *I miss my village*, p.141.; Celik, *Transnationalization of Human Rights Norms*, p.980.; HUNEE, *Türkiye Göç ve Yerinden Olmuş Nüfus Araştırması*, pp.51-87.; Gokalp, *A gendered analysis of violence*, p.562.

⁸⁷⁷ Yıldız et al., *The Situation of Kurdish Children in Turkey*, p.39.; Celik, *Evaluation of Fieldwork*, p.208.

⁸⁷⁸ Zubaida, *Introduction*, p.2.; Unalan et al., *Internal Displacement in Turkey*, p.98.; Ayata and Yukseker, *A belated awakening*, p.21.; Celik, *Transnationalization of Human Rights Norms*, p.981.; Yukseker, *Internal Displacement in the Province of Diyarbakır*, pp.186-187.; Wedel, *Migration and Displacement*, pp.184-185.; HUNEE, *Türkiye Göç ve Yerinden Olmuş Nüfus Araştırması*, p.83.

⁸⁷⁹ Saracoglu, *Exclusive recognition*, p.650.; Kurban, D., Celik, A. B. and Yukseker, D. (2006) *Overcoming a Legacy of Mistrust: Towards Reconciliation between the State and the Displaced*, Istanbul: TESEV Publications, pp.26-27.

⁸⁸⁰ Unal, *Habitus That Reproduces the Poverty*, pp.105-112.; Yıldız, M. Z. and Alaeddinoglu, F. (2011) Göç Ve Yoksulluk: Hakkâri Örneği (Migration and Poverty: Hakkari Sample), *Gaziantepe Üniversitesi Sosyal Bilimler Dergisi*, Vol.10, No.1, pp.437-462.; Unalan et al., *Internal Displacement in Turkey*, p.98.

⁸⁸¹ Yıldız et al., *The Situation of Kurdish Children in Turkey*, p.59.

families.⁸⁸² Moreover, several studies, which were conducted in various Turkish cities which received great numbers of Kurdish IDPs, depict that there is a considerable connection between children working on the street and forced migration.⁸⁸³ There is also a link between impoverished IDP children and crimes.⁸⁸⁴

Forced displacement has negative impacts on public health, physical health and mental health, and leads to many health problems for IDPs. IDPs' access to healthcare and the quality of healthcare deteriorated after the forced migration.⁸⁸⁵ The IDPs suffer from unhealthy housing conditions, malnutrition/insufficient nutrition, lack of insurance and inability to access healthcare because of economic difficulties arising from forced displacement.⁸⁸⁶ The deterioration in the health services can be identified as discrimination, as the state is obliged to avoid discriminatory practices in the realisation of ESCR (the right to health in this case). Moreover, various studies were conducted to inquire into the psychological consequences of the forced migration on IDPs. The findings show that many of the IDPs suffer from different mental health problems such as depression, post-traumatic stress disorder, panic disorder and somatisation.⁸⁸⁷ They do not experience only forced migration, many of the IDPs are also victims

⁸⁸² Yukseker, *Research Findings on Internal Displacement in Turkey*, pp.156-157.; Saracoglu, *The changing image of the Kurds*, p.242.; TBMM report (1997), *Dogu ve Guneydogu Anadolu'da Bosaltilan Yerlesim Birimleri*, pp.25-26.

⁸⁸³ Ayata and Yukseker, *A belated awakening*, p.21.; Saracoglu, *The changing image of the Kurds*, p.255.; Altuntas, B. (2003) *Mendile, Simite, Boyaya, Çöpe: Ankara Sokaklarında Çalışan Çocuklar*, İstanbul: İletişim.; Kizmaz, Z. and Bilgin, R. (2010) The Children Working/Living in the Street and Crime: Diyarbakir Case Study, *Electronic Journal of Social Sciences*, Vol.9, No.32, pp.269-311.; Ceylan, Y. (2012) Relationship Between Forced Migration and Crime (Example of the City of Mus), *Akademik Bakis Dergisi*, Vol.32, pp.1-18.; Basak Kultur ve Sanat Vakfi (BSV) (2004) *Zorunlu Göçün Çocuklar ve Gençler Üzerindeki Etkileri [The Effects of Forced Migration on Children and Young People]*, İstanbul: Başak Kültür ve Sanat Vakfı Publication.

⁸⁸⁴ Ceylan, *Relationship Between Forced Migration and Crime*, pp.1-18.; Kizmaz and Bilgin, *The Children Working/Living in the Street*, pp.269-311.; Yildiz et al., *The Situation of Kurdish Children in Turkey*, p.49.

⁸⁸⁵ Yildiz et al., *The Situation of Kurdish Children in Turkey*, pp.44-45.; Aker, A. T. (2007) 'Internal Displacement and Psychological and Public Health in Turkey: Past Studies, Expectations, and Obstacles' in Kurban, D. et al. *Coming to Terms with Forced Migration: Post-Displacement Restitution of Citizenship Rights in Turkey*, İstanbul: TESEV Publications, pp.160-161.; TBMM report (1997), *Dogu ve Guneydogu Anadolu'da Bosaltilan Yerlesim Birimleri*, pp.22-25.; HUNEE, *Turkiye Goc ve Yerinden Olmus Nufus Arastirmasi*, p.108.

⁸⁸⁶ Aker, *Internal Displacement and Psychological and Public Health*, pp.160-162.; Baser and Celik, *Imagining peace in a conflict environment*, p.270.; Yildiz et al., *The Situation of Kurdish Children in Turkey*, pp.35-77.; Cabuk, *Güney Doğu Anadolu'da Yoksulluğun Sosyal Göstergeleri*, pp.51-52.

⁸⁸⁷ Aker, *Internal Displacement and Psychological and Public Health*, pp.158-159.; Sir, A., Bayram, Y. and Ozkan, M. (1998) A Preliminary Study on PTSD After Forced Migration, *Turkish Journal of Psychiatry*, Vol.9, No.3, pp.173-180.; Aker T.A., B. Ayata, M. Özeren, B. Buran and A. Bay (2002) "Zorunlu İç Göç: Ruhsal ve Toplumsal Sonuçları" (Internal Displacement: Psychological and Social Consequences), *Anadolu Psikiyatri Dergisi*, Vol.3, No.2, pp.97-103.; Kara, H. (1997) "Göç ve Psikiyatri" in 6. *Anadolu Psikiyatri Günleri Kongresi Bilimsel Çalışmalar Kitabı [Migration and Psychiatry. 6th Congress of Anatolian Psychiatry Days, Book of Scientific Work]*. Erzurum, Turkey, pp.167-174.; Gulsen, C., Knipscheer, J., and Kleber, R. (2010) The Impact

of gross human rights violations.⁸⁸⁸ Therefore, in addition to physical healthcare services, IDPs also need mental health services to overcome their psychological problems.⁸⁸⁹

Due to conflict, a great number of Kurds had to migrate to the cities in western Anatolia where they have been marginalised and socially excluded, and this added a new dimension to the Kurdish Question.⁸⁹⁰ As mentioned earlier, the public has had very limited information about the dynamics of the conflict due to the censorship in the media, and the state has long adopted a security and terror discourse to describe the Kurdish Question. Therefore, the majority of the Turkish population considered the Kurdish Question exclusively as a terror issue and they often identified all the Kurdish people with the PKK postulating that the organisation represents all the Kurds.⁸⁹¹ The Kurdish IDPs are often frustrated with the marginalisation and exclusion, therefore, according to a study, which was conducted in Izmir with both Turkish and Kurdish people, it was observed that the Kurdish migrants tended to distance themselves from the PKK when it broke the ceasefire, and sought acceptance and inclusion from Turks.⁸⁹² The behaviour of the Kurdish IDPs is understandable considering the increasing anti-Kurdish sentiment among people.

Numerous scholars depicted that the Kurdish women IDPs' experience is different than men's as they are often more marginalised and excluded than men.⁸⁹³ Many Kurdish IDP women did not even have basic education and they suffer from lacking language skills in Istanbul and other cities.⁸⁹⁴ Kurdish girls have a more disadvantaged situation compared to Kurdish boys in education as there are various reasons which prevent Kurdish girls from attending school such

of Forced Migration on Mental Health: A Comparative Study on Posttraumatic Stress Among Internally Displaced and Externally Migrated Kurdish Women, *Traumatology*, Vol.16, No.4, pp.109-116.

⁸⁸⁸ Aker, A. T. (2007) 'Internal Displacement: A Mental Health Perspective' in Kurban, D. et al. *Coming to Terms with Forced Migration: Post-Displacement Restitution of Citizenship Rights in Turkey*, Istanbul: TESEV Publications, pp.71-75.

⁸⁸⁹ Aker, *Internal Displacement: A Mental Health Perspective*, p.75.

⁸⁹⁰ Saracoglu, *The changing image of the Kurds*, pp.240-241.; Baser and Celik, *Imagining peace in a conflict environment*, p.276.; Goral, *Urban Anxieties and Kurdish Migrants*, pp.113-114.; Yukseker, *Internal Displacement and Social Exclusion*, pp.274-275.; HUNEE, *Turkiye Goc ve Yerinden Olmus Nufus Arastirmasi*, pp.129-130.; Icduygu et al., *The ethnic question in an environment of insecurity*, pp.991-1010.

⁸⁹¹ Baser and Celik, *Imagining peace in a conflict environment*, p.277.; Celik, *I miss my village*, pp.140-152.; Bilali et al., *Psychological asymmetry in minority-majority relations*, pp.253-264.

⁸⁹² Bilali et al., *Psychological asymmetry in minority-majority relations*, p.261.

⁸⁹³ Nilsson, M. (2018) Kurdish women in the Kurdish-Turkish conflict - perceptions, experiences, and strategies, *Middle Eastern Studies*, Vol.54, No.4, pp.638-651.; Abbas and Yigit, *Perspectives on Ethno-National Conflict*, p.311.; Celik, *I miss my village*, pp.143-148.; Wedel, *Migration and Displacement*, pp.185-186.; Bilgin, *The Problem with Children*, p.143.; Gokalp, *A gendered analysis of violence*, pp.561-569.

⁸⁹⁴ Celik, *I miss my village*, pp.143-145.; Smits, J. and Gündüz-Hoşgör, A. (2003) Linguistic capital: Language as a socio-economic resource among Kurdish and Arabic women in Turkey, *Ethnic & Racial Studies*, Vol.26, No.5, pp.829-853.

as traditional boundaries, poverty and poor educational facilities.⁸⁹⁵ Unlike women, men often have a greater chance for education, which is taught in Turkish, and they also have an opportunity to learn Turkish during their obligatory military service.⁸⁹⁶ Women had limited opportunities for establishing social relations as they were often restricted by the traditions and their families, particularly men in the families.⁸⁹⁷ It is also noted that the negligence and the lack of empathy of the Turks towards the sufferings of the Kurdish IDPs also negatively affect the relationship between the two groups.⁸⁹⁸ Domestic violence has always been an issue in both Turkish and Kurdish societies, yet the conflict has exacerbated the situation as conflict damaged family and social structures.⁸⁹⁹ Therefore, many IDPs miss home as they had a community and a traditional lifestyle that they enjoyed.⁹⁰⁰

3.2.b. The Return to Villages and Rehabilitation Project (RVRP) and the Compensation Law

The Turkish state has implemented various policies to address the problems arising from forced migration. The RVRP was launched in 1994 to address the problems of displaced people due to natural disasters and development projects as part of the GAP.⁹⁰¹ In 1998, the government initiated a new RVRP as the previous one (adopted in 1994) had limitations regarding its scope and funding.⁹⁰² The RVRP (1998)'s aims are:

resettling those who wish to return to the vicinity of their own villages or in other available areas; building the necessary social and economic infrastructure, and facilitating sustainable living conditions in these areas; rebuilding and reviving the disrupted rural life; developing a more balanced settlement plan in rural areas; providing a more rational distribution of government investments and services; and supporting the development of "central villages"⁹⁰³

Within the scope of the RVRP the state provided IDPs in-kind aid such as farm animals and construction material to rebuild/repair their houses.⁹⁰⁴ In addition, the state constructed infrastructure in some villages, provided piped water and repaired the roads for various villages

⁸⁹⁵ Yildiz et al., *The Situation of Kurdish Children in Turkey*, pp.95-98.

⁸⁹⁶ Ergil, *the Kurdish Question in Turkey*, p.126.

⁸⁹⁷ Wedel, *Migration and Displacement*, pp.186-187.; Celik, *I miss my village*, pp.155-160.; Gokalp, *A gendered analysis of violence*, p.562.

⁸⁹⁸ Goral, *Urban Anxieties and Kurdish Migrants*, p.121.

⁸⁹⁹ Yildiz et al., *The Situation of Kurdish Children in Turkey*, pp.111-122.

⁹⁰⁰ Celik, *I miss my village*, p.149.

⁹⁰¹ Unalan et al., *Internal Displacement in Turkey*, p.84.

⁹⁰² Ayata and Yukseker, *A belated awakening*, p.22(n62).; Muller, M. and Linzey, S. (2007) *The Internally Displaced Kurds of Turkey: Ongoing Issues of Responsibility, Redress and Resettlement*, London: Kurdish Human Rights Project (KHRP), pp.52-54.

⁹⁰³ Unalan et al., *Internal Displacement in Turkey*, p.84.

⁹⁰⁴ Ayata and Yukseker, *A belated awakening*, p.22.; Muller and Linzey, *The Internally Displaced Kurds*, pp.54-55.

and hamlets.⁹⁰⁵ In some cases, such as in Kulp district of Diyarbakir, the state built and delivered houses to IDPs to compensate their destroyed houses.⁹⁰⁶ The state also allocated some resources of the Social Aid and Solidarity Foundation (Sosyal Yardımlaşma ve Dayanışma Vakfı, SYDV) to IDPs as a part of the RVRP. Although these efforts can be considered as redressing the violations of ESCR, their scope was limited. It is noted that these aids were inadequate and only limited people could access these aids from the RVRP and the SYDV.⁹⁰⁷ The RVRP has also been criticised for its poor implementation process as there have been problems regarding clarity, transparency and efficiency.⁹⁰⁸ In most cases, IDPs had to survive by themselves without the assistance or aid of the state.⁹⁰⁹

The JDP government initiated various projects to gather data on internal displacement.⁹¹⁰ This could be considered as a positive approach to tackle the problems arising from forced migration as analysing the problem and exploring the root causes are critical to producing a solution. The JDP government implemented several policies to improve health, education and transportation in the Kurdish region and the results were considered as promising.⁹¹¹ For instance, successful programs include “free healthcare for the poor (the ‘Green Card’), income transfers to families who keep their children in school, income transfers to farmers, monetary and in-kind aid to needy families and the campaign to enroll school-age girls in primary education.”⁹¹² These have been important steps to realise ESCR of the Kurdish people and to eliminate discrepancies in the enjoyment of socioeconomic rights among the regions (and eliminate the perception of discrimination).

In 2004, the JDP government enacted the Compensation Law to address the problems of the IDP and this law has been considered as the most important and concrete step that has ever been taken for IDPs.⁹¹³ The law is designed to compensate the material losses which resulted from

⁹⁰⁵ Yukseker, *Internal Displacement in the Province of Diyarbakir*, p.175.; Ayata and Yukseker, *A belated awakening*, p.22.

⁹⁰⁶ Yukseker, *Internal Displacement in the Province of Diyarbakir* p.176.

⁹⁰⁷ Yukseker, *Internal Displacement in the Province of Diyarbakir*, pp.176-180.; Muller and Linzey, *The Internally Displaced Kurds*, pp.55-59.

⁹⁰⁸ Muller and Linzey, *The Internally Displaced Kurds*, pp.55-59.; HUNEE, *Türkiye Goc ve Yerinden Olmus Nufus Arastirmasi*, pp.113-114.

⁹⁰⁹ Ayata and Yukseker, *A belated awakening*, p.16.; Stefanovic et al., *Home is Where the Heart Is*, p.289.

⁹¹⁰ “Eastern and Southeastern Anatolia Return to Village and Rehabilitation Project Sub-Regional Development Plan” which was prepared by the Turkish Social Science Association (Türkiye Sosyal Bilimler Derneği –TSBD) and “Research on Migration and Displaced Persons in Turkey” which was prepared by Hacettepe University Institute of Population Studies (Hacettepe Üniversitesi Nüfus Etütleri Enstitüsü–HUNEE) for State Planning Organization (Devlet Planlama Teskilati- DPT).

⁹¹¹ Yavuz and Ozcan, *Turkish Democracy and the Kurdish Question*, p.79.; KONDA, *Biz Kimiz’10*, p.27.

⁹¹² Ayata and Yukseker, *A belated awakening*, p.24.

⁹¹³ Unalan et al., *Internal Displacement in Turkey*, p.90.; Celik et al., *Towards A Resolution*, pp.47-48.

the terrorism or the fight against terrorism since 1987.⁹¹⁴ According to the preamble of the law, Turkey's EU candidacy and the cases of Kurdish IDPs taken to the European Court of Human Rights (ECtHR) motivated the government to enact the law.⁹¹⁵ The law does not hold state officials responsible for their unlawful acts which inflicted damages regarding forced migration.⁹¹⁶ Three types of losses are going to be compensated according to the law: damage to moveable or immoveable property, damage to the life and body of the person, and damage sustained due to inability to access one's property.⁹¹⁷ Psychological damages are excluded since the law addresses only monetary losses.⁹¹⁸ The law was criticised for failing to deliver justice on various grounds such as difficulties in its application and decision process (unrealistic demands regarding evidence and delays in the process), arbitrariness in the calculations and the lack of independence of the commissions.⁹¹⁹ Although there have been deficits, the law should be considered as an important attempt to redress ESCR violations rising from forced displacement. However, the law does not consider forced migration in the context socioeconomic rights and does not mention ESCR violations.⁹²⁰ The law should have acknowledged that forced migration causes ESCR violations, and the compensation of losses should have been identified as redressing these violations. By this way, the IDPs could base their claims on rights violations which would provide them a strong argument.

It must be noted that some IDPs may not want to return to their places of origin for various reasons, and the government needs to formulate policies for them as well.⁹²¹ Integration plays an important role as the IDPs, who are more integrated into the society by finding jobs and mastering the Turkish language, are less prone to return.⁹²² Studies show that older IDPs are more willing to return to their homelands whereas younger generations are more eager to stay as they often see better opportunities in cities in terms of employment, education, health and

⁹¹⁴ The Law No. 5233 on the Compensation of Damages Resulting from Terrorism and the Fight against Terrorism, Article 1.

⁹¹⁵ Budak, *Dealing with the Past*, pp.232-233.

⁹¹⁶ Unalan et al., *Internal Displacement in Turkey*, p.92.; Celik et al., *Towards A Resolution*, pp.47-49.; Budak, *Dealing with the Past*, p.233.

⁹¹⁷ The compensation law (5233), article 7.

⁹¹⁸ Unalan et al., *Internal Displacement in Turkey*, p.93.; Muller and Linzey, *The Internally Displaced Kurds*, pp.76-77.

⁹¹⁹ Celik et al., *Towards A Resolution*, pp.47-49.; Claridge and Vine, *The Status of Internally Displaced Kurds*, pp.31-45.; Muller and Linzey, *The Internally Displaced Kurds*, pp.63-88.; Unalan et al., *Internal Displacement in Turkey*, pp.90-94.; Yukseker, *Internal Displacement in the Province of Diyarbakir* pp.196-201.; HUNEE, *Turkiye Goc ve Yerinden Olmus Nufus Arastirmasi*, pp.113-114.; Budak, *Dealing with the Past*, pp.233-235.

⁹²⁰ The Law No. 5233 on the Compensation of Damages Resulting from Terrorism and the Fight against Terrorism.

⁹²¹ Celik et al., *Towards A Resolution*, pp.47-48.; Unalan et al., *Internal Displacement in Turkey*, p.98.

⁹²² Stefanovic et al., *Home is Where the Heart Is*, pp.176-296.

living standards.⁹²³ There are several reasons which prevent the Kurdish IDPs from returning to their homes including socioeconomic problems, landmines, security, village guards and poor living conditions in the region.⁹²⁴ Celik points out that the state must provide assistance to the internally displaced Kurds since their quality of life declined drastically because of the forced migration.⁹²⁵ These problems need to be tackled to encourage the IDPs to return. For instance, the lands and properties of the IDPs must be returned or compensated.⁹²⁶ The public services such as health and education, and physical conditions in the evacuated villages such as roads and infrastructure must be improved.⁹²⁷ The government needs to address their problems and assist those who want to return.

4. Conclusion

Solving the Kurdish Question is critical for Turkey not only for the Kurdish people, but also for the country as a democratic solution could enhance the country's human rights record, help to eliminate regional disparities and achieve sustainable development.⁹²⁸ The counterterrorism campaign against the PKK had a serious negative impact on the economy since the 1990s.⁹²⁹ There are various estimates about the cost of war ranging from 7 to 15 billion dollars annual spending between 1984 and 1999.⁹³⁰ It is claimed that one third of the annual budget of the government went to the fight with the PKK in the 1990s.⁹³¹ Moreover, terrorism negatively affects economic activities and growth, particularly in the Kurdish region.⁹³² Historically, there have been socioeconomic disparities among the regions, but the conflict has exacerbated these

⁹²³ Yukseker, *Internal Displacement in the Province of Diyarbakır*, p.178.; HUNEE, *Türkiye Goc ve Yerinden Olmus Nüfus Arastırması*, p.108.; Ayata and Yukseker, *A belated awakening*, p.36.

⁹²⁴ Claridge and Vine, *The Status of Internally Displaced Kurds*, pp.23-27.; Yukseker, *Internal Displacement in the Province of Diyarbakır*, pp.179-185.; Muller and Linzey, *The Internally Displaced Kurds*, pp.89-99.; HUNEE, *Türkiye Goc ve Yerinden Olmus Nüfus Arastırması*, p.109.; Jongerden, *The Settlement Issue in Turkey*, p.285.

⁹²⁵ Celik, *Transnationalization of Human Rights Norms*, p.982.

⁹²⁶ Celik et al., *Towards A Resolution*, pp.47-48.

⁹²⁷ Celik et al., *Towards A Resolution*, pp.47-49.; HUNEE, *Türkiye Goc ve Yerinden Olmus Nüfus Arastırması*, pp.111.

⁹²⁸ Tezcur, *Prospects for Resolution*, p.73.; Keyman, *Rethinking the Kurdish question*, p.468.

⁹²⁹ Kanat, K. B. (2013) 'Ending Ceasefires for Political Survival: The Use of Diversionary Strategies by the PKK Leadership' in Bilgin, F. and Sarihan, A. (eds) *Understanding Turkey's Kurdish Question*, Lanham: Lexington Books, pp.105-106.

⁹³⁰ Sarihan, *The Two Periods of the PKK*, p.94.; Amicam, *Turkey: Facing A New Millenium*, p.49.

⁹³¹ Beriker-Atiyas, *The Kurdish Conflict in Turkey*, p.441.; Waldman and Caliskan, *The New Turkey*, p.168.

⁹³² Beriker-Atiyas, *The Kurdish Conflict in Turkey*, p.441.; Yildirim and Ocal, *Analysing the Determinants of Terrorism*, p.206.; Ocal and Yildirim, *Regional effects of terrorism*, p.487.; Bilgel and Karahasan, *The Economic Costs of Separatist Terrorism*, p.471.; Gurbey, *The development of the Kurdish nationalist movement*, p.19.; Araz-Takay, B., Arin, K. P. and Omay, T. (2009) The Endogenous and Non-linear Relationship Between Terrorism and Economic Performance: Turkish Evidence, *Defence and Peace Economics*, Vol.20, No.1, pp.1-10.

inequalities for the Kurds in terms of poverty, education, health and unemployment.⁹³³ Elimination of these inequalities are critical to have a full-fledged solution to the Kurdish Question.

Important steps have been taken to solve the Kurdish Question such as alleviating the ban on the Kurdish language, introducing some mechanisms to address the problems of the IDPs, and other reforms through democratisation initiatives.⁹³⁴ Yet, these are not adequate to tackle the Kurdish Question. Therefore, transitional justice mechanisms could play an important role through exploring the wide range of problems and their root causes in the Kurdish Question and designing appropriate mechanisms to find a full-fledged solution. It must be reemphasised that socioeconomic issues have had a critical role in the Kurdish Question. So, redressing ESCR violations and realising ESCR fully could make a huge contribution to tackling the Kurdish Question. The next chapter will look at transitional justice processes of Peru and East Timor to explore the points to take into consideration to design the most suitable and efficient transitional justice mechanisms. Then, the last chapter will attempt to find the most appropriate transitional justice mechanisms to be adopted in the context of the Kurdish Question.

⁹³³ Ergin, *The racialization of Kurdish identity*, p.324.; Celik and Blum, *Track II Interventions*, p.68.; Bilgel and Karahasan, *The Economic Costs of Separatist Terrorism*, p.466.; BILGESAM, *Güneydoğu Sorununun Sosyolojik Analizi*, p.24.; Sirkeci, *Exploring the Kurdish population*, p.165.; Somer, *Ethnic Kurds*, p.74.; Robins, *The Overlord State*, p.663.

⁹³⁴ Yadirgi, *The Political Economy of the Kurds of Turkey*, p.275.

Chapter 4: Comparisons: East Timor and Peru

1. Introduction

This chapter aims to contribute to the overall thesis by analysing the transitional justice experiences of East Timor and Peru. It does so by exploring their transitional processes and determining what worked and what did not work in these countries in addressing past human rights violations and particularly ESCR violations. The chapter is divided into two parts. The first part addresses East Timor's transitional justice process by explaining the historical background, analysing transitional justice mechanisms implemented in East Timor and Indonesia, and showing the significance of socioeconomic dimension of the process. The second part addresses Peru's transitional justice process and it does so by giving the historical background of the conflict, exploring the transitional justice mechanisms adopted in Peru and depicting the significance of socioeconomic dimension of the process. The experiences of these two countries remark the importance of carefully designing and implementing transitional justice mechanisms to respond to the needs and demands of victims and affected populations. Moreover, both countries' examples show that addressing violations of ESCR, structural violence and root causes of the conflict is critical for a successful transition.

2. East Timor

East Timor had suffered from a conflict and an occupation for 25 years between 1974 and 1999. Prior to that East Timor had been a colony of the Portuguese for hundreds of years. The war affected the entire population and had egregious effects on people. To deal with the past, the country has gone through a transitional justice process through several transitional justice mechanisms including truth commissions, trials and reparations. A truth commission was established to address this painful past, and the commission published a final report to show what had happened during the conflict. The final report's findings are of critical importance as they unearth the truth about the past. This section is going to give a historical background of the conflict, then going to describe the transitional justice process and its mechanisms, and the last part is going to depict the significance of the socioeconomic dimension of the conflict.

2.1. Historical background

Until 1974, East Timor had been under Portuguese colonial rule for almost five hundred years. After the withdrawal of Portuguese colonial administration in 1974, several political groups were formed in the country. Two prominent ones were the Revolutionary Front for an Independent East Timor (Portuguese acronym FRETILIN) and the Timorese Democratic Union (Portuguese

acronym UDT), and both aimed at the independence of East Timor.⁹³⁵ In August 1975, a brief civil war broke out when the UDT commenced an armed struggle to control the territory, and the FRETILIN answered in ten days.⁹³⁶ The civil war did not last long and ended in September, but what happened after the war was a turning point for the country. FRETILIN unilaterally announced the independence of East Timor on 28th of November 1975, but Indonesia occupied the country nine days later.⁹³⁷ The UDT and three other smaller political parties escaped to West Timor and became allies with Indonesia which carried on air, sea and land attacks in East Timor.⁹³⁸ FRETILIN had to retreat to the mountains where they formed a resistance against the Indonesian invasion.⁹³⁹ Rae noted that East Timor witnessed the most egregious violence in the first two years of the Indonesian occupation.⁹⁴⁰

The CAVR's final report states that the international community remained silent towards the invasion of East Timor, and the Indonesian army carried out a fierce campaign in the country during occupation years.⁹⁴¹ The United States and Australia implicitly approved the conquest of Indonesia.⁹⁴² This also meant that Australia and other major powers ignored the violence and human rights abuses in East Timor.⁹⁴³ It was noted that East Timorese people had been started being massacred since the first day of the occupation and the death toll was about 60,000 in the first six months of the occupation.⁹⁴⁴ The final report described that the campaign was particularly brutal in the 1970s when the Indonesian army aimed at annihilating FRETILIN's resistance and did not differentiate between guerrillas and civilians.⁹⁴⁵ Tens of thousands of civilians were put in detention camps and resettlement villages where they suffered from a

⁹³⁵ The CAVR, *Chega*, p.11.

⁹³⁶ The CAVR, *Chega*, pp.11-12.

⁹³⁷ Kiernan, B. (2004) 'War, Genocide, and Resistance in East Timor, 1975–99: Comparative Reflections on Cambodia' in Selden, M. and So. A. Y. (eds), *War and State Terrorism: The United States, Japan and the Asia-Pacific in the Long Twentieth Century*, Lanham, Md.: Rowman & Littlefield Publishers, p.200.

⁹³⁸ The CAVR, *Chega*, p.12.

⁹³⁹ Ottendorfer, E. (2013) Contesting International Norms of Transitional Justice: The Case of Timor Leste, *International Journal of Conflict and Violence*, Vol.7, No.1, p.26.

⁹⁴⁰ Rae, J. D. (2009) *Peacebuilding and transitional justice in East Timor*, Boulder [u.a.]: First Forum Press, p.43.

⁹⁴¹ The CAVR, *Chega*, pp.12-13.

⁹⁴² Cumes, G. (2010) Conflict, International Intervention and Criminal Tribunals as Transitional Justice Mechanisms: The Legacy of Failed Justice in Timor-Leste, *Internationales Asienforum*, Vol.41, No.3-4, p.271.; Rae, *Peacebuilding and transitional justice*, p.46.

⁹⁴³ Rae, *Peacebuilding and transitional justice*, p.158.; Cumes, *Conflict and International Intervention*, p.273.

⁹⁴⁴ Kiernan, *War, Genocide, and Resistance*, pp.210-211.

⁹⁴⁵ The term "guerrilla" will be used for FALINTIL fighters in this thesis as the truth commission preferred this term. There are debates around the terminology to be used in war and conflict context around the world, and most of the time one's freedom fighter is considered as a terrorist by others. Therefore, adopting the truth commission's terminology seems the appropriate way.

disastrous famine. Yet, the resistance was reformed in the 1980s and the Indonesian army expanded its domain to reach every single village in East Timor.⁹⁴⁶

According to the final report of the CAVR, in 1991, the Santa Cruz Massacre (which was committed by the Indonesian security forces) drew attention and criticism from the international community.⁹⁴⁷ Rae explains that by the end of the Cold War, the states which backed (or condoned) Indonesia's occupation changed their positions. These states and the UN started to manifest their discomfort about the brutal violence in the absence of the bipolar political system of the Cold War.⁹⁴⁸ A referendum was administered by the UN in 1999 and the vast majority of people (nearly 80%) voted for an independent East Timor.⁹⁴⁹ It is noted that the Indonesian security forces attempted to intimidate and threaten people to make them vote for integration with Indonesia, yet people chose independence against all the odds.⁹⁵⁰ Though, following the announcement of the referendum results on 3rd of September 1999, pro-Indonesia militia groups threw the country in turmoil which culminated in the death of almost 1500 people, myriad rapes and beatings, forced displacement of 25% of the population to West Timor and the demolition of 80% of all buildings.⁹⁵¹ These militia groups were "organized, financed, trained, equipped, and assisted by the Indonesian Armed Forces."⁹⁵² The CAVR's report indicated that after the referendum, some 250,000 East Timorese fled to West Timor (most of them forcibly).⁹⁵³ Cumes states that public utilities, administrative buildings, education and health institutions, and homes were demolished. Likewise, the judicial system and infrastructure of the country were damaged as judicial documents were destroyed, judicial officers fled the country, and the courts were plundered.⁹⁵⁴

An Australian-led international force under the UN aegis arrived on 20th of September and took control of the country. The country was governed by the UN between October 1999 and May 2002 because there was no institutional infrastructure, and these needed to be established in a tight schedule.⁹⁵⁵ When the country voted for independence, there was no functioning

⁹⁴⁶ The CAVR, *Chega*, p.13.

⁹⁴⁷ *Ibid*, p.14.

⁹⁴⁸ Rae, *Peacebuilding and transitional justice*, p.51.

⁹⁴⁹ *Ibid*, pp.52-53.

⁹⁵⁰ The CAVR, *Chega*, p.14.

⁹⁵¹ Kingston, J. (2006) Balancing justice and reconciliation in East Timor, *Critical Asian Studies*, Vol.38, No.3, p.272.

⁹⁵² Cohen, D. (2006) 'Justice on the Cheap' Revisited: The Failure of the Serious Crimes Trials in East Timor, *AsiaPacific Issues*, No.80, p.2.

⁹⁵³ The CAVR, *Chega*, p.85.

⁹⁵⁴ Cumes, *Conflict and International Intervention*, p.273.

⁹⁵⁵ Kingston, *Balancing justice and reconciliation*, p.272.

bureaucracy, no constitution and no political system.⁹⁵⁶ After the end of conflict, the transitional process began in East Timor under the auspices of the UN. The CAVR was established on 13th of July 2001 by the United Nations Transitional Administration in East Timor (UNTAET).⁹⁵⁷ According to the commission's estimation, the number of conflict-related deaths was around 102,800 in East Timor (18,600 of these deaths were killings, and 84,200 of them resulted from hunger and illness.). The findings depict that 57.6% of the killings and disappearances were committed by the Indonesian army and police, whereas 32.3% of them were perpetrated by the East Timorese auxiliaries of Indonesian security forces.⁹⁵⁸

Although the transitional process was in progress in the country, a crisis broke out in 2006. Ottendorfer explained that a group of soldiers signed a petition claiming that they had been discriminated against regarding recruitment, promotion and disciplinary measures "based on the allegation that people from the Western part of Timor Leste had formerly collaborated with the occupation forces while people from the East had fought for independence."⁹⁵⁹ Petitioners, around 600 soldiers, were dismissed from the armed forces, and many other dissenting groups joined them as they were frustrated because of employment, living conditions and government benefits.⁹⁶⁰ Although, ostensibly, the petitioners' discrimination allegations were considered as the reason for the conflict, there were several causes which contributed to the conflict including political divisions, socioeconomic problems and youth unemployment.⁹⁶¹ It is explained that the tensions in the aftermath of independence paved the way for the conflict. People had high expectations in the post-independence period, particularly regarding peace dividends and economic development. Yet, these expectations were not met as oil and gas revenues did not benefit the population much, and most of the people continued to suffer from poverty.⁹⁶² That

⁹⁵⁶ Hill, H. (2001) Tiny, Poor and War-Torn: Development Policy Challenges for East Timor, *World Development*, Vol.29, No.7, p.1138.

⁹⁵⁷ The United Nations Transitional Administration in East Timor (UNTAET) (n.d.) Regulation No. 2001/10. Available at: <http://www.un.org/en/peacekeeping/missions/past/etimor/untaetR/Reg10e.pdf> (access date: 30.07.2018)

⁹⁵⁸ The CAVR, *Chega*, p.44.

⁹⁵⁹ Ottendorfer, *Contesting International Norms*, p.30.

⁹⁶⁰ Robinson, G. (2011) East Timor Ten Years On: Legacies of Violence, *The Journal of Asian Studies*, Vol.70, No.4, p.1013.; Wallis, *Victors, Villains and Victims*, p.142.

⁹⁶¹ Harris, V. and Goldsmith, A. (2009) Integrating security, development and nation-building in Timor-Leste, *Conflict, Security & Development*, Vol.9, No.2, p.136.; Cotton, J. (2007) Timor-Leste and the discourse of state failure, *Australian Journal of International Affairs*, Vol.61, No.4, pp.455-461.; International Crisis Group (2006) *Resolving Timor-Leste's Crisis*, Asia Report No.120, p.1.; Wallis, *Victors, Villains and Victims*, pp.133-142.; Van der Auweraert, P. (2012) *Ending the 2006 Internal Displacement Crisis in Timor-Leste: Between Humanitarian Aid and Transitional Justice*, International Organization for Migration (IOM), Migration Research Series, No.44, p.17.; Scambary, J. (2009) Anatomy of a conflict: the 2006–2007 communal violence in East Timor, *Conflict, Security & Development*, Vol.9, No.2, p.277.

⁹⁶² Van der Auweraert, *Dealing with the 2006 Internal Displacement Crisis*, p.4.; Rae, *Peacebuilding and transitional justice*, pp.106-107.

is why managing the expectations and framing a realistic picture for the future is crucial in transitional contexts. Moreover, the discrimination allegation of the petitioners was a complicated issue. The UN's special inquiry commission noted that both the easterners and the westerners perceived that they were discriminated against by each other in East Timor.⁹⁶³ It is also noted that although the youth was not a primary factor in the 2006 crisis, they were still an important factor as they constituted a considerable percentage of the population and struggled to find jobs. It was unsurprising for them to be utilised in violent conflicts by political agitators.⁹⁶⁴ As explained in the third chapter, the perception of discrimination (based on Kurdishness) and youth unemployment are significant in the Kurdish Question as well, and Turkey needs to tackle these issues to ensure sustainable peace and reconciliation.

The UN inquiry commission reported that 38 people were killed, and more than 150,000 people were forcibly displaced because of the violence in 2006.⁹⁶⁵ To address the resentments of people which participated in violence, the government created benefit schemes "to provide cash payments to certain societal groups, including: veterans of the resistance to the Indonesian occupation; deserters from the F-FDTL [FALINTIL-Forca de Timor-Leste, The Timor Leste Defence Force] who had instigated the crisis; persons internally displaced by the crisis; the elderly and disabled; and female-headed households."⁹⁶⁶ The veterans of FRETILIN received cash payments depending on their service in the independence struggle.⁹⁶⁷ Wallis explained the impacts of the payments on society. The valorisation of FRETILIN after independence and provision of cash payments to its veterans led to resentments among people who have supported the resistance clandestinely since the 1980s. These people were not recognised as part of the independence struggle by the state, and their resentment inclined them to be involved in the 2006 violence. Likewise, the pensions paid to petitioners gave rise to resentments among people as many thought that they were rewarded for causing trouble.⁹⁶⁸ In fact, the benefit scheme entailed arguments in identifying veterans and granting them payments in general.⁹⁶⁹ Moreover, people who were not entitled to benefits have become disadvantaged in the society. Wallis gives an

⁹⁶³ The United Nations Report (2006) *Report of the United Nations Independent Special Commission of Inquiry for Timor-Leste*, Geneva: The United Nations, p.20. [For a more detailed analysis of the East-West factionalism see: International Crisis Group, *Resolving Timor-Leste's Crisis*.]

⁹⁶⁴ Brady, C. and Timberman, D. G. (2006) *The Crisis in Timor-Leste: Causes, Consequences and Options for Conflict Management and Mitigation*, The United States Agency for International Development – USAID Report, pp.11-13.; Wallis, *Victors, Villains and Victims*, p.142.

⁹⁶⁵ The UN Report (2006), *Independent Special Commission of Inquiry for Timor-Leste*, p.42.

⁹⁶⁶ Wallis, *Victors, Villains and Victims*, p.134.

⁹⁶⁷ International Crisis Group (2011) *Timor-Leste's Veterans: An Unfinished Struggle*, Update Briefing-Asia Briefing No.129, p.7.

⁹⁶⁸ Wallis, *Victors, Villains and Victims*, pp.136-146.

⁹⁶⁹ International Crisis Group, *Timor-Leste's Veterans*, p.18.

example to illuminate this: as of 2007, the lowest pension was \$276 per month, and 52.9% of the East Timorese were living on less than \$1.25 per day. These payments were funded by the oil and gas revenues.⁹⁷⁰ It can be understood that people who did not get to receive cash payments were frustrated as a big gap emerged between their incomes and beneficiaries' incomes. This was also related to the valorisation of the resistance. Rothschild mentions that the state produced a discourse about heroic veterans, and this put veterans in an advantaged position.⁹⁷¹

Cumes explained that the 2006 crisis persisted until presidential and parliamentary elections in 2007, with periods of violence which diminished after the elections. Yet, in February 2008, there were coordinated attacks orchestrated against the president and the prime minister (wounding the president and killing the former commander of the military police) which led to the application of emergency law and restrictions on freedoms until May 2008. Cumes concluded that even though tensions continue to exist, there has been no tangible violence after 2008.⁹⁷² Even though the 2006 violence harmed both the economy and the confidence in the state,⁹⁷³ the violence has decreased, and the political stability continues in East Timor as of 2018.⁹⁷⁴

2.2. Transitional justice process

After the UN's intervention and the cease of the violence, the transitional justice process started in East Timor. Despite all the disadvantages inherited from the colonisation and occupation periods, East Timor finally had a chance to build a country and to progress. The UNTAET was founded by the UN to assist East Timor to rebuild the country from scratch.⁹⁷⁵ Yet, rebuilding the country was not the only duty of the government; addressing the past violations was also imperative. However, the government alone could not achieve these duties as it lacked capacity and resources. East Timor needed the support of the international community to achieve its aims.

President Gusmao and the political leadership in East Timor prioritised "reconciliation through forgiveness" over the pursuit of justice and claimed that East Timor needed to concentrate on

⁹⁷⁰ Wallis, *Victors, Villains and Victims*, pp.134-147.

⁹⁷¹ Rothschild, A. (2017) Victims versus Veterans: Agency, Resistance and Legacies of Timor-Leste's Truth Commission, *International Journal of Transitional Justice*, Vol.11, No.3, pp.449-450.

⁹⁷² Cumes, *Conflict and International Intervention*, p.284.

⁹⁷³ Harris and Goldsmith, *Integrating security, development and nation-building*, p.135.; Allden, S. (2009) Microfinance and Post-Conflict Development in Cambodia and Timor-Leste, *Journal of Social Issues in Southeast Asia*, Vol.24, No.2, p.272.

⁹⁷⁴ Distler, W. (2017) Dangerised youth: the politics of security and development in Timor-Leste, *Third World Quarterly*, DOI: 10.1080/01436597.2017.1401924, p.9.

⁹⁷⁵ Ottendorfer, *Contesting International Norms*, p.26.

development and reconciliation rather than prosecuting perpetrators.⁹⁷⁶ Lieberfeld asserts that Gusmao was being pragmatic when he wanted to allocate scarce resources to economic development instead of pursuing criminal justice.⁹⁷⁷ President Gusmao promoted forgiveness for both high-ranking and low-ranking perpetrators to achieve reconciliation.⁹⁷⁸ In fact, there are contradicting claims regarding whether prosecutions are necessary or not. Kent asserts that the overwhelming majority of victims⁹⁷⁹ prioritise prosecutions based on her research.⁹⁸⁰ Kingston also says that, unlike Gusmao, the civil society, the church and many victims were in favour of prosecutions to combat impunity.⁹⁸¹ On the other hand, Robins claims that the families who were interviewed did not prioritise prosecutions. He notes that only ten percent of them spoke of retributive justice; and even when they were asked explicitly, only 40% of them considered them as important. Economic support was the most pressing need for the majority of the interviewees (61%).⁹⁸² Pigou's study also depicts that there were different views among victims: some emphasised the importance of criminal justice whereas others were keen on forgiveness.⁹⁸³ When the UN's Commission of Experts produced their report on East Timor in 2005, they referred to a 2004 opinion poll which claims that 52% of the people of East Timorese wanted justice "even if it slows down reconciliation with Indonesia, while 39 per cent favoured reconciliation even if that meant significantly reducing efforts to seek justice."⁹⁸⁴ Considering these contrasting claims, it would be better to look at the context to see what victims want. In addition to victims' demands, the possibility and applicability of prosecutions need to be examined for every country. This should also be the case for Turkey; transitional justice practitioners need to consider what people want regarding prosecutions.

⁹⁷⁶ *Ibid*, p.28.

⁹⁷⁷ Lieberfeld, D. (2018) Political leadership, peace-making, and post-conflict reconciliation: Xanana Gusmao and East Timor, *Leadership*, Vol.14, No.1, pp.58-82.

⁹⁷⁸ Ottendorfer, *Contesting International Norms*, p.29.

⁹⁷⁹ Regarding the terminology, the term "victim" is widely used in the literature in context of East Timor. Yet it was claimed that "many Timorese people do not want to be classified as 'victims', but instead see themselves as 'heroes' because 'we fought for our independence and we won'." (Wallis, *Victors, Villains and Victims*, p.148.; Rothschild, *Victims versus Veterans*, p.454.) I prefer to stick to the term victim as it refers to a human rights violation whereas 'hero' or 'survivor' can be used for anyone in the society even though they were not subjected to any kind of violation.

⁹⁸⁰ Kent, *Unfulfilled Expectations*, p.5.

⁹⁸¹ Kingston, *Balancing justice and reconciliation*, p.287.

⁹⁸² Robins, S. (2012) Challenging the Therapeutic Ethic: A Victim-Centred Evaluation of Transitional Justice Process in Timor-Leste, *International Journal of Transitional Justice*, Vol.6, No.1, pp.93-96.

⁹⁸³ Pigou, P. (2003) *Crying Without Tears: In Pursuit of Justice and Reconciliation in Timor-Leste: Community Perspectives and Expectations*, Occasional Paper Series, New York: International Center for Transitional Justice.

⁹⁸⁴ The United Nations Security Council (2005) *Report to the Secretary-General of the Commission of Experts to Review the Prosecution of Serious Violations of Human Rights in Timor-Leste (then East Timor) in 1999*, Geneva: The United Nations, p.89.

In East Timor, a hybrid tribunal, two truth commissions, a traditional reconciliation program and a reparations program were introduced to address and redress the past human rights violations. Serious crimes were planned to be dealt in the Serious Crimes Process (SCP) whereas less serious crimes would be dealt through the Community Reconciliation Program (CRP), a traditional reconciliation mechanism under the auspices of the CAVR.⁹⁸⁵ They will be explained in detail below.

2.2.a. Trials

Human rights violations which took place following the referendum were documented by the UN's International Commission of Inquiry on Timor-Leste and three special rapporteurs of the UN. Several reports were prepared by this commission and the Indonesian Human Rights Commission to recommend the establishment of an international tribunal to try perpetrators. Yet the UN rejected these recommendations and left these prosecutions to the Indonesian government.⁹⁸⁶ As the UN was not in favour of an international tribunal, this opportunity was put aside. It would be impossible for East Timor to prosecute the perpetrators without international support because, as noted, the country did not have experienced judges and lawyers, and Indonesia eradicated the country's pre-existing legal infrastructure – judicial facilities, archives, books.⁹⁸⁷ In addition, without the cooperation of Indonesia, the perpetrators could not be brought before the courts. Cumes asserts that economic concern was also an important reason for not establishing an international tribunal in East Timor.⁹⁸⁸

Since the UN did not support the idea of an international tribunal, it decided that past violations would be dealt through two internationally sponsored tribunals: The Special Panels for Serious Crimes (SPSC) and the Indonesian Human Rights Court (IHRC). The SPSC was a hybrid tribunal whereas the IHRC was a domestic one.⁹⁸⁹ Katzenstein defined the hybrid tribunal as “a system that shares judicial accountability jointly between the state in which it functions and the United Nations.”⁹⁹⁰ McAuliffe noted that hybrid courts “typically deploy to states like East Timor, Sierra Leone and Kosovo where the formal justice system of courts and public prosecutors is in

⁹⁸⁵ Hirst, M. and Varney, H. (2005) *Justice Abandoned: An Assessment of the Serious Crimes Process in East Timor*, Occasional Paper Series, New York: International Center for Transitional Justice, p.5.

⁹⁸⁶ Kingston, *Balancing justice and reconciliation*, p.273.

⁹⁸⁷ Kingston, *Balancing justice and reconciliation*, pp.275-276.; McAuliffe, P. (2008) East Timor's Community Reconciliation Process as a Model for Legal Pluralism in Criminal Justice, *Law, Social Justice & Global Development Journal (LGD)*, p.4. Available at: https://warwick.ac.uk/fac/soc/law/elj/lgd/2008_2/mcauliffe/mcauliffe.pdf (access date: 08.09.2018).

⁹⁸⁸ Cumes, *Conflict and International Intervention*, p.286.

⁹⁸⁹ Cumes, *Conflict and International Intervention*, p.278.

⁹⁹⁰ Katzenstein, S. (2003) Hybrid Tribunals: Searching for Justice in East Timor, *Harvard Human Rights Journal*, Vol.16, p.245.

disarray, where there are few judges and lawyers or where those that exist are largely discredited by association with the formal regime.”⁹⁹¹ Katzenstein described the hybrid tribunal in East Timor as comprising three elements: the Special Panels for Serious Crimes (two panels operating at the Dili Court of Appeals and one at the Dili District Court), the Serious Crimes Unit (SCU) and the Public Defenders’ Office.⁹⁹² The Special Panel within the Dili District Court was established in June 2000 by the UNTAET to try serious crimes.⁹⁹³ The UNTAET regulation listed serious crimes as: genocide, war crimes, crimes against humanity, murder, sexual offences and torture.⁹⁹⁴ Unfortunately, the violations of ESCR were not included in the mandate.

The SCU’s mandate (and accordingly the SPSC’s) was limited to the past crimes which took place in 1999.⁹⁹⁵ Although the violence which took place under 24 years of occupation was more destructive for Timorese people, the SCU’s mandate did not include this period.⁹⁹⁶ The SCP exclusively focused on individual and direct crimes and did not address structural injustices, socioeconomic crimes and complicities.⁹⁹⁷ Since an international tribunal was not established, the UN and international community exerted pressure on Indonesia to try the perpetrators of violence in East Timor. Indonesia claimed the sovereignty principle and assured that perpetrators would be tried.⁹⁹⁸ The UN report regarding East Timor stated that the SCP “ensured a notable degree of accountability for those responsible for the crimes committed in 1999.”⁹⁹⁹ The ICTJ’s report on this subject also remarks that the process dealt with a notable amount of cases considering its operation time.¹⁰⁰⁰ Yet, Cohen notes that even though the UN considered the criminal process in East Timor as a success, it has been rife with problems since the beginning, regarding the inadequate funding and recruitment, unclear mandate, ineffective management and absence of political will.¹⁰⁰¹ General Wiranto’s indictment was a good example to show the lack of political will of important actors. The SCU issued a warrant for Wiranto (the

⁹⁹¹ McAuliffe, *East Timor’s Community Reconciliation Process*, p.3.

⁹⁹² Katzenstein, *Hybrid Tribunals*, p.251.

⁹⁹³ Ottendorfer, *Contesting International Norms*, p.27.

⁹⁹⁴ Section 10.1, UNTAET Regulation 2000/11, March 6, 2000. Available at: <http://www.un.org/en/peacekeeping/missions/past/etimor/untaetR/Reg11.pdf> (access date: 30.07.2018)

⁹⁹⁵ Hirst and Varney, *Justice Abandoned*, p.8.

⁹⁹⁶ Kent, *Interrogating the "Gap"*, p.1029.

⁹⁹⁷ Kent, *Interrogating the "Gap"*, p.1034.

⁹⁹⁸ Cumes, *Conflict and International Intervention*, p.285.

⁹⁹⁹ The United Nations Security Council (2006) *Report of the Secretary-General on justice and reconciliation for Timor-Leste*, para.8. Available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2006/580 (access date: 30.07.2018)

¹⁰⁰⁰ International Center for Transitional Justice - ICTJ (2010) *Impunity in Timor-Leste: Can the Serious Crimes Investigation Team Make a Difference*, New York: International Center for Transitional Justice, p.11.

¹⁰⁰¹ Cohen, *Justice on the Cheap*, p.1.

commander of the Indonesian armed forces during the 1999 violence), but the unit could not find support from the UN and East Timor. Indonesia certainly opposed the indictment, and Wiranto continued enjoying impunity.¹⁰⁰² Moreover, the funding was limited for the hybrid tribunal, because approximately \$6-7 million per year was allocated for the process, whereas Cambodia's Extraordinary Courts received \$19 million and Sierra Leone's Special Court received \$16 million per year.¹⁰⁰³ Cohen describes the limitations of the panels and Public Defenders' Office due to financial problems. They did not have funding for experienced judges, interpreters and investigators. They could not even manage to bring witnesses to trials in first 14 trials.¹⁰⁰⁴ Likewise, the publicity of the SCP was a problem due to geographical and financial constraints. Although hearings were open to the public, many people including victims did not even know that trials were taking place, and even if they knew, they were unable to attend because of these constraints.¹⁰⁰⁵ Another criticism of the trials came from the victims. Kent notes that in East Timor's serious crimes process, victims were treated as a source of evidence, and they were not able to make extensive contributions to the cases. Her research depicts that some victims felt that they were used, because they were repeatedly asked for information, but they were not provided with feedback and information about the process of their trials.¹⁰⁰⁶

Likewise, Cumes explains that both tribunals (the SPSC and the IHRC) completed their mandate without success. The SPSC could only try low-level perpetrators due to the lack of resources and support from both Indonesia and other international major powers. The IHRC only convicted a handful of perpetrators who were eventually acquitted on appeal.¹⁰⁰⁷ In fact, it is stated that the absence of Indonesia's cooperation was the main obstacle to serious crimes process; and because of Indonesia's attitude towards this process, the vast majority of the high-ranking perpetrators went unpunished.¹⁰⁰⁸ Without the cooperation of the army, many perpetrators also escaped trials in Peru, as explained in section 3.2.c below. It would be even more difficult to try perpetrators without cooperation in East Timor considering that East Timor is a nascent

¹⁰⁰² Cumes, *Conflict and International Intervention*, p.293.; ICTJ, *Impunity in Timor-Leste*, p.11.

¹⁰⁰³ Kent, *Interrogating the "Gap"*, pp.1027-1028.; Reiger, C. and Wierda, M. (2006) *The Serious Crimes Process in Timor-Leste: In Retrospect*, Prosecutions Case Studies Series, New York: International Center for Transitional Justice, p.30.

¹⁰⁰⁴ Cohen, D. (2002) Seeking Justice on the Cheap: Is the East Timor Tribunal Really a Model for the Future, *AsiaPacific Issues*, No.61, p.5.

¹⁰⁰⁵ Kent, *Interrogating the "Gap"*, pp.1028-1029.

¹⁰⁰⁶ *Ibid*, pp.1032-1040.

¹⁰⁰⁷ Cumes, *Conflict and International Intervention*, p.279.

¹⁰⁰⁸ ICTJ, *Impunity in Timor-Leste*, p.10.; Kingston, *Balancing justice and reconciliation*, p.273.

country, and Indonesia is a powerful one. Moreover, the vast majority of the perpetrators were in Indonesia, and East Timor was not in a position to force them to surrender.¹⁰⁰⁹

In May 2005, the SCP was ended not because the cases were completed, but because of lack of commitment of Indonesia, East Timor, the UN and the international community.¹⁰¹⁰ The Serious Crimes Investigations Team (SCIT) was founded in 2007 to conclude the remaining investigations but the SCIT's mandate was even more limited (only investigation tasks).¹⁰¹¹ In addition to limited mandate, the SCIT was also insufficiently funded and it lacked adequate staff like the SCP.¹⁰¹² Despite these challenges, the team managed to complete some of the investigations that were left from the SCU.¹⁰¹³ To conclude, the success of the prosecutions in East Timor was very limited and the violations of ESCR were excluded from this process.

2.2.b. The CAVR

The CAVR was established in July 2001 by the UNTAET¹⁰¹⁴ after a consultation process.¹⁰¹⁵ The commission was designed as an independent institution which would not be under the supervision of the government, and it was given 24 months to operate, but this period was extended three times.¹⁰¹⁶ The CAVR's mandate was: to reveal the truth about human rights abuses committed between 1974 and 1999, to prepare a final report, to make recommendations, to promote reconciliation and human rights, and to implement the CRP. The mandate included inquiring into the context and causes which led to the conflict.¹⁰¹⁷ It can be considered that the mandate of the CAVR was comprehensive as it included the root causes of

¹⁰⁰⁹ Reiger and Wierda, *The Serious Crimes Process in Timor-Leste*, p.21.; Nevins, J. (2007) The CAVR: Justice and Reconciliation in a Time of "Impoverished Political Possibilities", *Pacific Affairs*, Vol.80, No.4, pp.593-594.

¹⁰¹⁰ ICTJ, *Impunity in Timor-Leste*, p.6.

¹⁰¹¹ The Serious Crimes Investigation Team. Available at: <https://unmit.unmissions.org/serious-crimes-investigation-team> (access date: 30.07.2018).

¹⁰¹² ICTJ, *Impunity in Timor-Leste*, pp.18-30.

¹⁰¹³ ICTJ, *Impunity in Timor-Leste*, p.17.

¹⁰¹⁴ The UNTAET, Establishment of a Commission for Reception, Truth and Reconciliation in East Timor, Regulation No. 2001/10.

¹⁰¹⁵ A workshop was held by the representatives of the civil society, the Church and community leaders; and they decided that the first National Congress of the National Council of Timorese Resistance (CNRT) should discuss the subject. Then, the formation of a "Commission for Resettlement and National Reconciliation" was advised by the congress, and a steering committee was established. This committee consisted of agents of human rights and women's NGOs, youth groups, CNRT, FALINTIL, UNTAET, UNHCR and the Association of ex-Political Prisoners (ASEPOL). The committee conducted public meetings and consulted with communities, political parties, jurists and human rights and victim groups in 13 districts. Public consultation meetings were organised in district, sub-district and village levels. The consultation process depicted that the idea of establishing a truth and reconciliation commission was extremely endorsed. (The CAVR, *Chega*, p.18.)

¹⁰¹⁶ The CAVR, *Chega*, p.19.

¹⁰¹⁷ *Ibid*, pp.19-20.

the conflict. It must be noted that the commission did not operate like a court. It did not address individuals or individual cases and issue indictments, but its mandate included “recommending prosecutions, where appropriate, to the Office of the General Prosecutor.”¹⁰¹⁸ Nevins thinks that the commission prioritised social justice frameworks over legalistic frameworks as it considers victims in a collective perception rather than focusing on individual victims.¹⁰¹⁹

The commission was funded by more than 25 governments and international organisations to operate in six offices with 300 staff in the field.¹⁰²⁰ The CAVR had seven national (including two women) and 29 regional commissioners (including ten women).¹⁰²¹ The commission operated in several languages and translated the report into them to make it available to stakeholders.¹⁰²² The commission adopted Tetum primarily for the verbal process and had international staff who could speak Tetum fluently. This helped the process to be more understandable and relevant for the people.¹⁰²³ The CAVR held eight national hearings which included seven thematic hearings and one victims’ hearing. These themes had different characters such as women and conflict; children and conflict; forced displacement and famine; and four more.¹⁰²⁴ The CAVR took 7669 statements from 13 districts and 65 sub-districts, and conducted more than 1000 interviews in Dili, districts, Indonesia and Portugal to record human rights abuses.¹⁰²⁵ To facilitate this process, the commission employed and trained many East Timorese so they could travel and take testimonies of people.¹⁰²⁶ Recruiting a high percentage of locals through a grassroots approach contributed to its legitimacy and the local ownership.¹⁰²⁷ Yet, it was also said that locals’ participation was more symbolic as the management was in the hands of the international staff.¹⁰²⁸

The CAVR also held 52 Sub-district Victims’ Hearings where 214 people gave testimonies and approximately 6500 community members attended.¹⁰²⁹ The people showed a significant interest in public hearings as many people travelled from across the country although the journey was

¹⁰¹⁸ *Ibid*, pp.16-20.

¹⁰¹⁹ Nevins, *The CAVR: Justice and Reconciliation*, p.600.

¹⁰²⁰ The CAVR, *Chega*, p.8.

¹⁰²¹ The CAVR, *Chega*, pp.18-19.; Rae, *Peacebuilding and transitional justice*, p.190.

¹⁰²² The CAVR, *Chega*, p.6.

¹⁰²³ Rae, *Peacebuilding and transitional justice*, pp.185-186.

¹⁰²⁴ The CAVR, *Chega*, p.32.

¹⁰²⁵ *Ibid*, p.20.

¹⁰²⁶ Roosa, J. (2007) How Does a Truth Commission Find out What the Truth Is? The Case of East Timor's CAVR, *Pacific Affairs*, Vol.80, No.4, p.571.

¹⁰²⁷ Evans, C. (2012) *The Right to Reparation in International Law for Victims of Armed Conflict*, Cambridge: Cambridge University Press, p.201.

¹⁰²⁸ Huang, R. and Gunn, G. (2004) Reconciliation as State-Building in East Timor, *Lusotopie*, p.33. Available at: <http://www.lusotopie.sciencespo-bordeaux.fr/gunn-huang2004.pdf> (access date: 12.08.2018).

¹⁰²⁹ The CAVR, *Chega*, p.33.

onerous.¹⁰³⁰ Yet, Rae explained that many victims and witnesses were frustrated during the public hearings due to cultural differences. They were not comfortable with talking to the foreign personnel and being asked direct inquisitorial questions. They were often unable to have a cathartic experience as their responses were often limited to yes or no. Likewise, they struggled answering questions about the violations, as their perceptions of time and place were different from those of modern capitalist societies. Furthermore, female victims encountered difficulties in testifying about sexual crimes.¹⁰³¹ These experiences prove that the settings in which victims testify are of great importance. As is discussed in the first chapter, truth-telling may lead to re-traumatisation.

The CAVR conducted six healing workshops in Dili; victims from all districts of the country were invited to participate.¹⁰³² Healing workshops included dancing, singing, praying and reflection.¹⁰³³ The commission adopted a victim-centred approach as victims from all parts of the country, mostly from rural communities, participated in both national hearings and sub-district hearings, and their testimonies were broadcasted to the entire nation.¹⁰³⁴ The healing workshops allowed the commission to identify the needs of victims and to determine specific victim groups, such as rape victims, who were more vulnerable than others.¹⁰³⁵ Moreover, the CAVR conducted Community Profile Workshops by its district teams to examine the impacts of the conflict on communities and the needs of them. These workshops helped the commission to analyse the broad economic, social and political contexts and deep impacts of violations on communities during the conflict. More than 4700 people attended 297 workshops in total across the country.¹⁰³⁶ Through these workshops, local histories were delineated.¹⁰³⁷ Furthermore, the commission produced and broadcasted radio programs, films and the recordings of national and community level meetings to promote reconciliation both in East Timor and West Timor.¹⁰³⁸

Ultimately, the final report was presented to the parliament in October 2005.¹⁰³⁹ Indonesia rejected the final report, stating that the future was more important; the international actors

¹⁰³⁰ Rae, *Peacebuilding and transitional justice*, p.177.

¹⁰³¹ *Ibid*, pp.187-190.

¹⁰³² The CAVR, *Chega*, p.34.

¹⁰³³ Huang and Gunn, *Reconciliation as State-Building*, p.32.

¹⁰³⁴ The CAVR, *Chega*, p.33.

¹⁰³⁵ *Ibid*, p.40.

¹⁰³⁶ *Ibid*, pp.37-38.

¹⁰³⁷ Roosa, *The Case of East Timor's CAVR*, p.578.

¹⁰³⁸ The CAVR, *Chega*, p.31.

¹⁰³⁹ Robins, *Challenging the Therapeutic Ethic*, p.88.

ignored it; and the East Timorese leadership declined its recommendations.¹⁰⁴⁰ The recommendations were criticised by President Gusmao because he thought enhancements in living conditions and governance, and achieving healing and social justice were more important than prosecuting the perpetrators as such attempts carried a risk of renewed violence.¹⁰⁴¹ Other political leaders such as then Prime Minister Mari Alkatiri and José Ramos-Horta also criticised the final report and prioritised reconciliation over prosecutions.¹⁰⁴² Kingston comments that in the case of East Timor where there is a lack of capacity for trials and the absence of international support, Gusmao did his best to achieve reconciliation.¹⁰⁴³ As is discussed in the previous section, Gusmao's decision can be comprehended because without the cooperation of Indonesia and the support of the international actors, East Timor could not pursue retributive justice. Still, the CAVR's covering the complicity of international actors made its work unique.¹⁰⁴⁴ When the CAVR recommended reparations, it asked powerful states and corporations to pay for them as they benefited from the conflict by trading with Indonesia and selling weapons.¹⁰⁴⁵

Consequently, the East Timorese parliament didn't discuss the report's content.¹⁰⁴⁶ It has been observed that the political elite in East Timor had little support for addressing the issues and implementing the recommendations identified in the final report. The CAVR process and the final report were considered as an end in itself.¹⁰⁴⁷ There have been calls from several national and international organisations (Amnesty International, ANTI, KontraS),¹⁰⁴⁸ but no official program has been introduced to implement the recommendations.¹⁰⁴⁹ Amnesty International's 2016/2017 report depicts that the prime minister formed a working group to counsel the government on applying the recommendations of the truth commission as victims of the conflict

¹⁰⁴⁰ Nevins, *The CAVR: Justice and Reconciliation*, pp.601-602.; Kingston, *Balancing justice and reconciliation*, p.286.

¹⁰⁴¹ Kingston, *Balancing justice and reconciliation*, pp.281-284.

¹⁰⁴² Ottendorfer, *Contesting International Norms*, pp.29-30.

¹⁰⁴³ Kingston, *Balancing justice and reconciliation*, pp.296-297.

¹⁰⁴⁴ Nevins, *The CAVR: Justice and Reconciliation*, p.595.

¹⁰⁴⁵ *Ibid*, pp.598-599.

¹⁰⁴⁶ Ottendorfer, *Contesting International Norms*, p.33.

¹⁰⁴⁷ Vieira, L. (2012) *The CAVR and the 2006 Displacement Crisis in Timor-Leste: Reflections on Truth-Telling, Dialogue, and Durable Solutions*, New York: International Center for Transitional Justice, p.14.; Kent, L., Kinsella, N. and Rodrigues Tchailoro, N. (2016) *Chega! Ten Years On: A Neglected National Resource - The Fate of the CAVR Final Report in Timor-Leste*, State, Society & Governance in Melanesia - SSGM Report, p.2.

¹⁰⁴⁸ Timor-Leste/Indonesia: Calls on truth and reparation made by bilateral truth commission "ignored" [Joint statement by Amnesty International, ANTI (The Timor-Leste National Alliance for an International Tribunal) and KontraS (the Commission for the Disappeared and Victims of Violence)]. Available at: <http://www.refworld.org/pdfid/51e92f404.pdf> (access date: 30.07.2018)

¹⁰⁴⁹ Kent et al., *Chega! Ten Years On*, p.5.

still ask for justice and reparations.¹⁰⁵⁰ Certainly, implementing the recommendations of the commission is important. Nevertheless, Nevins comments that the work of the commission was invaluable regarding its moral authority, even though its recommendations were mostly not applied through a follow-through.¹⁰⁵¹

It was claimed that the commission got support from Timorese people, civil society, political parties, the government and the parliament.¹⁰⁵² Yet, the work of the commission was criticised on several grounds. Robins asserts that the CAVR's understanding of truth did not really correspond with the victims' understanding of truth. Victims expected a more private truth such as the fate of their beloved ones but the CAVR's truth was more of a public truth such as a component of historiography.¹⁰⁵³ Likewise, Kent depicts that the government adopted one version of the past which glorified the resistance of the Armed Forces for the National Liberation of Timor Leste (FALINTIL) and other truths which did not accord this narrative (for instance the stories of the victims of the resistance groups, stories of women) were suppressed.¹⁰⁵⁴ This approach was linked to the recognition of the victims; as veterans were recognised and granted pensions, and other victims were not.¹⁰⁵⁵ Victims of FRETILIN claim that the CAVR ignored them by focusing on violations of Indonesian security forces exclusively. They were also excluded from the valorisation program.¹⁰⁵⁶ Another criticism was about victim groups in East Timor. It was noted that there were no strong victim groups in East Timor¹⁰⁵⁷ and the ones which did exist were dominated by the victims of the 1999 conflict. In addition, the victims of Indonesian security forces outnumbered the victims of the FRETILIN in victim groups.¹⁰⁵⁸ Therefore, the victims of FRETILIN and the victims of violence which took place before 1999 thought that their voices were not heard.¹⁰⁵⁹ As explained below in the fifth chapter's section 6.3.a, Turkey also created a hierarchy among victims, as the state has granted reparations to the victims of the PKK, ignoring the victims of the Turkish security forces. It needs to be understood that

¹⁰⁵⁰ Amnesty International - Timor-Leste 2017/2018. Available at: <https://www.amnesty.org/en/countries/asia-and-the-pacific/timor-leste/report-timor-leste/> (access date: 30.07.2018)

¹⁰⁵¹ Nevins, *The CAVR: Justice and Reconciliation*, p.594.

¹⁰⁵² The CAVR, *Chega*, p.5.; Rae, *Peacebuilding and transitional justice*, p.181.

¹⁰⁵³ Robins, *Challenging the Therapeutic Ethic*, p.101.

¹⁰⁵⁴ Kent, L. (2011) Local Memory Practices in East Timor: Disrupting Transitional Justice Narratives, *International Journal of Transitional Justice*, Vol.5, No.3, p.440.; Kent, L. (2016) After the Truth Commission: Gender and Citizenship in Timor-Leste, *Human Rights Review*, Vol.17, No.1, pp.57-58.

¹⁰⁵⁵ Kent, *Local Memory Practices*, pp.440-441.

¹⁰⁵⁶ Robins, *Challenging the Therapeutic Ethic*, pp.98-102.; Kent, *Local Memory Practices*, p.453.

¹⁰⁵⁷ Rothschild, *Victims versus Veterans*, p.444.

¹⁰⁵⁸ Kent, *Local Memory Practices*, p.451.

¹⁰⁵⁹ Robins, *Challenging the Therapeutic Ethic*, pp.98-101.

transitional processes should be designed cautiously to prevent emergence of hierarchies among victims and to address all the victim groups' needs.

The Community Reconciliation Program (CRP)

The CRP was established on 13th of July 2001, and it was inspired by a traditional practice named *nahe biti* (to spread the mat).¹⁰⁶⁰ The CRP, a new and unpractised initiative, was introduced by the CAVR at the grassroots level for less serious crimes. Its mandate excluded serious crimes like "crimes against humanity, rape, torture and murder".¹⁰⁶¹ According to the CAVR's report, the aim of this initiative was to promote reconciliation in local communities through a participatory approach. The CRP adopted exercises from different disciplines such as traditional justice, mediation, arbitration and criminal law.¹⁰⁶² Reconciliation at the local level was important as former militias and pro-integration East Timorese needed to be reintegrated into communities after their return from West Timor.¹⁰⁶³ After their return, the refugees confessed their actions; they were either handed over to the authorities in cases of serious crimes or they were given sanctions through community reconciliation process.¹⁰⁶⁴ The report described how the CRP initiatives promoted reconciliation. The commission held public hearings where victims, perpetrators and community members participated. Perpetrators needed to confess their crimes fully to reach an agreement and to carry out particular actions such as community work or paying reparations to victims.¹⁰⁶⁵ After completing these tasks, the agreement needed to be registered with the nearest district court and the community would reintegrate them.¹⁰⁶⁶ It should be noted that the case had to be presented to the Office of the General Prosecutor first to determine whether it was applicable for the CRP.¹⁰⁶⁷ Although there is no satisfactory data in the literature on ESCR violations which were addressed through the CRP, it is noted that the CRP looked at house-burning cases (considering them as less serious crimes).¹⁰⁶⁸ This can be considered as addressing the violations of the right to housing. Even though it is difficult to analyse which ESCR violations were addressed in the CRP due to lack of information, it can be said that some ESCR violations such as violations of the right to housing and the right to food

¹⁰⁶⁰ Ottendorfer, *Contesting International Norms*, p.29.

¹⁰⁶¹ McAuliffe, *East Timor's Community Reconciliation Process*, p.10.

¹⁰⁶² The CAVR, *Chega*, p.22.

¹⁰⁶³ Huang and Gunn, *Reconciliation as State-Building*, p.34.

¹⁰⁶⁴ Babo-Soares, D. (2004) *Nahe biti: The philosophy and process of grassroots reconciliation (and justice) in East Timor*, *The Asia Pacific Journal of Anthropology*, Vol.5, No.1, p.27.

¹⁰⁶⁵ The CAVR, *Chega*, p.22.

¹⁰⁶⁶ Huang and Gunn, *Reconciliation as State-Building*, p.32.

¹⁰⁶⁷ The CAVR, *Chega*, p.23.

¹⁰⁶⁸ Pigou, P. (2004) *The Community Reconciliation Process of the Commission for Reception, Truth and Reconciliation (Report for UNDP Timor-Leste)*, Dili: UNDP Timor-Leste, p.17.

could be dealt in this process. If Turkey conducts a community reconciliation process in the future, less serious violations of ESCR must be included in this process to promote reconciliation among communities.

The CRP also helped the judicial system by settling some of the ordinary crimes as the huge number of cases would be a burden otherwise.¹⁰⁶⁹ Being fast, cost-effective and originated from local traditions were considered as the strength of the CRP¹⁰⁷⁰ and the program stimulated wide interest in the communities.¹⁰⁷¹ Among other benefits, the CRP also contributed to the fight against impunity. According to the report, the idea of amnesty for the perpetrators of less serious crimes was not accepted by the community members, and many perpetrators were held accountable for their past crimes through the CRP program.¹⁰⁷² It was claimed that a symbolic closure and reconciliation were achieved for many communities through the CRP. The target was 1000 cases in the beginning, but 1371 perpetrators accomplished a CRP and reintegrated into their communities, and there was a strong demand for the program to carry on.¹⁰⁷³ Although it was estimated that there were more than 3000 cases which could be dealt in the CRP program, it did not continue.¹⁰⁷⁴ It must be noted that the CRP was the only experience of an official legal mechanism for many participants according to their statements, because the CRP extended to distant parts of East Timor.¹⁰⁷⁵ Although it was not a full-fledged tribunal, its proximity to communities was a great advantage in giving the communities a sense of justice.

Nevertheless, the program was not conducted without criticisms. Firstly, the CRP was a voluntary process, and many perpetrators did not participate in the program and enjoyed impunity. The Jakarta Ad Hoc Tribunal and the Serious Crimes Process was not successful in bringing the perpetrators of the most serious crimes to justice, and a situation of unequal accountability had occurred in East Timor where many perpetrators of less serious crimes attended the CRP program and were held accountable, whereas offenders of the most serious crimes enjoyed impunity.¹⁰⁷⁶ Many deponents of the CRP pointed out this issue and criticised

¹⁰⁶⁹ Vieira, *The CAVR and the 2006 Displacement Crisis*, p.7.

¹⁰⁷⁰ McAuliffe, *East Timor's Community Reconciliation Process*, p.6.; Kent, *Unfulfilled Expectations*, p.9.; Larke, B. (2009) '...And the Truth Shall Set You Free': Confessional Trade-Offs and Community Reconciliation in East Timor, *Asian Journal of Social Science*, Vol.37, No.4, p.673.

¹⁰⁷¹ Huang and Gunn, *Reconciliation as State-Building*, p.33.

¹⁰⁷² The CAVR, *Chega*, p.24.

¹⁰⁷³ Robins, *Challenging the Therapeutic Ethic*, p.99.; The CAVR, *Chega*, pp.23-24.; Burgess, P. (2006) 'A new approach to restorative justice – East Timor's Community Reconciliation Processes' in Roht-Arriaza, N. and Mariezcurrena, J. (eds) *Transitional justice in the twenty-first century: Beyond truth versus justice*, Cambridge: Cambridge University Press, pp.186-188.

¹⁰⁷⁴ The CAVR, *Chega*, p.27.

¹⁰⁷⁵ *Ibid*, p.24.

¹⁰⁷⁶ The CAVR, *Chega*, pp.25-27.; Burgess, *A new approach to restorative justice*, pp.194-200.

that the most responsible people went unpunished while they participated in the CRP. Likewise, the CRP sent some files to the Office of the General Prosecutor as serious offences were revealed in these cases. Yet, no punishment was imposed on the perpetrators by the SCU for these crimes.¹⁰⁷⁷

Many perpetrators claimed that they were also victims as they were forced to join militia but still they engaged in the program.¹⁰⁷⁸ Yet, although there was not a threat to be prosecuted, many offenders voluntarily applied to the CRP, and this was considered as a success by Burgess.¹⁰⁷⁹ However, the perpetrators of sexual crimes enjoyed impunity as these offenses were considered as serious crimes and could not be dealt in the CRPs.¹⁰⁸⁰ Furthermore, Horne states that traditional methods were adopted and included in the program to enhance the efficiency and legitimacy of the process. Yet, this was more of a symbolic role as the design and implementation process was led by external actors. She remarks that although elders and traditional actors were part of the CRP panels, their role was more of a symbolic one as they were not given authority on the cases. A regional commissioner of the CAVR was the chair of the panel and the authority of decision-making and of inflicting a punishment belonged to the chair.¹⁰⁸¹ Still, including a women's representative in the panels was mandatory which should be praised.¹⁰⁸²

According to Larke's observations the process aimed at rehabilitating the perpetrators rather than addressing the sufferings of the victims.¹⁰⁸³ This observation is parallel with Kent's study which reports that the experiences of the deponents regarding the CRP were more positive compared to the victims' experiences.¹⁰⁸⁴ Some victims said that they were retraumatized because of participating the CAVR and the CRP, and they said that if there is no result to meet the needs of victims (especially financial needs), talking itself was not healing or cathartic for them.¹⁰⁸⁵ The CRP was criticised for ignoring the needs and rights of individual victims and focusing on community reconciliation and collective good.¹⁰⁸⁶ As mentioned in the second

¹⁰⁷⁷ McAuliffe, *East Timor's Community Reconciliation Process*, pp.11-12.

¹⁰⁷⁸ Kent, *Unfulfilled Expectations*, pp.15-16.

¹⁰⁷⁹ Burgess, P. (2004) Justice and Reconciliation in East Timor: The Relationship Between the Commission for Reception, Truth and Reconciliation and the Courts, *Criminal Law Forum*, Vol.15, No.1, pp.154-155.

¹⁰⁸⁰ Larke, *And the Truth Shall Set You Free*, p.670.

¹⁰⁸¹ Horne, C. (2014) Reconstructing 'Traditional' Justice from the Outside in: Transitional Justice in Aceh and East Timor, *Journal of Peacebuilding & Development*, Vol.9, No.2, pp.26-28.

¹⁰⁸² Rae, *Peacebuilding and transitional justice*, p.179.

¹⁰⁸³ Larke, *And the Truth Shall Set You Free*, p.665.

¹⁰⁸⁴ Kent, *Unfulfilled Expectations*, p.4.

¹⁰⁸⁵ *Ibid*, p.23.

¹⁰⁸⁶ Kent, *Unfulfilled Expectations*, p.45.; Larke, *And the Truth Shall Set You Free*, p.672.

chapter, tensions are likely to occur between individual and collective aims in transitional societies; individuals often prioritise accountability and individual redress whereas wider communities demand collective measures. Larke, on the other hand, claims that the CRP was not designed to heal victims, instead, it aimed to facilitate integration and reconciliation within communities.¹⁰⁸⁷ Furthermore, as is mentioned in earlier chapters, traditional methods must be applied carefully. It is stated that East Timorese people raised concerns about unjust traditional power dynamics when traditional methods were being applied.¹⁰⁸⁸

Finally, the acts of reconciliation were considered as too lenient since only an apology was requested in the majority of the cases. In addition, the victims were not informed properly about the CRP and in many cases, they did not know what they could ask for as an act of reconciliation.¹⁰⁸⁹ Since the CRP was considered as a practice of closure, further civil action would be impossible, and this was criticised because many victims were not even properly informed about the program.¹⁰⁹⁰ It seems unfair to take away victims' right to take further action about violations, especially when they were not prepared for the CRP.

2.2.c. The Commission of Truth and Friendship (CTF)

The CTF was established in 2005 by Indonesia and East Timor to “establish the conclusive truth in regard to the events prior to and immediately after the popular consultation in 1999”.¹⁰⁹¹ The CTF was defined as the world's first bilateral truth commission, and it operated between 2005 and 2008.¹⁰⁹² It was claimed that the reason behind the establishment of the CTF was developing good relations between East Timor and Indonesia.¹⁰⁹³ The Term of Reference (TOR) for the CTF confirmed this by stating that the commission's aim was “further strengthening of reconciliation and friendship between the two countries and peoples.”¹⁰⁹⁴ Ottendorfer remarks that the CTF was criticised for being an attempt to prevent demands for further investigations.¹⁰⁹⁵ Moreover, it was mentioned previously that East Timorese leadership did not want to antagonise its

¹⁰⁸⁷ Larke, *And the Truth Shall Set You Free*, p.671.

¹⁰⁸⁸ Horne, *Reconstructing 'Traditional' Justice*, p.27.

¹⁰⁸⁹ Kent, *Unfulfilled Expectations*, pp.32-33.; Burgess, *A new approach to restorative justice*, pp.193-194.

¹⁰⁹⁰ Kent, *Unfulfilled Expectations*, p.34.; Larke, *And the Truth Shall Set You Free*, p.666.

¹⁰⁹¹ Terms of Reference for The Commission of Truth and Friendship, article 12. Available at: <https://www.etan.org/et2005/march/06/10tor.htm> (access date: 30.07.2018)

¹⁰⁹² Commission of Truth and Friendship (CTF) Indonesia-Timor-Leste (2009) *Per Memoriam Ad Spem: Final Report of Commission of Truth and Friendship (CTF), Indonesia-Timor-Leste*, pp.ix-x.

¹⁰⁹³ Hirst, M. (2008) *Too Much Friendship, Too Little Truth: Monitoring Report on the Commission of Truth and Friendship in Indonesia and Timor-Leste*, Occasional Paper Series, New York: International Center for Transitional Justice, pp.12-13.

¹⁰⁹⁴ Terms of Reference for The Commission of Truth and Friendship, article 13.

¹⁰⁹⁵ Ottendorfer, *Contesting International Norms*, p.31.

powerful neighbour. This commission could put an end to the calls for addressing the past human rights violations. So, the commission could serve to the interests of both countries.

The CTF's mandate was: unveiling the truth about the violence in 1999 and human rights abuses (including their causes, nature and extent); preparing a final report to inform the public; and to make recommendations to achieve healing of past wounds.¹⁰⁹⁶ The commission consisted of ten members;¹⁰⁹⁷ East Timor and Indonesia appointed equal numbers of commissioners to the CTF, and the selection process was completed without any consultation with the public and civil society.¹⁰⁹⁸ The commission was funded by East Timor and Indonesia.¹⁰⁹⁹ Hirst remarks that community engagement and public scrutiny were very limited regarding the CTF's work. Yet, holding public hearings, in a way, provided some involvement of the public.¹¹⁰⁰ Six public hearings were conducted (five in Indonesia and one in East Timor) but they were strongly criticised by both Indonesian and East Timorese NGOs. They remarked that the public hearings failed to establish the truth as witnesses did not speak truthfully.¹¹⁰¹ The hearings were criticised for the selection of witnesses (the military brought some witnesses from West Timor to testify against East Timor) and prioritising perpetrators over victims in testifying (only 13 victims and 43 perpetrators including 24 military and militia members accused of human rights abuses).¹¹⁰² The CTF hearings were primarily conducted in Indonesian but interpreters were provided for those who did not speak the language.¹¹⁰³ Overall, 147 statements were taken by the commission.¹¹⁰⁴ Considering that the CAVR had taken nearly 8000 statements, the CTF's work seems to be rather weak. Moreover, Hirst noted that very little support has been given to the victims regarding their testimonies. They were not informed before the hearing and not provided psychological support after the hearings.¹¹⁰⁵ Unlike the CAVR, the CTF did not give socioeconomic rights adequate focus. Although the final report of the CTF mentioned forced displacement and considered it as a serious crime, it did not consider this from an ESCR perspective. In addition, the CTF did not look at deaths from famines (produced by Indonesia)

¹⁰⁹⁶ The CTF, *Per Memoriam Ad Spem*, p.13.

¹⁰⁹⁷ Terms of Reference for The Commission of Truth and Friendship article 16.

¹⁰⁹⁸ Hirst, *Too Much Friendship*, p.15.

¹⁰⁹⁹ Terms of Reference for The Commission of Truth and Friendship, article 20.

¹¹⁰⁰ Hirst, *Too Much Friendship*, pp.23-24.

¹¹⁰¹ Commission of Truth and Friendship – A Stage Play for Human Rights Abusers, Joint statement issued by Indonesian NGOs. Available at: <https://www.forum-asia.org/?p=7175> (access date: 30.07.2018).; Hirst, *Too Much Friendship*, p.25.

¹¹⁰² Hirst, *Too Much Friendship*, pp.26-28.

¹¹⁰³ Rae, *Peacebuilding and transitional justice*, pp.185-186.

¹¹⁰⁴ Hirst, M. (2009) *An Unfinished Truth: An Analysis of the Commission of Truth and Friendship's Final Report on the 1999 Atrocities in East Timor*, Occasional Paper Series, New York: International Center for Transitional Justice, p.14.

¹¹⁰⁵ Hirst, *Too Much Friendship*, p.35.

and illnesses which were clear violations of the right to food and the right to health.¹¹⁰⁶ Yet, its recommendations included education and health programs which could enhance the enjoyment of ESCR if implemented.

The CTF's final report was presented to the presidents of East Timor and Indonesia in July 2008.¹¹⁰⁷ The CTF's final report explained that gross human rights violations were committed in East Timor in 1999, and these violations were systematic and widespread rather than random and spontaneous acts. The report also stated that these acts were mostly committed by pro-Indonesia militia members and Indonesian security forces against the pro-independence East Timorese.¹¹⁰⁸ Although the East Timorese people were hostile to the CTF in the beginning, this was mitigated after the final report.¹¹⁰⁹ The commission's findings were quite the opposite of the expected conclusions, and this was considered as an important achievement.¹¹¹⁰ Hirst remarks that the acceptance of the final report by the Indonesian president was considered as the first official recognition by Indonesia of its role in violence which took place in East Timor.¹¹¹¹

The CTF suggested short-term and long-term recommendations for "promoting friendship and reconciliation between peoples of the two countries, meeting the needs of those affected most by violence, healing old wounds, and preventing future reoccurrences of conflict."¹¹¹² The recommendations included institutional reforms, the creation of new institutions, and policies to foster diplomatic and economic relations between two countries.¹¹¹³ Although the TOR did not mention reparations, the CTF suggested collective reparations in its report.¹¹¹⁴ Yet, it was noted that the report did not suggest a comprehensive reparation program.¹¹¹⁵ In addition, the CTF did not grant amnesty to perpetrators, although it had the authority to do so.¹¹¹⁶

Yet, the CTF was criticised for being established without the consultation with victims, the public, the UN and human rights groups which then refused cooperation and engagement with the commission. The efficacy and credibility of the CTF were affected negatively from this.¹¹¹⁷ The

¹¹⁰⁶ The CTF, *Per Memoriam Ad Spem*.

¹¹⁰⁷ Hirst, *An Unfinished Truth*, p.8.

¹¹⁰⁸ The CTF, *Per Memoriam Ad Spem*, pp.285-286.

¹¹⁰⁹ Rae, *Peacebuilding and transitional justice*, pp.183-184.

¹¹¹⁰ Ottendorfer, *Contesting International Norms*, p.31.; Kent, *Local Memory Practices*, p.450.; Hirst, *An Unfinished Truth*, p.10.

¹¹¹¹ Hirst, *An Unfinished Truth*, p.10.

¹¹¹² The CTF, *Per Memoriam Ad Spem*, pp.295-296.

¹¹¹³ *Ibid*, pp.295-305.

¹¹¹⁴ *Ibid*, p.295.

¹¹¹⁵ Hirst, *An Unfinished Truth*, p.29.

¹¹¹⁶ The CTF, *Per Memoriam Ad Spem*, p.297.

¹¹¹⁷ Hirst, *Too Much Friendship*, p.14.; The UN report (2005), *Report to the Secretary-General of the Commission of Experts*, p.84.; Evans, *The Right to Reparation*, p.198.

UN also boycotted the CTF because it was given the authority to grant amnesty.¹¹¹⁸ Other criticisms for the CTF included its vague criteria to grant amnesty and, given that Indonesia is responsible for the grave human rights violations, the improbability of unearthing full truth.¹¹¹⁹ In addition, its time restriction was also criticised as it only looked at the violence which took place in 1999.¹¹²⁰ The TOR excluded individual responsibility and remarked that the commission's work would not "lead to prosecution"¹¹²¹ and this led to criticisms.¹¹²² The TOR did not even mention victims once, and did not make any recommendations regarding their needs.¹¹²³ Although the TOR stated that the final report would be available in Tetum, Indonesian, English and Portuguese,¹¹²⁴ the final report of the CTF was in English and was not translated into Tetum.¹¹²⁵ Hirst criticised the recommendations of the CTF on the grounds of their generality. She explained that the recommendations were described loosely without details. Likewise, they did not refer to countries specifically. This was a downside of the recommendations as it would be better to specify the circumstances of the countries and make recommendations regarding them.¹¹²⁶ Lastly, the CTF should have focused on ESCR violations as they have a critical importance in East Timor.

2.2.d. Reparations

The CAVR's final report made recommendations regarding reparations to the victims of gross human rights violations. The right to remedy and reparations is recognised in international law, and East Timor signed several international treaties¹¹²⁷ which included this right.¹¹²⁸ According to the CAVR, the main aim was assisting these victims in repairing the harms inflicted on them because of the violations. The forms of reparations included rehabilitation, restitution, compensation, establishment of the truth, and reassurance of non-repetition.¹¹²⁹ The CAVR recommended material and symbolic reparations at both individual and collective levels

¹¹¹⁸ Rae, *Peacebuilding and transitional justice*, p.18.; The UN report (2005), *Report to the Secretary-General of the Commission of Experts*, p.82.

¹¹¹⁹ Kingston, *Balancing justice and reconciliation*, p.289.; Hirst, *Too Much Friendship*, p.18.

¹¹²⁰ Hirst, *Too Much Friendship*, p.17.

¹¹²¹ Terms of Reference for The Commission of Truth and Friendship, articles 10 and 13/c.

¹¹²² Hirst, *Too Much Friendship*, pp.18-19.

¹¹²³ *Ibid*, p.19.

¹¹²⁴ Terms of Reference for The Commission of Truth and Friendship, article 14/b.

¹¹²⁵ Rae, *Peacebuilding and transitional justice*, p.186.

¹¹²⁶ Hirst, *An Unfinished Truth*, p.7.

¹¹²⁷ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, International Covenant on Civil and Political Rights, International Convention on the Elimination of All Forms of Racial Discrimination.

¹¹²⁸ International Center for Transitional Justice – ICTJ (2010) *Unfulfilled Expectations: Victims' perceptions of justice and reparations in Timor-Leste*, New York: International Center for Transitional Justice, p.5.

¹¹²⁹ The CAVR, *Chega*, pp.201-205.

including provision of medical and psychological care, material support, reburials, memorialisation, exhumations and commemoration ceremonies.¹¹³⁰ The CAVR did not see material support as monetary payments; instead, it referred to provision of services and assistance regarding health, education and housing. The provision of these services has a potential to contribute to the enjoyment of ESCR in East Timor. It must be noted that various reparations were granted to the victims of forced displacement which will be explored in detail in section 2.3.d below.

The report explained that all the East Timorese were victims in one way or another, but some victims were more vulnerable, and the reparations program needed to focus on those most in need. These victims were “victims of torture; people with mental and physical disabilities; victims of sexual violence; widows and single-mothers; children affected by the conflict; communities who suffered large-scale and gross human rights violations.”¹¹³¹ It should be remarked that the commission did not mention the political affiliations of the victims. Therefore, victims of the FALINTIL and the pro-integration individuals could be beneficiaries if they have the necessary qualifications.

The CAVR’s final report placed the greatest responsibility for financing the reparations on Indonesia as it was the main perpetrator of the crimes. The commission stated that the United States, the United Kingdom, France, China and Russia, and Indonesian and other international companies who profited from the conflict also needed to fund reparations.¹¹³² They need to finance reparations as they were complicit in the occupation.¹¹³³ Yet, Indonesia, Australia and other countries ignored these recommendations.¹¹³⁴ The CAVR recommended Indonesia issue apologies and stated that it must acknowledge the violations committed during the occupation.¹¹³⁵ Yet, this has not happened.

The East Timorese leadership has not introduced a reparation program, years after the publication of the final report.¹¹³⁶ Gusmao advocated social and economic justice over prosecutions as there were many people lacking basic needs such as electricity, clean water and healthcare.¹¹³⁷ The recommendations regarding reparations have been neglected for years. In

¹¹³⁰ *Ibid*, p.205.

¹¹³¹ *Ibid*, p.206.

¹¹³² The CAVR, *Chega*, p.208.

¹¹³³ Kingston, *Balancing justice and reconciliation*, p.280.

¹¹³⁴ Nevins, J. (2009) Embedded Empire: Structural Violence and the Pursuit of Justice in East Timor, *Annals of the Association of American Geographers*, Vol.99, No.5, p.918.; Evans, *The Right to Reparation*, p.202.

¹¹³⁵ The CAVR, *Chega*, p.195.

¹¹³⁶ Robins, *Challenging the Therapeutic Ethic*, p.100.

¹¹³⁷ Kingston, *Balancing justice and reconciliation*, p.293.

2010, after the lobbying efforts of both national and international NGOs,¹¹³⁸ political leaders of East Timor were convinced to draft laws for reparations and the establishment of an institution (Institute for Memory) which would monitor and promote the implementation of the recommendations of the CAVR and the CTF.¹¹³⁹ The draft law designed symbolic and material reparations at national, individual and collective levels with a focus on education, health, rehabilitation and infrastructure.¹¹⁴⁰ Unlike veterans' program, the draft law for reparations focused on vulnerable victims regardless of their political background (pro-independence or pro-integration). Yet, this led to criticisms among political elites as some members of parliament thought that pro-integration victims did not deserve payments.¹¹⁴¹ Likewise, the law's definition of victim was problematic for the public as many East Timorese and FRETILIN members thought pro-integration victims did not deserve any reparations.¹¹⁴² Although two laws have been drafted and submitted to parliament in 2010, the parliamentary negotiations has been quite slow.¹¹⁴³ It must be noted that the CTF also suggested recommendations regarding reparations including apologies from the heads of the state of Indonesia and East Timor, healing programs, and provision of services concerning education and health etc.¹¹⁴⁴

Reparations have been of great importance for the people in East Timor. Robins claims that victims' most pressing demand is economic support to improve their livelihood, and they prioritise this over other transitional justice mechanisms.¹¹⁴⁵ Kent also remarks that the East Timorese NGOs changed their agenda by starting to prioritise reparations rather than prosecutions after many years.¹¹⁴⁶ Likewise, a series of workshops were organised by national and international NGOs¹¹⁴⁷ to analyse the situation, needs and demands of victims in 2008 and 2009. The two prominent findings of the study were that victims' "current social and economic vulnerability can be linked to the human rights violations" and they "prioritized their needs as assistance with children's education, housing repairs, and health care."¹¹⁴⁸

¹¹³⁸ ACbit, HAK Association, NGO Forum, La'o Hamutuk and the NGO coalition ANTI, the ICTJ.

¹¹³⁹ Kent et al., *Chega! Ten Years On*, p.5.

¹¹⁴⁰ Draft-Law No. /II Framework of the National Reparations Programme, Democratic Republic of Timor-Leste National Parliament, Article 9.

¹¹⁴¹ Wallis, *Victors, Villains and Victims*, p.148.

¹¹⁴² Ottendorfer, *Contesting International Norms*, p.32.

¹¹⁴³ Kent et al., *Chega! Ten Years On*, p.5.

¹¹⁴⁴ The CTF, *Per Memoriam Ad Spem*, pp.295-303.

¹¹⁴⁵ Robins, *Challenging the Therapeutic Ethic*, p.102.

¹¹⁴⁶ Kent, *Local Memory Practices*, p.450.

¹¹⁴⁷ ICTJ, Post-CAVR, Fokupers, HAK, and the Justice and Peace Commission of the Baucau Diocese.

¹¹⁴⁸ ICTJ, *Unfulfilled Expectations: Victims' perceptions*, pp.11-12.

In fact, the CAVR saw the importance of reparations even before publishing its report. After visiting the villages across the country, the CAVR found out that many victims were in urgent need because of the violations they were subjected to. The Urgent Reparations Scheme was designed by the commission as a temporary program to address these needs, and the beneficiaries were determined by the district teams.¹¹⁴⁹ It was funded by the Trust Fund for East Timor and administered by the World Bank¹¹⁵⁰ and 712 victims benefited from this scheme.¹¹⁵¹ It was noted that this type of a reparation had never been applied in a truth commission before, as payments were made during the CAVR's operation. Orphans, widows and disabled constituted the majority of those beneficiaries.¹¹⁵²

As previously explained, a valorisation program was introduced for veterans of the independence struggle. Rothschild explains that unlike the CAVR's narrative about suffering victims and human rights violations, a new narrative has been promoted by the state which was built on a heroic resistance struggle. Veterans were promoted as heroes whose dedication must be praised through symbolic and material means.¹¹⁵³ These veterans were given medals, and some of them were granted compensation payments and pensions. Moreover, a big high-tech museum, a martyrs' cemetery and numerous monuments were established for them.¹¹⁵⁴ Although these acts of the state resemble reparations, the veterans' program, in fact, was not designed as reparations.¹¹⁵⁵ It benefited some veterans and their families who were also victims, but the payments were granted to the former resistance members for their role in the independence struggle. The basis of the program was recognising and assisting veterans.¹¹⁵⁶ It must be borne in mind that if the responsibility for human rights abuses is not acknowledged, the provision of financial assistance does not necessarily constitute reparation.¹¹⁵⁷ Likewise, the government has made cash payments to IDPs to tackle displacement in the scope of the National Recovery Strategy (NRS) but this program was also not considered and defined as reparations by the government.¹¹⁵⁸ The NRS is explained in detail below in the forced displacement section.

¹¹⁴⁹ The CAVR, *Chega*, pp.34-35.

¹¹⁵⁰ Evans, *The Right to Reparation*, p.195.

¹¹⁵¹ The CAVR, *Chega*, p.36.

¹¹⁵² Evans, *The Right to Reparation*, p.194.

¹¹⁵³ Rothschild, *Victims versus Veterans*, p.449.

¹¹⁵⁴ Robins, *Challenging the Therapeutic Ethic*, p.89.; Rothschild, *Victims versus Veterans*, pp.449-450.

¹¹⁵⁵ Kent, L. and Kinsella, N. (2015) 'The Veterans' Valorisation Scheme: Marginalising Women's Contributions to the Resistance' in Sue, I., Kent, L. and McWilliam, A. (eds) *A New Era? Timor-Leste after the UN*, Australian National University (ANU) Press, pp.219-220.

¹¹⁵⁶ The World Bank (2008) *Defining Heroes: Key Lessons from the Creation of Veterans Policy in Timor-Leste*, Report No. 45458-TP, p.i.; Rothschild, *Victims versus Veterans*, p.456.

¹¹⁵⁷ Lipscomb, *Beyond the Truth*, p.5.

¹¹⁵⁸ Van der Auweraert, *Dealing with the 2006 Internal Displacement Crisis*, p.17.

Although the valorisation program was quite popular among veterans, its scope was criticised by many victims including the families of the dead and the missing, victims who clandestinely supported the resistance, women, members of younger generations, the victims of the FALINTIL, and pro-integration victims.¹¹⁵⁹ Many victims are upset that veterans are recognised and granted payments, but they were not. They explain that they were also part of the resistance as there were different forms of resistance. In addition, all the victims, including pro-integration ones, have suffered during the conflict, and they also deserve recognition and reparations.¹¹⁶⁰ Lipscomb noted that if one group of victims were prioritised, there can be resentments and maybe other negative consequences among others. She says that reparations can play a role in preventing future conflicts by addressing the root causes of the poverty and conflict in East Timor.¹¹⁶¹ So, in order to prevent resentments and other negative outcomes, identifying beneficiaries and designing a comprehensive reparation program are significant.

In the absence of an official recognition and commemoration of the civilian victims, the local communities conducted their own unofficial memorialising practices throughout the country. Kent describes the construction of memorials, monuments and commemoration of the massacres, and notes that local practices challenged the government's narrative about the glorious resistance and veterans by paying tribute to ordinary people who sacrificed their lives for independence. She notes that local memorialisation and commemoration practices are significant as they were shaped by local customs and have a potential to help recovery through addressing the needs of victims.¹¹⁶² Furthermore, local memorialisation is important for victims as memorials in big cities were considered distant from victims.¹¹⁶³ Yet, local practices should be looked at cautiously as they also have some shortcomings. For instance, victims of sexual violence, deaths resulting from hunger or sickness and victims of violations of resistance groups were often excluded from these practices. These victims' stories probably did not buttress the valorisation of the resistance, so they were simply left out.¹¹⁶⁴ It can be comprehended that both official and unofficial memorialisation and commemoration practices ignored ESCR abuses as

¹¹⁵⁹ ICTJ, *Unfulfilled Expectations: Victims' perceptions*, pp.9-17.; Robins, *Challenging the Therapeutic Ethic*, p.99.; Kent, L. and Kinsella, N. (2015) A Luta Continua (The Struggle Continues), *International Feminist Journal of Politics*, Vol.17, No.3, p.478.; Kent, L. and Wallis, J. (2014) *Timor-Leste's Veterans' Pension Scheme: Who are the Beneficiaries and Who is Missing Out*, Australian National University, In Brief 2014/13, p.2.

¹¹⁶⁰ Rothschild, *Victims versus Veterans*, pp.457-459.; ICTJ, *Unfulfilled Expectations: Victims' perceptions*, p.10.

¹¹⁶¹ Lipscomb, *Beyond the Truth*, pp.4-6.

¹¹⁶² Kent, *Local Memory Practices*, p.434-443.

¹¹⁶³ Robins, *Challenging the Therapeutic Ethic*, p.94.

¹¹⁶⁴ Kent, *Local Memory Practices*, p.443.

the victims of these violations were overlooked in East Timor. This should not be the case for Turkey as ESCR violations are as important as CPR violations and they need to be included in these practices.

Finding funds for reparations was difficult for the CAVR, and both national and international sources were eager to grant money for general development plans rather than reparation programs. Yet, the CAVR's report makes it clear that although reparations and development complement each other, reparations should not be subsumed within development plans as they have a profound function to serve justice and to contribute to human rights protection.¹¹⁶⁵

2.2.e. *Amnesties*

Amnesties have not been a significant element of the transitional process in East Timor. Since the main perpetrators have been enjoying impunity in Indonesia, amnesties were irrelevant for them. In addition, the East Timorese leadership, notably Gusmao, has opposed prosecutions and advocated for reconciliation through forgiveness. Although there has not been a blanket amnesty for perpetrators, several amnesties were granted by the government.¹¹⁶⁶ Some of the perpetrators who have been pardoned had been convicted for crimes against humanity by the UN Special Panels for Serious Crimes.¹¹⁶⁷ In a remarkable case, in 2009, the government was criticised as a former militia leader (an Indonesian citizen, Maternus Bere), who had been accused of crimes against humanity by the UN's SCU, was released and transferred to Indonesian authorities. The East Timorese leadership and Gusmao explained that this happened due to political pressures.¹¹⁶⁸

This, in fact, reflects the pragmatic approach of the leadership in the country. As explained earlier, the political leadership prioritised reconciliation and development over justice. They claimed that this reflects the people's needs and demands. However, the survey which was conducted by the Asia Foundation in 2008 depicts that 90% of East Timorese did not approve of impunity and claimed that if someone committed murder, this person should not be able to "avoid punishment".¹¹⁶⁹ Amnesties have been explained previously and the debates around

¹¹⁶⁵ The CAVR, *Chega*, p.39.

¹¹⁶⁶ ICTJ, *Impunity in Timor-Leste*, p.25.; The Centre for International Governance Innovation -CIGI (2011) *Security Sector Reform Monitor: Timor-Leste*, Ontario: CIGI, pp.1-7.

¹¹⁶⁷ Amnesty International, *Timor-Leste Law Allows Amnesties for War Criminals*. Available at: <https://www.amnesty.org/en/press-releases/2010/06/timor-leste-law-allows-amnesties-war-criminals/> (access date: 30.07.2018)

¹¹⁶⁸ Sahin, S. (2010) Timor-Leste in 2009: Marking Ten Years of Independence or Dependence on International "Assistance", *Southeast Asian Affairs*, Vol.2010, p.352.

¹¹⁶⁹ The Asia Foundation Report (2009) *Law and Justice in Timor-Leste: A Survey of Citizen Awareness and Attitudes Regarding Law and Justice*, Dili: The Asia Foundation, p.42.

them continue in the literature. To conclude, it must be understood that amnesties can contribute to reconciliation and peace in some contexts. Yet, they should not be designed and granted without consultation with public.

2.2.f. Institutional reforms

In 1999, most of the infrastructure was destroyed in East Timor including public buildings, schools and hospitals. In addition, Indonesia took much of the administrative experience away when it left the country after the ballot.¹¹⁷⁰ It was stated that of the civil service “around one quarter were non-Timorese and these filled the top positions in the administration, including judges, prosecutors and police.”¹¹⁷¹ This shows that there had been a considerable dependency on Indonesia in terms of administration and human capital. Yet, East Timor, as a newly independent country, had to establish many modern state institutions (including the parliament, local government structures, the police service and the army) from scratch under the auspices of the UNTAET.¹¹⁷² It was noted that most of the civil servants (including legal professionals such as judges and prosecutors) were not experienced or trained for their roles.¹¹⁷³ The country needed to develop capable civil servants and apply institutional reforms to achieve effective governance.¹¹⁷⁴

The CAVR’s mandate stated that the commission “shall make recommendations concerning the reforms and other measures, whether legal, political, administrative or otherwise which could be taken to achieve the objectives of the Commission, prevent the repetition of human rights violations and respond to the needs of victims of human rights violations.”¹¹⁷⁵ The CAVR did not explicitly indicate institutional reforms in the report but it has suggested a wide spectrum of recommendations which could be considered as institutional reforms, ranging from regulating detention centres and processes to training public servants and security forces.¹¹⁷⁶ Likewise, the CTF’s final report stated that: “Remedying systemic and institutional failures through institutional reform is thus necessary to prevent future reoccurrences of violence.”¹¹⁷⁷ And the

¹¹⁷⁰ Brown, M. A. (2009) Security, development and the nation-building agenda—East Timor, *Conflict, Security & Development*, Vol.9, No.2, p.149.; The United Nations Development Programme – UNDP (2002) *East Timor Human Development Report 2002: Ukun Rasik A’an - The way ahead*, New York: UNDP, p.57.

¹¹⁷¹ UNDP (2002), *East Timor Human Development Report*, p.57.

¹¹⁷² The UN Report (2006), *Independent Special Commission of Inquiry for Timor-Leste*, p.18.

¹¹⁷³ National Development Plan, Planning Commission, Dili (2002), p.3.; McAuliffe, *East Timor’s Community Reconciliation Process*, pp.4-5.

¹¹⁷⁴ The World Bank – WB (2002) *East Timor: Policy Challenges for a New Nation Country Economic Memorandum*, Report No. 23285-TP, Washington, DC: World Bank, p.ii.

¹¹⁷⁵ The UNTAET, Establishment of a Commission for Reception, Truth and Reconciliation in East Timor, Regulation No. 2001/10.

¹¹⁷⁶ The CAVR, *Chega*, pp.161-183.

¹¹⁷⁷ The CTF, *Per Memoriam Ad Spem*, p.296.

same report suggested various institutional reforms including security sector reform, educational reform and legislative amendments to promote human rights and prevent future violence.¹¹⁷⁸ To conclude, East Timor needed to establish state institutions and implement institutional reforms for the existing ones to ensure that human rights would be respected and not violated again in the future.

2.3. ESCR and development

Violations of civil and political rights such as killings and disappearances often draw more attention in post-conflict contexts, but violations of socioeconomic rights are critical and need to be addressed as well. Violations of these rights can be destructive for countries, and they have huge impacts on the lives of people in the post-conflict societies. For instance, the first years of the Indonesian invasion caused great catastrophe in East Timor as tens of thousands of people died because of hunger and starvation. It was estimated that around 200,000 people lost their lives because of the famine.¹¹⁷⁹ These were clear violations of the right to food and the right to an adequate standard of living as the state failed to ensure minimum obligations of these rights.

The causes of poverty and low-level development in the country rooted in the Portuguese colonial rule which had made very little investment in education, capacity building and economy.¹¹⁸⁰ Due to the colonial legacy and devastation, in the first years of Indonesian occupation the country became one of the poorest regions of Indonesia.¹¹⁸¹ Hill remarks that the country experienced some level of growth under the Indonesian occupation considering that this did not occur during colonial times. Yet, this did not mean the country experienced industrial development. In 1997, manufacturing only made up 3% of East Timor's economy (one-eighth of the national average of Indonesia).¹¹⁸² Nevins explains socioeconomic abuses of Indonesia in East Timor: 80% of the existing buildings and infrastructure were destroyed after the ballot; East Timor's significant amount of natural resources (timber, coffee etc.) were stolen;¹¹⁸³ its economy had been decapitalised dramatically; and the development of the country was stunted because of the occupation.¹¹⁸⁴ In addition, during the Indonesian occupation billions of dollars' worth of

¹¹⁷⁸ *Ibid*, pp.296-300.

¹¹⁷⁹ Kohen, A. S. (1999) *From the place of the dead: The Epic Struggles of Bishop Belo of East Timor*, New York: St. Martin's Press, pp.97-98.

¹¹⁸⁰ Lundahl, M. and Sjöholm, F. (2005) *Poverty and Development in Timor-Leste*, SIDA Country Economic Report 2005:3, p.12.

¹¹⁸¹ Hill, *Tiny, Poor and War-Torn*, p.1139.

¹¹⁸² *Ibid*, p.1140.

¹¹⁸³ The CAVR, *Chega*, p.148.

¹¹⁸⁴ Nevins, *Embedded Empire*, p.917.

oil and gas revenues were exploited by Australia at “impoverished East Timor's expense.”¹¹⁸⁵ In short, one of the most important challenges regarding development was the legacy of Portuguese colonialism and Indonesian rule after independence.¹¹⁸⁶

In 2002, a broad development plan was prepared by the government to establish a road map for the country to progress. The National Development Plan was produced after a broad countrywide consultation process as some 38,000 people engaged in the meetings.¹¹⁸⁷ After the broad consultation process, two development goals came to the fore: “a) To reduce poverty in all sectors and regions of the nation, and b) To promote economic growth that is equitable and sustainable, improving the health, education, and wellbeing of everyone in East Timor.”¹¹⁸⁸ The development plan described the country's profile regarding poverty, education, health and infrastructure: more than two fifths of the people were poor; standards of education were amongst the lowest in the world; access to health was very limited and the standards were poor; and infrastructure, sanitation, access to safe water and housing were weak and inadequate.¹¹⁸⁹ In addition, the government adopted the NRS to address these problems in 2007 since socioeconomic problems were underlying causes of the violence in 2006. The strategy included cash payments to certain societal groups such as veterans and IDPs.¹¹⁹⁰

Considering these poor conditions of the country, economic assistance to victims becomes more crucial. It is not surprising that there have been pressing demands from victims for economic assistance. Moreover, the enjoyment of ESCR needs to be improved by the state to ensure that minimum obligations of socioeconomic rights are ensured in the country.

2.3.a. Economy

The Portuguese had colonised and ruled East Timor for almost five centuries. The Portuguese did not make any effort to develop the economy of the country. Until the 19th century sandalwood was the most valuable product, but then coffee exports to Portugal and subsistence farming had constituted the large part of the production in the economy.¹¹⁹¹ Moreover, the

¹¹⁸⁵ *Ibid*, p.918.

¹¹⁸⁶ Carroll-Bell, S. (2015) Development Alternatives in Timor-Leste: Recasting Modes of Local Engagement, *Bijdragen tot de Taal-, Land- en Volkenkunde*, Vol.171, No.2/3, p.317.

¹¹⁸⁷ *Timor-Leste Poverty Assessment, Poverty in a New Nation: Analysis for Action (In Two Volumes) Volume I: Main Report*, Report No. 25662-TP (2003) Joint Report of the Government of the Democratic Republic of Timor-Leste, ADB, JICA, UNDP, UNICEF, UNMISSET and the World Bank, p.3.

¹¹⁸⁸ *National Development Plan*, p.1.

¹¹⁸⁹ *Ibid*, pp.4, 8 and 38.

¹¹⁹⁰ Wallis, *Victors, Villains and Victims*, pp.142-144.

¹¹⁹¹ Lundahl and Sjöholm, *Poverty and Development in Timor-Leste*, p.5.; World Bank Report (2002), *East Timor: Policy Challenges for a New Nation*, p.3.

Portuguese precluded the East Timorese from accumulating capital. For instance, the Portuguese and Chinese traders obtained most of the profits from coffee exports.¹¹⁹² Likewise, the East Timorese were forced to pay taxes in kind at times. Coffee production was increased by these in-kind taxes to the detriment of the indigenous population.¹¹⁹³ In addition to heavy taxes, the colonial administration adopted forced-labour policies to use people in road construction programs and coffee plantations.¹¹⁹⁴

After the end of the colonial period, there was an improvement in the economy during Indonesian occupation¹¹⁹⁵ as Indonesia made investments in the country. Yet, the country remained poor, among the poorest provinces of Indonesia.¹¹⁹⁶ Besides, it was noted that the investments in East Timor were aimed at reinforcing military rule by Indonesia and increasing the production of cash crops.¹¹⁹⁷ The economy of East Timor stagnated under the Portuguese and Indonesian rules. Moreover, the natural resources (gas and oil) of the country were exploited by Australia since the Indonesian annexation of East Timor. Maritime boundaries of East Timor were determined by Australia and Indonesia,¹¹⁹⁸ and there was an alliance between them to benefit from the natural resources of East Timor.¹¹⁹⁹ East Timor could not file a case against Australia as it did not want to antagonise its powerful neighbour. Now East Timor is trapped in poverty. It is remarked that, let alone paying for its crimes, Australia is still benefiting from East Timor's oil and gas revenues.¹²⁰⁰

Even though Indonesia made some investments to secure its presence in East Timor, its aggressive policies had detrimental effects on the economy and daily lives of the East Timorese people. To eliminate the resistance, massive bombing campaigns were conducted by Indonesia. Farming became impossible, and people had to flee from one place to another.¹²⁰¹ People were unable to maintain their subsistence farming most of the time, as they were forced to work at road construction and logging, their times were restricted for producing their own food, and they were forced to produce cash crops for export.¹²⁰² The CAVR report explains that people's

¹¹⁹² UNDP (2002), *East Timor Human Development Report*, p.70.

¹¹⁹³ World Bank Report (2002), *East Timor: Policy Challenges for a New Nation*, p.3.

¹¹⁹⁴ Kohen, *From the place of the dead*, p.45.; Taylor, J. G. (1999) *East Timor: The Price of Freedom*, London: Zed Books, pp.11-14.

¹¹⁹⁵ Lundahl, and Sjöholm, *Poverty and Development in Timor-Leste*, p.5.

¹¹⁹⁶ UNDP (2002), *East Timor Human Development Report*, pp.56-57.

¹¹⁹⁷ *Ibid*, p.71.

¹¹⁹⁸ Nevins, *Embedded Empire*, p.918; Rae, *Peacebuilding and transitional justice*, p.46.; Kohen, *From the place of the dead*, pp.18-19.

¹¹⁹⁹ Cumes, *Conflict and International Intervention*, p.272.

¹²⁰⁰ Nevins, *Embedded Empire*, p.919.; Cumes, *Conflict and International Intervention*, p.282.

¹²⁰¹ Kohen, *From the place of the dead*, p.95.

¹²⁰² UNDP (2002), *East Timor Human Development Report*, p.71.

means of making a livelihood were destroyed because either their crops, agricultural implements, lands and livestock were demolished, or they were unable to conduct these activities due to conflicts.¹²⁰³ Indonesia violated socioeconomic rights (the right to food, the right to work, the right to an adequate standard of living) of the people through these activities. People were prevented from working and making a living, and this exacerbated their living standards dramatically.

Hill explains that the 1999 rampage hit the country's economy dreadfully. Although it is not possible to calculate the precise cost of the violence, he says that the GDP of the country may have diminished 25-30% in this period.¹²⁰⁴ The UNDP's report describes the period and remarks that the destruction in 1999 caused "enormous human suffering" by further impoverishing the East Timorese people who were already living in poverty. In terms of economy, 80% of schools and clinics were destroyed (partially or completely); a substantial proportion of the livestock was annihilated; and telephone landlines and electricity-generating capacity were significantly damaged.¹²⁰⁵ All the banks (state and commercial banks) and their branches were closed because of the violence.¹²⁰⁶ It can be comprehended that the destructive activities of Indonesia worsened the enjoyment of ESCR of the people such as the right to education and the right to health.

When East Timor became independent, it had to build the country from scratch as the economy consisted only of subsistence agriculture, and state bureaucracy was wiped out.¹²⁰⁷ The main source of income was agriculture in 94% of *sucos* (usually translated as "village"¹²⁰⁸) as of 2001.¹²⁰⁹ Senior civil servants, teachers, and much commercial expertise left the country because of the violence.¹²¹⁰ As a bright side of the situation, however, large amounts of aid and the country's gas and oil revenues were important resources for economic development.¹²¹¹ Contrary to all challenges, the country managed to recover the economy in the 2000-2001 period, and reached pre-1999 levels.¹²¹² It must be noted that a serious amount of aid (8.8 billion

¹²⁰³ The CAVR, *Chega*, p.74.

¹²⁰⁴ Hill, *Tiny, Poor and War-Torn*, p.1142.

¹²⁰⁵ UNDP (2002), *East Timor Human Development Report*, p.57.

¹²⁰⁶ Allden, *Microfinance and Post-Conflict Development*, p.271.

¹²⁰⁷ Lundahl and Sjöholm, *Poverty and Development in Timor-Leste*, p.6.

¹²⁰⁸ UNDP (2002), *East Timor Human Development Report*, p.12.

¹²⁰⁹ UNDP (2002), *East Timor Human Development Report*, p.60.

¹²¹⁰ Hill, *Tiny, Poor and War-Torn*, p.1138.

¹²¹¹ Robinson, *East Timor Ten Years On*, p.1009.; Hill, *Tiny, Poor and War-Torn*, p.1138.

¹²¹² Joint report of WB et al., *Timor-Leste Poverty Assessment*, p.7.

US dollars) was received by the country between 1999 and 2009.¹²¹³ Yet, the population was struggling with widespread poverty. 41% of the population was living under the poverty line (\$0.55 per person per day was formulated as the national poverty line).¹²¹⁴ It was explained that there have been considerable disparities both between rural and urban settings and between different regions regarding economic and social indicators. Poverty was higher, and access to basic social services was lower in rural areas. The same pattern was observed for the regions as the West was poorer than the East.¹²¹⁵

Sahin claims that the economic growth after independence was not achieved by improvements in production capacity of the country's economy, instead it was generated by the government spending which was funded from the nation's Petroleum Fund.¹²¹⁶ It is not a secret that natural gas and oil revenues have constituted a significant portion of the country's economy. Yet, the Timorese economy's dependency on these revenues is problematic. Parma notes that the country is among the most petroleum-dependent countries in the world (as of 2012, 98% of government revenues were dependent on petroleum money).¹²¹⁷ It could be conceived that the country's development could be achieved conveniently regarding the vast amount of aid and petroleum revenues the country receives. Yet, Duncan remarks that: "The development experience of the past 40 years or so shows that exploitation of mineral resources and accumulation of aid is not the route to economic growth and development."¹²¹⁸ He explains that empirical evidence from development experiences around the world depicts that aid and natural resource revenues are not a positive force for growth. They do not foster development alone; there should be good economic policies, institutions, physical infrastructure and human capital.¹²¹⁹ Lack of infrastructure and human capital was a serious obstacle in East Timor's economic development.¹²²⁰ In fact, there are arguments in the literature about whether natural resources are a "curse" and detrimental to economic development in some cases.¹²²¹ The scope

¹²¹³ Anthony Deutsch, 'E. Timor aid- where did billions go?' *The Associated Press*, 7.09.2009. Available at: <http://www.sandiegouniontribune.com/sdut-east-timor-where-money-090709-2009sep07-story.html> (access date: 30.07.2018).

¹²¹⁴ *National Development Plan*, p.33.

¹²¹⁵ Joint report of WB et al., *Timor-Leste Poverty Assessment*, p.30.; *National Development Plan*, p.122.

¹²¹⁶ Sahin, *Timor-Leste in 2009*, p.355.

¹²¹⁷ Barma, N. H. (2012) Peace-building and the predatory political economy of insecurity: evidence from Cambodia, East Timor and Afghanistan, *Conflict, Security & Development*, Vol.12, No.3, p.285.

¹²¹⁸ Duncan, R. (1999) Development Lessons for East Timor, *Bulletin of Indonesian Economic Studies*, Vol.35, No.1, p.130.

¹²¹⁹ *Ibid*, pp.129-130.

¹²²⁰ Rae, *Peacebuilding and transitional justice*, p.107.

¹²²¹ For the arguments about resource curse and development see: Sachs, J. and Warner, A. (1995) *Natural Resource Abundance and Economic Growth*, Working Paper no. 5398, NBER Working Paper Series, Cambridge MA.; Robinson, J. A., Torvik, R. and Verdier, T. (2006) *Political Foundations of the Resource*

of this section does not allow for further analysis of this argument. However, it could be said that whether or not the natural resources of East Timor are a curse, the country requires good economic policies, institutions, infrastructure and human capital as the country was built from scratch after independence.

Rae explains that East Timor was not successful in development in terms of economic growth, infrastructure, health, education and basic services. The country was not able to create new employment opportunities for people, and poverty continues to prevail in both urban and rural areas. Compared to rural areas, urban centres had some businesses and opportunities, and this caused increasing urbanisation and income inequalities.¹²²² According to the UNDP report, 46.8% of the population are below the poverty line in East Timor as of 2016.¹²²³ Maj asserts that the East Timorese governments prioritised government-led big development schemes and projects rather than ones which integrate rural populations and address their needs and concerns. Developing employment opportunities in agriculture and for young people have resulted in little success.¹²²⁴ Cumes explained that the UN and the international community adopted an approach which did not reflect the needs and interests of the East Timorese people. Because of the exclusion of local participation, socioeconomic development has not been successful in East Timor, although vast amounts of aid were provided to the country.¹²²⁵

Based on the empirical data of several development projects (a dairy, a greenhouse, a seed development program, and a permanent farming initiative), Shepherd remarks that there were difficulties and tensions between development agents and locals, and these differences need to be reconciled to achieve development.¹²²⁶ Similarly, Carroll-Bell's empirical study suggests that application of orthodox approaches of development was not promising for East Timor, and alternative ways of development which ensure the engagement of locals and their understandings must be sought out.¹²²⁷

Curse, *Journal of Development Economics*, Vol.79, No.2, pp.447-468.; Smith, B. (2015) The resource curse exorcised: Evidence from a panel of countries, *Journal of Development Economics*, Vol.116, pp.57-73.; Van der Ploeg, F. and Poelhekke, S. (2009) Volatility and the natural resource curse, *Oxford Economic Papers*, Vol.61, No.4, pp.727-760.; Sachs, J. and Warner, A. (2001) The curse of natural resources, *European Economic Review*, Vol.45, No.4-6, pp.827-838.

¹²²² Rae, *Peacebuilding and transitional justice*, pp.102-103.

¹²²³ UNDP Human Development Report 2016- Timor-Leste, p.6.

¹²²⁴ Nygaard-Christensen, M. (2016) Timor-Leste in 2015: Petro-Politics or Sustainable Growth, *Southeast Asian Affairs*, Vol.2016, p.354.

¹²²⁵ Cumes, *Conflict and International Intervention*, p.281.

¹²²⁶ Shepherd, C. J. (2009) Participation, Authority, and Distributive Equity in East Timorese Development, *East Asian Science, Technology and Society: An International Journal*, Vol.3, No.2&3, pp.337-339.

¹²²⁷ Carroll-Bell, *Development Alternatives in Timor-Leste*, p.339.

According to the latest official statistics, the unemployment rate was 11% as of 2013 in East Timor,¹²²⁸ but the figure was higher for young people (15-24): 21.9%.¹²²⁹ These figures should not be interpreted as employed people having secure jobs in East Timor. It was noted that a large portion of these people were in vulnerable employment which means they do not have job security or a guaranteed salary every month.¹²³⁰ Returning to poverty, it was noted that there is a significant correlation between education and poverty. People with less or no education tend to earn less than their more educated counterparts. For instance, 74.6% of the people who were in the poorest quintile of the population had no education whereas the percentage was 2.4% for people who attended more than junior high school according to 1998 statistics.¹²³¹

2.3.b. Education

East Timor has a remarkably young population as 48% of the population is below the age of 18.¹²³² This young population can be an advantage as the country has been built from the scratch and youth can be an important part of the development of the country. However, their human capital is critical for them to advance development of the country, and East Timor has serious problems regarding education. According to the National Development Plan, which was prepared in 2002, the country's literacy rate was among the lowest in the world.¹²³³ The poor education level was the result of the policies of Portuguese colonialism and the Indonesian occupation.

The Portuguese colonisers considered education as a means to assimilate East Timorese elites. So, they provided education to the children of the elites and ignored the rest of the population.¹²³⁴ It is noted that the main aim of the Portuguese was to educate an administrative elite rather than mass education.¹²³⁵ Only 5% of the population was literate when Portugal left East Timor.¹²³⁶ Education under Indonesian occupation was not much different at all. After the Indonesian occupation, the enrolment rates in school improved compared to the colonial

¹²²⁸ *Timor-Leste Labour Force Survey 2013*, Statistics Timor-Leste (General Directorate of Statistics), p.5.

¹²²⁹ *Ibid*, p.10.

¹²³⁰ The United Nations Children's Fund (UNICEF) and General Directorate of Statistics of the Ministry of Finance (2014) *Situation Analysis of Children in Timor-Leste*, p.45.

¹²³¹ The World Bank Report (2002), *East Timor: Policy Challenges for a New Nation*, p.128.; The World Bank (2004) *Timor-Leste: Education Since Independence from Reconstruction to Sustainable Improvement*, Report No. 29784-TP, p.7.

¹²³² UNICEF report, *Situation Analysis of Children in Timor-Leste*, p.31.

¹²³³ *National Development Plan*, p.9.

¹²³⁴ Millo, Y. and Barnett, J. (2004) Educational Development in East Timor, *International Journal of Educational Development*, Vol.24, No.6, pp.725-726.

¹²³⁵ WB report (2004), *Timor-Leste: Education Since Independence*, p.2.

¹²³⁶ UNDP (2002), *East Timor Human Development Report*, p.47.

times.¹²³⁷ Yet, Shah explains that even though provision of education opportunities was largely improved, the aim remained similar: “to assimilate future generations into Indonesian society, and discount the existence of a distinct Timorese identity.”¹²³⁸ In addition to this disadvantageous historical legacy, the country’s school system was devastated in the 1999 violence. 95% of schools were destroyed by the militia, and a large number of teachers (20% of primary school and 80% of secondary school teachers) departed from East Timor as they were from Indonesia.¹²³⁹ These should be considered as a violation of the right to education of the East Timorese people, as the enjoyment of their right was prevented through deliberate activities of Indonesia. East Timor was able to rebuild almost 86% of the classrooms within 18 months.¹²⁴⁰ However, rebuilding the schools did not mean that the physical conditions of schools were satisfactory. Most of the schools did not have electricity, toilets or water.¹²⁴¹

Access to basic education was improved as the primary enrolment rate increased from 64% in 2005 to 94% in 2010.¹²⁴² Yet, it was noted that there are important challenges for students enrolled in school including: lack of learning materials, poor teacher performance, high student-teacher ratios, poor conditions of schools and education in a new language.¹²⁴³ The language is a serious challenge for many students as most of them speak different languages at home rather than Portuguese and Tetum. It was noted that children can perform better if they are taught in their mother tongues.¹²⁴⁴ It should be understood that providing education in other languages would be a serious challenge for the country as producing learning materials and training teachers for these languages will be a difficult task. Berlie notes that the country received educational support from Portugal and Brazil for Portuguese, but teachers are still struggling with using Portuguese in primary and secondary schools.¹²⁴⁵ Besides, poor learning outcomes are also a serious challenge as many students repeat the same grades (for example, 30% of students repeat the first grade), most of them start the school over-age, and their achievements

¹²³⁷ WB report (2004), *Timor-Leste: Education Since Independence*, p.4.

¹²³⁸ Shah, R. (2012) Goodbye Conflict, Hello Development? Curriculum Reform in Timor-Leste, *International Journal of Educational Development*, Vol.32, No.1, p.32.

¹²³⁹ *Timor-Leste Poverty Assessment, Poverty in a New Nation: Analysis for Action (In Two Volumes) Volume II: Technical Report*, Report No. 25662-TP (2003) Joint Report of the Government of the Democratic Republic of Timor-Leste, ADB, JICA, UNDP, UNICEF, UNMISSET and the World Bank, p.124.

¹²⁴⁰ WB report (2004), *Timor-Leste: Education Since Independence*, p.9.

¹²⁴¹ *Ibid*, p.32.

¹²⁴² UNICEF report, *Situation Analysis of Children in Timor-Leste*, p.119.

¹²⁴³ WB report (2004), *Timor-Leste: Education Since Independence*, p.33.

¹²⁴⁴ WB report (2004), *Timor-Leste: Education Since Independence*, p.41.; UNDP (2002), *East Timor Human Development Report*, pp.51-52.

¹²⁴⁵ Berlie, J. (2012) Anticorruption in East Timor: Implications for development and education, *Asian Education and Development Studies*, Vol.1, No.3, p.259.

are poor.¹²⁴⁶ The differences between rural and urban settings are also reflected upon student profiles. The students in rural areas have poorer living conditions (regarding electricity, running water etc.) at home, their parents are less educated, and they have less resources compared to their peers in urban households.¹²⁴⁷

The CAVR's findings depict there have been anger and frustration among young males in the society. They were unable to have or complete their education due to the violence. After independence, lack of education and unemployment made them feel marginalised and excluded.¹²⁴⁸ It is claimed that youth are vulnerable to agitation and violence if they have no regular work.¹²⁴⁹ The arguments about whether young males pose a threat in post-conflict societies continue in literature.¹²⁵⁰ The UNDP's report on youth stated that promotion of youth employment could prevent violence.¹²⁵¹ In the context of East Timor, Distler explains that youth had not been considered as a threat to peace before 2006, but after the violent events in 2006 and 2008, both national and international actors started to consider them so.¹²⁵² UNICEF's report regarding the Timorese children also explained the involvement of youth in violence with their frustration with unemployment and exclusion.¹²⁵³ The report clarified that unemployment was not the only reason for youth violence, but it was an important one.¹²⁵⁴ A survey conducted in East Timor depicts that employment was considered as a key to cease the violence among youth as almost all the participants agreed on this.¹²⁵⁵

¹²⁴⁶ UNICEF report, *Situation Analysis of Children in Timor-Leste*, p.20.

¹²⁴⁷ WB report (2004), *Timor-Leste: Education Since Independence*, p.40.

¹²⁴⁸ The CAVR, *Chega*, p.41.

¹²⁴⁹ World Bank Group and Asian Development Bank – ADB (2007) *Economic and Social Development Brief*, Prepared by The World Bank Group and the Asian Development Bank, in consultation with Development Partners, p.73.

¹²⁵⁰ For the arguments see: Bangura, I. (2016) We Can't Eat Peace: Youth, Sustainable Livelihoods and the Peacebuilding Process in Sierra Leone, *Journal of Peacebuilding & Development*, Vol.11, No.2, pp.37-50.; Agbiboa, D. E. (2015) Youth As Tactical Agents Of Peacebuilding And Development In The Sahel, *Journal of Peacebuilding & Development*, Vol.10, No.3, pp.30-45.; The United Nations Development Program (2007) *The Youth of Africa: A Threat to Security or a Force for Peace?*, UNDP Conference Background Paper.; Sukarieh, M. and Tannock, S. (2018) The global securitisation of youth, *Third World Quarterly*, Vol.39, No.5, pp.854-870.; Urdal, H. (2006) A Clash of Generations? Youth Bulges and Political Violence, *International Studies Quarterly*, Vol.50, No.3, pp.607-629.

¹²⁵¹ The United Nations Development Program (2007) *The youth of Africa: A Threat to Security or a Force for Peace*, Conference Background Paper, Geneva: UNDP, p.6.

¹²⁵² Distler, *Dangerised youth*, pp.6-7.

¹²⁵³ UNICEF report, *Situation Analysis of Children in Timor-Leste*, p.167.

¹²⁵⁴ *Ibid*, p.168.

¹²⁵⁵ Distler, *Dangerised youth*, p.8.

2.3.c. Health, sanitation and infrastructure

Violence in 1999 hit East Timor's health system as well. Most of the doctors and health staff departed from East Timor as they were from Indonesia, and almost three-quarters of the health facilities were devastated partially or completely.¹²⁵⁶ The National Development Plan described the health standards of the country as weak since life expectancy was around 50-58, and other health indicators (infant mortality [IMR], under-5 years mortality [U5MR], maternal mortality rates) were poor. A significant number of children were chronically malnourished (about 20%) and underweight (about 45%) as of 2002.¹²⁵⁷ The country made an impressive improvement in U5MR and IMR as the death figures were reduced about 50% in both from 2002 to 2016.¹²⁵⁸ However, it was not the case for malnutrition. Malnutrition had long been a problem for East Timorese children. Kohen notes that mental development of half of a generation of these children was damaged because of malnutrition under the Indonesian occupation.¹²⁵⁹ It was remarked that there have been some improvements in malnutrition since 2002, but it is still a major concern.¹²⁶⁰ Relating to this, the country had the lowest percentage of children 6–59 months of age who are neither stunted nor wasted in the world¹²⁶¹ and the highest stunting in the world as of 2015.¹²⁶²

Sanitation and infrastructure have also been a big concern for East Timor. When the country became independent, the sanitation and infrastructure were in poor conditions. It was reported that “three in four persons live without electricity, three in five persons without safe sanitation and every other person without safe drinking water”.¹²⁶³ Besides, there was a stark difference between rural and urban areas: only 4% of the population had access to electricity, drinking water and sanitation in rural areas whereas it was almost 50% for urban areas.¹²⁶⁴ There have been some improvements regarding drinking water, sanitation and electricity. Access to drinking water increased both in rural (from ≈44% to 61%) and urban areas (from ≈70% to 95%) from

¹²⁵⁶ UNDP (2002), *East Timor Human Development Report*, p.14.

¹²⁵⁷ *National Development Plan*, p.45.

¹²⁵⁸ General Directorate of Statistics (GDS) and ICF (2017) *Timor-Leste Demographic and Health Survey 2016: Key Indicators*, Dili, Timor-Leste: GDS, and Rockville, Maryland, USA: ICF, p.16.

¹²⁵⁹ Kohen, *From the place of the dead*, p.99.

¹²⁶⁰ Cornwell, K., Inder, B. and Datt, G. (2015) *Measuring Poverty & Well Being in Timor-Leste*, Centre for Development Economics and Sustainability, Monash University, p.6.; UNICEF report, *Situation Analysis of Children in Timor-Leste*, p.19.

¹²⁶¹ International Food Policy Research Institute (2016) *Global Nutrition Report 2016: From Promise to Impact: Ending Malnutrition by 2030*, Washington, DC, p.23.

¹²⁶² International Food Policy Research Institute, *Global Nutrition Report 2016*, p.120.

¹²⁶³ Joint report of WB et al., *Timor-Leste Poverty Assessment*, p.26.

¹²⁶⁴ *Ibid*, p.28.

2001 to 2016.¹²⁶⁵ There has not been a significant improvement in sanitation as figures did not change much from 2001 to 2016: in rural areas $\approx 30\%$ in 2001 and remained the same in 2016; and in urban areas it increased from $\approx 70\%$ to 73% .¹²⁶⁶ East Timor experienced a remarkable improvement regarding electrification as it increased from 22% (2003) to 71% (2014) nationwide.¹²⁶⁷ According to two polls conducted in 2016 and 2017, “lack of healthcare, education and infrastructure development” were the main reasons for the people who think the country was on the wrong course,¹²⁶⁸ and 42% of the interviewees stated that roads were the main problem of East Timor.¹²⁶⁹ The state needs to eliminate the disparities in these conditions to prevent discrimination in the enjoyment of ESCR.

2.3.d. Forced displacements

Forced displacement had long been a phenomenon for East Timorese people. Almost the entire population has been displaced once or more during the Indonesian occupation, the 1999 violence, or the 2006 violence.¹²⁷⁰ Since it has been a pressing problem, the CAVR’s fourth national hearing was on forced displacement and famine.¹²⁷¹ An inquiry on forced displacement was carried out by the CAVR to understand the sufferings of the victims, and the report stated that forced displacement and famine were adopted as a weapon of war and a collective punishment method to disrupt the daily lives of civilians in East Timor. They were correlated with other political, economic, social and cultural rights abuses.¹²⁷²

Taylor explained the internal displacements during Indonesian occupation. The army aimed to keep the Timorese under its control and prevent them from joining the resistance. So, people were forced to depart from their original villages to resettlement camps and villages which were controlled by the Indonesian army.¹²⁷³ The physical conditions of the camps and villages were extremely poor which caused diseases among the people. In addition to diseases, people faced famine as they were unable to grow food due to Indonesia’s military operations and forced

¹²⁶⁵ Joint report of WB et al., *Timor-Leste Poverty Assessment*, p.28.; UNICEF (2017) *Timor-Leste at a Glance*, p.1.

¹²⁶⁶ Joint report of WB et al., *Timor-Leste Poverty Assessment*, p.28.; World Health Organization (WHO) and United Nations Children’s Fund (UNICEF) (2017) *Progress on Drinking Water, Sanitation and Hygiene: 2017 Update and SDG Baselines*, Geneva: UNICEF, p.90.

¹²⁶⁷ Asian Development Bank (2017) *Pacific Energy Update 2017*, p.23.

¹²⁶⁸ Center for Insights in Survey Research (2016) *National Survey of Timor-Leste Public Opinion*, The International Republican Institute, p.6.

¹²⁶⁹ Center for Insights in Survey Research (2017) *National Survey of Timor-Leste Public Opinion*, The International Republican Institute, p.15.

¹²⁷⁰ Koefner, *Displacement in East Timor*, p.81.; The CAVR, *Chega*, p.72.

¹²⁷¹ The CAVR, *Chega*, p.32.

¹²⁷² *Ibid*, pp.72-74.

¹²⁷³ Taylor, *East Timor: The Price of Freedom*, p.119.

displacements. Their movement was heavily restricted by the army, and they were forced to work in construction, road building, timber logging and cultivation of cash crops.¹²⁷⁴ Moreover, the Indonesian military burnt their corps and destroyed the food stocks of displaced people.¹²⁷⁵ Findings of the commission depict that at least 84,200 people died because of hunger and illness which were caused by displacement.¹²⁷⁶ The displacement-related deaths took place because displacements led to hunger and famines which made people more vulnerable to diseases, and these people did not have access to medical care. The CAVR's report states: "It is likely that more people died from the effects of displacement than from any other violation."¹²⁷⁷ It must be understood that these policies of Indonesia are clear violations of ESCR of the East Timorese, and some of these violations constitute serious crimes.

Although people were suffering from famine in the camps and villages, the international humanitarian aid agencies were unable to operate freely to help these people because of the Indonesian government. Their aid was abused by the Indonesian army; the supplies were misappropriated and maldistributed (or sold) to the Timorese people by the army members.¹²⁷⁸ Moreover, in 1982, Indonesia started to distribute the fertile lands of the displaced people to non-Timorese people who were brought from other parts of the country.¹²⁷⁹ Eventually, the resettlement campaign of Indonesia expanded in East Timor; almost all the East Timorese people were living in resettlement villages by 1990.¹²⁸⁰

During the 1999 conflict, roughly 450,000 people were displaced (including 250,000 East Timorese who fled to West Timor) as Indonesia-backed militias launched a violent campaign in the aftermath of the vote for independence.¹²⁸¹ It was claimed that this displacement wave was a planned operation and systematic as many people were forcibly carried to West Timor by the Indonesian military.¹²⁸² Although some 140,000 refugees who had fled to West Timor returned to East Timor by 2001 when the war was over,¹²⁸³ many people who were actively pro-integration and suspected militias and their families remained in West Timor as they were afraid

¹²⁷⁴ Taylor, *East Timor: The Price of Freedom*, pp.92-94 and 119.

¹²⁷⁵ Taylor, *East Timor: The Price of Freedom*, p.150.

¹²⁷⁶ The CAVR, *Chega*, p.72.

¹²⁷⁷ *Ibid*, p.74.

¹²⁷⁸ Taylor, *East Timor: The Price of Freedom* pp.120-122.; The CAVR, *Chega*, p.74.

¹²⁷⁹ Taylor, J. G. (1999) East Timor: Forced resettlement, *Forced Migration Review*, No.5, p.32.

¹²⁸⁰ *Ibid*, p.32.

¹²⁸¹ Kingston, *Balancing justice and reconciliation*, p.280.; Niksch, L., McHugh, L. and Margesson, R. (2001) *East Timor Situation Report*, Congressional Research Service-Report for Congress, Order Code RL30975, p.2.

¹²⁸² Koefner, *Displacement in East Timor*, pp.78-86.

¹²⁸³ Niksch et al, *East Timor Situation Report*, p.2.; Koefner, *Displacement in East Timor*, p.79.

of being targeted. Babo-Soares states that these people were considered as a threat by the East Timorese government as they may destabilise the country in the future.¹²⁸⁴ East Timorese political leaders, including Gusmao, visited West Timor and held meetings with pro-integration political leaders to convince these people to return.¹²⁸⁵ Yet, the elite-driven reconciliation process among political leaders was not effective for return and reconciliation among society. Therefore, a grassroots reconciliation program was adopted to facilitate returns and integration which was explained in the previous section.

The commission implemented a specific program to monitor and assist the returnees as they faced many struggles. Earning a living has been the most critical problem for them as they lost their lands and assets during the conflict and lived in refugee camps in West Timor. Therefore, many returnees migrated to Dili and other urban centres to make a living.¹²⁸⁶ Yet, the returnees and IDPs settled in urban centres and this created problems regarding housing, resources and unemployment.¹²⁸⁷ The competition for jobs and resources led to jealousy and tensions among these people.¹²⁸⁸ In fact, the CAVR had recommendations to achieve reconciliation within communities regarding local conflicts and grievances,¹²⁸⁹ yet, it was noted that these problems were not addressed properly and they contributed to the violence in 2006.¹²⁹⁰ The 2006 crisis created a new wave of displacement in East Timor. Over 150,000 people (almost 15% of the population¹²⁹¹) were displaced between 2006 and 2008 and these people faced lots of problems regarding housing, security and health.¹²⁹² This new wave of displacement also caused numerous violations of socioeconomic rights as in other cases. The details of the 2006 crisis was elucidated in the historical background of the conflict section and will not be explained here. However, the government's strategy to deal with the displacement crisis was effective in tackling the problem and merits a brief analysis.¹²⁹³

When the violence significantly declined in 2008, the government created a comprehensive plan (the NRS) to tackle the displacement issue.¹²⁹⁴ Vieira explained the process of how the NRS was

¹²⁸⁴ Babo-Soares, *Nahe biti*, p.16.

¹²⁸⁵ *Ibid*, pp.16-17.

¹²⁸⁶ The CAVR, *Chega*, pp.30-31.; Vieira, *The CAVR and the 2006 Displacement Crisis*, p.9.; Rae, *Peacebuilding and transitional justice*, pp.74-75.

¹²⁸⁷ Koefner, *Displacement in East Timor*, p.79.; Vieira, *The CAVR and the 2006 Displacement Crisis*, p.14.

¹²⁸⁸ Vieira, *The CAVR and the 2006 Displacement Crisis*, p.16.

¹²⁸⁹ The CAVR, *Chega*, p.191 (Recommendations 8.1-8.3).

¹²⁹⁰ Vieira, *The CAVR and the 2006 Displacement Crisis*, pp.15-16.

¹²⁹¹ Van der Auweraert, *Ending the 2006 Internal Displacement Crisis*, p.7.

¹²⁹² Ferguson, P. (2010) IDP camp closure and gender inequality in Timor-Leste, *Forced Migration Review*, No.34, p.67.

¹²⁹³ Van der Auweraert, *Ending the 2006 Internal Displacement Crisis*, pp.9-10.

¹²⁹⁴ Vieira, *The CAVR and the 2006 Displacement Crisis*, p.10.

designed. The government conducted a series of dialogue initiatives with the IDP communities. The government officials, including the president and the minister of social solidarity (who was responsible for IDP-related problems), visited the IDP camps; large-scale community ceremonies and mass information campaigns were held; and individual land and property disputes were mediated. After these dialogues and debates, the government decided to grant cash payments (called “recovery package”) to IDPs to facilitate their return and resettlement.¹²⁹⁵ These efforts could be considered as an important attempt to redress violations (such as the right to housing) arising from the forced displacement. Van der Auweraert remarks that merely providing payments to IDPs would not be enough for their return and resettlement smoothly. So, the government formed “dialogue teams” to work with IDPs to facilitate their return.¹²⁹⁶ These teams were effective in local peacebuilding and reconciliation processes which helped to facilitate a sustainable return process. It was not possible to assess that reconciliation had been achieved entirely, but it could be said that in general, the process continued without considerable violence.¹²⁹⁷

Closing camps and facilitating returns and resettlements were not free from problems though. Within the scope of the NRS, the government provided payments to the IDPs for their homes which were destroyed or damaged; and closed the last IDP camps in 2010.¹²⁹⁸ Yet, there was a concern regarding gender-parity in these payments to IDPs; the payments were granted to the male heads of the households, and there were many cases in which men disappeared with the money.¹²⁹⁹ So, the government should have taken gender parity into account concerning these payments. Moreover, land and property disputes, and socioeconomic problems in the urban centres were important issues in the context of IDPs. It was noted that land disputes and property ownership posed a threat to security and stability in East Timor.¹³⁰⁰ There have long been land and property disputes in East Timor due to the different land titling systems of the Portuguese and Indonesia. Destruction of property records in 1999 and the 2006 crisis exacerbated these disputes.¹³⁰¹ Likewise, the numerous displacements contributed to these

¹²⁹⁵ *Ibid*, pp.11-12.

¹²⁹⁶ Van der Auweraert, *Ending the 2006 Internal Displacement Crisis*, p.29.

¹²⁹⁷ Timor-Leste Armed Violence Assessment (2009) *Groups, gangs, and armed violence in Timor-Leste*, Issue Brief, No.2, p.6.; Van der Auweraert, *Ending the 2006 Internal Displacement Crisis*, pp.10-29.; Vieira, *The CAVR and the 2006 Displacement Crisis*, p.13.

¹²⁹⁸ Wallis, *Victors, Villains and Victims*, p.144.

¹²⁹⁹ Ferguson, *IDP camp closure and gender inequality*, pp.68-69.

¹³⁰⁰ Almedia, B. and Wassel, T. (2016) *Survey on Access to Land, Tenure Security and Land Conflicts in Timor-Leste*, The Asia Foundation and Van Vollenhoven Institute, p.8.

¹³⁰¹ The United Nations Development Program (UNDP) Timor-Leste, *Timorese finally land property rights*. Available at: http://www.tl.undp.org/content/timor_lesste/en/home/stories/TL_land_certificates.html (access date: 30.07.2018).

problems in East Timor. There were no legal documents or proof to verify the ownership of lands and properties to which the IDPs wanted to return. Since enacting a law and tackling all the property and land issues would require time, the government decided to consult with the affected communities to verify land and property claims of the IDPs.¹³⁰² In 2017, a land law named “Special Regime for the Ownership of Immovable Property” was enacted.¹³⁰³

Regarding the urban centres, lack of adequate housing, infrastructure and employment opportunities challenged the government. For instance, Dili’s population increased from 100,715 (1999) to 173,541 (2004) in only five years¹³⁰⁴ but housing, infrastructure, employment opportunities did not grow at a similar rate.¹³⁰⁵ Vieira remarked that the government and the international organisations were not successful in employing complementary measures to address these problems. He noted that IDPs need to be supported to find a sustainable solution to the displacement problem as the movement of thousands of people begets many challenges.¹³⁰⁶ To mitigate these challenges some government officials wanted to persuade the IDPs to resettle in districts other than Dili through material and transport support, but this proved not to be successful as a majority of IDPs returned to Dili in the end.¹³⁰⁷ Moreover, return and resettlement may not mean that the displacement problem is solved. Koefner noted that if the problems which arose from displacement remain and the normalcy in all respects of life is not restored, it is not possible to say the displacement problem is solved. He continued that people were still dependent on aid, and reconciliation was not entirely achieved in the society as some of the returnees continued to face harassment, particularly the ones who were pro-integration.¹³⁰⁸ Although achieving development is not a responsibility of transitional justice, redressing ESCR violations and contributing to elimination of historical inequalities should be among the aims of transitional justice efforts. Although there have been deficits, East Timor attempted to achieve this by taking socioeconomic issues into account in its transitional process.

¹³⁰² Van der Auweraert, *Dealing with the 2006 Internal Displacement Crisis*, pp.10-11.; Scambary, *Anatomy of a conflict* p.276.; Thu, P. M. (2012) Access to Land and Livelihoods in Post-conflict Timor-Leste, *Australian Geographer*, Vol.43, No.2, p.197.

¹³⁰³ The Government of Timor Leste, *Enactment of Land Law major step for Development*, 14.06.2017. Available at: <http://timor-leste.gov.tl/?p=18216&lang=en> (access date: 30.07.2018).

¹³⁰⁴ Neupert, R. and Lopes, S. (2006) *The Demographic Component of the Crisis in Timor-Leste - Political Demography: Ethnic, National and Religious Dimensions*, Association for the Study of Ethnicity and Nationalism, London School of Economics, p.25.

¹³⁰⁵ Van der Auweraert, *Ending the 2006 Internal Displacement Crisis*, p.18.

¹³⁰⁶ Vieira, *The CAVR and the 2006 Displacement Crisis*, p.17.

¹³⁰⁷ *Ibid*, p.15.

¹³⁰⁸ Koefner, *Displacement in East Timor*, pp.81-82.

3. Peru

Between 1980 and 2000, Peru had suffered from an internal war between the Peruvian military and the Shining Path (the Communist Party of Peru - Sendero Luminoso, PCP-SL) – a subversive group which aimed for a communist revolution in Peru.¹³⁰⁹ In 1992 the leader of the PCP-SL was captured, and the war started to fade away. After 2000, a transitional process started in Peru; and various transitional justice mechanisms, including trials, truth commission and reparations were applied to redress the past human rights violations committed during the war. To analyse the transitional justice in Peru, the historical background of the war needs to be understood.

This section will start explaining the historical background of the war, then will describe the transitional justice process with a specific focus on ESCR violations. The last part of this section will make an analysis of the socioeconomic dimension of the transitional process in Peru.

3.1. Historical background

Peru had been under Spanish colonial rule for nearly 300 years and the country became independent in 1824. Yet, the legacies of colonialism could not be eliminated by declaring independence. Root explains that Peru had long been divided intensely, and two different groups of people had lived in the country. The first group, mainly the descendants of Spanish, has been urban and middle class. The second group, mainly indigenous people, has lived in Andean highlands, and they were poor and rural peasants. There was a stark difference between these groups in terms of income, health, education and living conditions.¹³¹⁰ Even the language they spoke was different; the first group spoke Spanish, whereas second group spoke Quechua and other indigenous languages.¹³¹¹ The government's approach had been ignoring the exclusion and marginalisation of indigenous people and this left these people without political and economic power.¹³¹² The approach of the government towards the marginalisation of the indigenous people allowed this division in the society to continue to exist, if not get worse. In fact, the division in the society was deeply rooted in Peru. Heilman depicts that indigenous Peruvians had been considered as backwards, ignorant and uncivilised in Peru since the 19th

¹³⁰⁹ Civil war, internal war, insurgency and internal conflict are used to describe the conflict in Peru. In fact, there is no agreement about the definitions of these terms and differences between them in academia. The truth commission's final report did not use the term "civil war"; and preferred to use "conflict", "internal conflict" and "internal war". However, in academia, civil war is also used among others to define the conflict in Peru. Therefore, these terms will be used interchangeably in the thesis.

¹³¹⁰ There are different terms to differentiate societal groups in Peru such as mestizo (mixed race of Spanish and Indian descents), criollo (Spanish descents), campesino (peasants), cholos (migrants from rural regions and highlands), indio (indigenous) etc. Yet, for the purposes of this thesis, I prefer not to use these terms as the boundaries between them are not clear and sometimes they overlap.

¹³¹¹ Root, R. K. (2012) *Transitional Justice in Peru*, New York: Palgrave Macmillan, p.15.

¹³¹² Root, *Transitional Justice in Peru*, p.16.

century. They were disenfranchised, their labour and lands were exploited, and they were excluded from political participation.¹³¹³ It must be added that there were still some marginalising statements after the conflict; for instance, the president Garcia referred to indigenous people as “enemies of modernity” and “enemies of national progress” in 2007 and 2009.¹³¹⁴

Since the society was deeply divided and beset with inequalities, there was unrest among poor sections of the society, mainly among the indigenous people of the Andes. The communist parties had been effective in these communities and they were promising to change the unjust system of the country. The Shining Path was one of them and its leader was Abimael Guzman. Guzman was a philosophy professor at a university in Ayacucho region and he started his communist campaign in the 1970s among students to achieve a peasant revolution in Peru. The military campaign of Guzman to overthrow the government was started in 1980 in the poor districts of Ayacucho.¹³¹⁵ The PCP-SL was not the only rebel group at that time, there were other violent groups such as Tupac Amaru Revolutionary Movement (Spanish acronym MRTA), yet the most prominent rebel group among others had been the PCP-SL.¹³¹⁶

It is important to understand the circumstances in the society which paved the way for a subversive campaign to become an internal war. Therefore, analysing the dynamics in Peru prior to conflict is crucial. Heilman explained that the indigenous peasants of the Andes had sought to have a healthy dialogue with the state to transform the unequal share of the political, economic and social power long before the emergence of the PCP-SL; yet the state’s approach to them had varied from neglect to oppression which might also explain the initial popularity of the subversive groups.¹³¹⁷ It was noted: “The economic catastrophe, the poverty, illiteracy, unemployment along with the persecution of the peasantry in the highland regions made it a hot bed of such revolutionary and guerrilla activities.”¹³¹⁸ In addition, the country was transitioning to democracy when the PCP-SL started its insurgent campaign, and the nascent democracy and its institutions were not strong or prepared to handle a subversive campaign.¹³¹⁹

¹³¹³ Heilman, J. P. (2010) *Before the Shining Path: Politics in Rural Ayacucho, 1895–1980*, Stanford: Stanford University Press, pp.198-199.

¹³¹⁴ Orihuela, J. C. (2012) The Making of Conflict-Prone Development: Trade and Horizontal Inequalities in Peru, *European Journal of Development Research*, Vol.24, No.5, p.702.

¹³¹⁵ Root, *Transitional Justice in Peru*, p.17.

¹³¹⁶ Holmes, J. S. (2015) Sendero Luminoso After Fujimori: A sub-national analysis, *The Latin Americanist*, Vol.59, No.2, p.29.

¹³¹⁷ Heilman, *Before the Shining Path*, p.3.

¹³¹⁸ Gangopadhyay, A. (2003) The Peruvian Labyrinth and the Return of the Shining Path, *India Quarterly*, Vol.59, No.3-4, p.220.

¹³¹⁹ Gangopadhyay, *The Peruvian Labyrinth*, p.217.

There is often no single reason to explain the emergence of a conflict. Historical marginalisation and oppression of the indigenous peasants of the Andes and the Amazon do not exclusively explain the conflict in Peru. Yet, these realities can be helpful to understand both the conflict and the reasons why people had supported the subversive campaign.

The PCP-SL's initial popularity must be analysed more thoroughly to get a good grasp of the conflict. Root described how Guzman initiated his campaign and recruited people. Guzman convinced the poor and marginalised indigenous Peruvians that they lived in poverty and misery because of the bourgeois Peruvians who were essentially corrupted.¹³²⁰ This view explains the initial popularity of the PCP-SL but there is a contradicting view that suggests the organisation's campaign could not find much support in the beginning. According to this view, the PCP-SL did not attempt to win the sympathy of people; instead, they forced people to support them by installing fear and resorting to violence.¹³²¹ The first view sounds more convincing as it is plausible to think that oppressed and marginalised people would support a campaign which promised them to eliminate these inequalities. Even so, whether the PCP-SL had tried to win the hearts of the people in the region, the group often targeted the very people it claimed to champion since the beginning of its campaign. Therefore, their brutal policies and attacks damaged its popularity over time. Root notes that the PCP-SL turned to alternative ways to continue its operations when the public support for them had diminished. They started child recruitment and forced recruitment to find new soldiers. In addition, they resorted to narcotrafficking with the Colombian drug cartels to fund their organisation.¹³²²

The reason for losing the public support could also be explained by the PCP-SL's abusive and brutal exercises in the communities they controlled. They declared these areas as "liberated zones", yet their governance was not liberating at all. Heilman gives an example from a district named Carhuanca that: "There was nothing liberating about life in the 'liberated zone' of Carhuanca."¹³²³ In addition to oppression, people were put in a difficult position by the PCP-SL economically. It is depicted that the organisation extorted 50% of the agricultural production of the areas it controlled and also got extortions from the businesses.¹³²⁴ Heilman summarises this

¹³²⁰ Root, *Transitional Justice in Peru*, p.17.

¹³²¹ Peru Support Group Report (2004) *Truth and Reconciliation: The Findings of Peru's Truth and Reconciliation Commission*, London: Peru Support Group, p.19.

¹³²² Root, *Transitional Justice in Peru*, p.19.

¹³²³ Heilman, *Before the Shining Path*, p.188.

¹³²⁴ Manwaring, M. G. (1995) Peru's Sendero Luminoso: The Shining Path Beckons, *The Annals of the American Academy of Political and Social Science*, Vol. 541, Small Wars, p.163.

as: "Far from liberation, the PCP-SL had brought only violence, devastation, and ruin to Carhuanca, to Ayacucho, and to Peru."¹³²⁵

The state's approach to the people was not very different from the PCP-SL's. The government's initial response to the subversive campaign was sending the paramilitary police to the region but their behaviour towards the local population was abusive and indiscriminate.¹³²⁶ It is also noted that the government's approach to the insurgency was not intelligent because they labelled the whole indigenous people of Ayacucho as enemy. Their abusive and harsh counterinsurgency policies and militarisation of the region led to greater support for the PCP-SL.¹³²⁷ Although the government did not consider the Shining Path as a serious threat in the beginning, by the 1983, their activities reached a point where the government could not ignore them anymore. It is noted that the government adopted a hard-line stance against the PCP-SL and declared a state of emergency in the zones the organisation operated. Military leaders took control of the political power which meant the suspension of even the basic human rights of the people. Enforced disappearances, extra-judicial killings and torture were adopted as a means of counterinsurgency campaign.¹³²⁸ Peru's response to the PCP-SL's campaign is quite similar to Turkey's response to the PKK. As depicted in the third chapter, Turkey's counterinsurgency campaign led to serious human rights violations in the Kurdish region, and this increased the support for the PKK among Kurds.

The hard-line response of the state, in fact, benefited the rebels. Root noted that the PCP-SL resorted to violence to marginalise people because the state's response was indiscriminate in the region. She explains that the state's indiscriminate violence in the region reflected the divisions in the Peruvian society. The members of the security forces were mainly from Lima and other urban centres, and they did not speak Quechua and other indigenous languages. The soldiers and people could not communicate, and they did not trust each other. This exacerbated the tension between them.¹³²⁹ As the military had a powerful position, its expenditures were around 30% of the national budget during these years. In addition to the budget, the army enjoyed impunity for its large-scale human rights violations, and it was given autonomy which allowed the army to exercise great power in the countryside and in emergency zones.¹³³⁰ People often found themselves in the cross-fire and they suffered from the actions of both the

¹³²⁵ Heilman, *Before the Shining Path*, p.190.

¹³²⁶ Peru Support Group, *Truth and Reconciliation*, p.24.

¹³²⁷ *Ibid*, p.24.

¹³²⁸ Root, *Transitional Justice in Peru*, p.20.

¹³²⁹ Root, *Transitional Justice in Peru*, p.21.

¹³³⁰ *Ibid*, p.21.

subversive organisations and the state officials.¹³³¹ Lacking the protection of the state, people in the conflict zones sought alternative ways to protect themselves. When the PCP-SL's violence targeted the peasants, they got frustrated and formed rondas (or rondos/ronderos), self-defence groups, to protect themselves.¹³³² Later, the state integrated these self-defence groups into its counterinsurgency campaign and started training and equipping them to buttress its security forces.¹³³³ It can be understood that the lives of people in conflict zones were highly militarised, and this often leads to traumas at individual and societal levels which will be explained in the following sections.

During the 1980s, the PCP-SL continued to expand, and the country witnessed increasing violence. Therefore, not only poor peasants living in the Andes but also middle-class Peruvians living in Lima and other urban centres also started experiencing civil war.¹³³⁴ The PCP-SL started to concentrate on shantytowns of the big cities such as Lima where the organisation got better protection from security forces and better opportunities to recruit new people.¹³³⁵ This led to a change in government's approach. In 1990, Fujimori became president by promising that he would bring an end to the conflict. Yet, Fujimori undermined democracy when he was in power and the country slid towards authoritarianism.¹³³⁶ The legal system was corrupted under his rule: many innocent citizens were convicted even though there was not sufficient evidence against them; whereas the members of the security forces enjoyed impunity although there was sufficient evidence showing their involvement in grave human rights abuses.¹³³⁷ During his presidency, a paramilitary group, Grupo Colina (the Colina Group), committed human rights abuses, and the group was backed by the government covertly.¹³³⁸ Fujimori's harsh policies against the PCP-SL served their purpose in Peru. In 1992, Guzman was captured, prosecuted and sentenced to life imprisonment which led to a stark decline in the PCP-SL's subversive activities. Gradually, the organisation turned into a small gang engaged in drug trafficking after Guzman's capture.¹³³⁹ In 1993, a "repentance law" was enacted by Fujimori for the militants of subversive

¹³³¹ Peru Support Group, *Truth and Reconciliation*, p.24.

¹³³² Gangopudhyay, *The Peruvian Labyrinth*, p.230.

¹³³³ Mucha, W. (2016) Securitisation and militias during civil war in Peru, *Conflict, Security & Development*, Vol.16, No.4, p.328.

¹³³⁴ Root, *Transitional Justice in Peru*, p.24.

¹³³⁵ Kent, R. B. (1993) Geographical Dimensions of the Shining Path Insurgency in Peru, *American Geographical Society*, Vol.83, No.4, pp.451-452.

¹³³⁶ Gangopudhyay, *The Peruvian Labyrinth*, p.232.

¹³³⁷ Root, *Transitional Justice in Peru*, p.32.

¹³³⁸ *Ibid*, p.34.

¹³³⁹ *Ibid*, p.33.

groups, and more than 5000 of them surrendered within the context of this amnesty.¹³⁴⁰ Yet, the draconian policies of the Fujimori regime did not end after this, and militarised policies were applied against the regime's critics, opponents, human rights defenders and journalists.¹³⁴¹ In 1995, an amnesty law was passed by the Peruvian Congress which granted "total legal amnesty to all military and police officers implicated in human rights abuses since 1980."¹³⁴² The purpose of this law was to grant impunity to the members of the security forces who committed human rights abuses. In addition to these practices, Fujimori was involved in corruption cases which later compelled him to flee the country.

Fujimori resigned from office and fled to Japan in 2000 as his presidency was collapsing after the corruption he was involved had been unearthed.¹³⁴³ After his resignation, the country started taking steps to re-institutionalise democracy and human rights. It is noted that after Fujimori, an interim president, Valentín Paniagua, came to power, and although he was in power for only eight months, he had taken fundamental steps to enhance human rights and transitional justice in Peru.¹³⁴⁴ The transitional justice efforts in Peru will be explained in the next section, but before that, looking at the socioeconomic dimensions of the war is beneficial to have a complete understanding of the war in Peru.

3.1.a. Socioeconomic background

First of all, it must be noted that most of the violence took place in certain parts of the country – mainly highlands and jungle areas – which are far from Lima and other urban centres, and inhabitants of these regions experienced exclusion and indifference from the rest of the country.¹³⁴⁵ The unequal development and modernisation in Peru left these regions without important investments, highways and hydroelectric projects prior to the conflict.¹³⁴⁶ These regions had already been in unfortunate conditions. Gangopudhyay claims that before the PCP-SL's subversive campaign, there were alarming socioeconomic problems which had long been ignored. These included poverty, particularly among Peru's rural and urban youth, and disrupted rural economies of peasant communities which had resulted from demographic pressures and agrarian reforms. This socioeconomic environment enabled the rebel group to become

¹³⁴⁰ Fielding, D. and Shortland A. (2012) The dynamics of terror during the Peruvian civil war, *Journal of Peace Research*, Vol.49, No.6, p.848.

¹³⁴¹ Root, *Transitional Justice in Peru*, pp.33-34.

¹³⁴² *Ibid*, p.36.

¹³⁴³ Holmes, *Sendero Luminoso After Fujimori*, p.30.

¹³⁴⁴ Root, *Transitional Justice in Peru*, p.41.

¹³⁴⁵ The CVR, *Hatun Willakuy*, p.14.

¹³⁴⁶ The CVR, *Hatun Willakuy*, p.55.

attractive.¹³⁴⁷ Although a low level of development is not transitional justice's concern, it is still important to understand this for analysing the root causes of the conflict. It can be comprehended that a low level of development of a region is often associated with a low level of enjoyment of socioeconomic rights in that region. So, as mentioned in the second chapter, transitional justice and development efforts should be cooperated in a constructive manner to achieve development and enhance the enjoyment of ESCR.

It is unfortunate that the region could only draw attention when the civil war began. Perhaps, if the region had been given adequate prominence and the problems had been tackled in the first place, the support that PCP-SL got from people could be much less. In fact, Gangopudhyay's assertion supports this opinion. She says that the PCP-SL's primary targets were young people and lower/middle class Peruvians who had been frustrated with economic depression, violence and oppression by the authorities.¹³⁴⁸ The PCP-SL received support of people by promising them a revolution which would overthrow the prevailing political, social and economic inequalities. However, what was promised to people never came true. In fact, the opposite became the reality. The indigenous people were severely affected by the war. As mentioned earlier in this section, they had been extorted by the PCP-SL. Their means of living were damaged by the conflict. Hundreds of thousands of people were forced to leave their homes because of the conflicts. They fled to relatively safer areas, and many of them inhabited the slums of Lima.¹³⁴⁹ In addition to losing their means of livelihoods, they were discriminated against in these cities because of their ethnic background and lack of education and language.¹³⁵⁰ Although political abuses such as enforced disappearances, killings and torture receive more attention in post-conflict settings, socioeconomic abuses and ESCR violations also deserve attention as they also have egregious impacts on people.

3.2. Transitional justice process

Peru experienced eight years of authoritarianism (1992-2000) and 20 years of conflict (1980-2000).¹³⁵¹ After the resignation of Fujimori in 2000, a transitional government was formed, and this government commenced the transitional justice period to deal with those horrendous legacies of the past. Root notes that Peru has adopted almost all sorts of transitional justice

¹³⁴⁷ Gangopudhyay, *The Peruvian Labyrinth*, p.222.

¹³⁴⁸ *Ibid*, p.226.

¹³⁴⁹ Peru Support Group, *Truth and Reconciliation*, p.29.

¹³⁵⁰ *Ibid*, p.29.

¹³⁵¹ It must be clarified that the war mostly faded away, and the PCP-SL was disbanded after Guzman's capture in 1992. And the authoritarianism prevailed between 1992 and 2000 (from Fujimori's self-coup to his flight from Peru). Yet, the war is often considered to be ended in 2000.

mechanisms during its transition period including “official apologies, the legislation of reparations programs, a truth and reconciliation commission, a revocation of official amnesties, and prosecutions of members of the armed forces, intelligence agencies, guerrilla organisations, and the executive branch.”¹³⁵² It must be noted that Peru did not have negotiations or a peace agreement with the PCP-SL, as the organisation was defeated militarily. Yet, even after a military defeat, the country needed a transitional justice process.

There is no hierarchy among transitional justice mechanisms, but it could be argued that truth commissions are more prominent than others as they bring the past violations to light. Understanding the past thoroughly is extremely useful to draw a roadmap for redressing the past. In addition, truth commissions make recommendations when they prepare their reports. These recommendations can be a starting point for other mechanisms. The Peruvian truth commission likewise recommended the prosecution of 150 people who were identified by the commission.¹³⁵³ The commission also suggested that the official apology would not be enough, and the Peruvian government needed to act on behalf of victims to redress the violations.¹³⁵⁴ So, this section will focus the Peruvian truth commission first. Then, other transitional justice mechanisms will be explained.

3.2.a. Truth commission

The Peruvian Truth and Reconciliation Commission (Spanish acronym CVR) was established in June 2001. The proposal of the CVR came from the National Coordinator for Human Rights (the Coordinadora), an umbrella organisation for Peruvian NGOs. Establishing a truth commission was part of their 44-point agenda for the advancement of human rights in Peru. Then, an Inter-Institutional Working Group was formed by the president Paniagua to prepare a design for the truth commission.¹³⁵⁵ The group consulted with national and international experts and – more importantly – hundreds of groups from the civil society to decide on the design of the commission.¹³⁵⁶ After the consultation process, the group decided that the truth commission should not have restricted itself to a specific type of crimes. So, it was concluded that the commission would look at all sources and patterns of violence committed between 1980 and

¹³⁵² Root, *Transitional Justice in Peru*, p.8.

¹³⁵³ Peru Support Group, *Truth and Reconciliation*, p.34.

¹³⁵⁴ *Ibid*, p.43.

¹³⁵⁵ Root, *Transitional Justice in Peru*, p.53.

¹³⁵⁶ Root, *Transitional Justice in Peru*, p.54.

2000.¹³⁵⁷ In addition, the working group decided that “the Truth Commission should be a precursor to trials.”¹³⁵⁸ It meant that the commission would not obstruct trials.

The mission of the CVR was: “shedding light on crimes and human rights violations that were committed, providing an interpretation of the underlying causes of the violence, contributing to justice and proposing recommendations for a reparations policy and institutional reforms.”¹³⁵⁹ According to the commission, its ethical mandate was “to pay respect to thousands of victims, to recognise them and to give them the public voice that violence and exclusion had denied them throughout Peruvian history.”¹³⁶⁰ It must be noted that the CVR did not only aim to find the truth about the human rights violations, it also sought to find political, economic, cultural and psychological root causes of the conflict which led to violence and atrocities.¹³⁶¹

Selection of members of the truth commission was designed by a supreme decree.¹³⁶² So, Toledo appointed the commissioners from different backgrounds including a congresswoman (from Fujimori’s political party), a journalist, a retired army lieutenant, academicians and religious leaders with the approval of the Council of Ministers.¹³⁶³ The commission set up one central office, four regional offices and eight local offices, and went to every department of the country (530 districts in 137 provinces) between 2001 and 2003.¹³⁶⁴ The CVR operated for 26 months and published its final report on 28th of August 2003. The CVR collected nearly 17,000 testimonies from victims, held public hearings and conducted forensic and social research.¹³⁶⁵ It is noted that Peruvian human rights organisations had already been gathering testimonies and information throughout the civil war and these were included in the commission’s work for contribution.¹³⁶⁶

The CVR did not only gather testimonies from people, it also gathered several types of written evidence such as “press reports, parliamentary commissions of enquiry, judicial documentation, other official documents from a range of government agencies, the archives of the various human rights organisations, etc.”¹³⁶⁷ Politicians, military officials and militants of subversive

¹³⁵⁷ *Ibid*, p.54.

¹³⁵⁸ *Ibid*, p.55.

¹³⁵⁹ The CVR, *Hatun Willakuy*, p.1.

¹³⁶⁰ *Ibid*, p.1.

¹³⁶¹ *Ibid*, p.2.

¹³⁶² Supreme Decree No. 065-2001-PCM. Translation available at: <http://www.mississippitruth.com/documents/PERU.pdf> (access date:30.07.2018)

¹³⁶³ Root, *Transitional Justice in Peru*, pp.73-74.

¹³⁶⁴ Peru support group, *Truth and Reconciliation*, p.11.

¹³⁶⁵ The CVR, *Hatun Willakuy*, p.1.

¹³⁶⁶ Root, *Transitional Justice in Peru*, p.75.

¹³⁶⁷ Peru Support Group, *Truth and Reconciliation*, p.11.

groups were called for interviews with the commissioners and many of them – including Alan Garcia (president between 1985-1990) and Abimael Guzman (the founder of the Shining Path) – accepted to talk. Only Alberto Fujimori and some members of the death squad refused to talk.¹³⁶⁸ The CVR examined experiences of other countries thoroughly to learn from them.¹³⁶⁹ The CVR also examined the dynamics of culture and society to understand the conditions which allowed violence and abuses to take place. Peruvian society is multicultural, and hierarchies and prejudices are extant from colonial times.¹³⁷⁰ The details about the way the CVR worked depict that there was a significant effort to find the truth about the past.

Public hearings were important in raising awareness among people who lived in urban centres such as Lima and were unaware of the human rights abuses.¹³⁷¹ To contribute to the dissemination of the truth about the civil war, the commission broadcast eight hearings on television.¹³⁷² The CVR wanted to prevent re-traumatisation of the victims who would give testimony, so all the victims who participated in public hearings were provided with mental health professionals before, during and after they gave testimony.¹³⁷³ It is described that even the commission's hearings were designed carefully for the testimony givers. They sat around a table with commissioners and there was no questioning, no cross-examination and no confrontation with the perpetrators.¹³⁷⁴ Since the settings were designed cautiously, many of the victims reported positively about their experience, stating that they had felt like they were considered as equal human beings.¹³⁷⁵ It must be noted that the report did not only disclose the shame and dishonour of people, it also disclosed the stories of the ones who had defended the rights of others.¹³⁷⁶ It is important to include such stories for two reasons. Firstly, it helps to give a balanced account of the past and secondly, it gives hope to people. It may help people to trust in society and institutions.

Root notes that both national and international NGOs had made a great contribution to the CVR's work. For instance, the International Center for Transitional Justice assigned consultants to assist the commission and Coordinadora sent members to work in the field.¹³⁷⁷ The Peruvian

¹³⁶⁸ *Ibid*, p.13.

¹³⁶⁹ Root, *Transitional Justice in Peru*, p.54.

¹³⁷⁰ The CVR, *Hatun Willakuy*, p.2.

¹³⁷¹ Peru support group, *Truth and Reconciliation*, p.11.

¹³⁷² Crandall, J. (2004) Truth Commissions in Guatemala And Peru: Perpetual Impunity and Transitional Justice Compared, *Peace, Conflict and Development*, No.4, p.16.

¹³⁷³ Root, *Transitional Justice in Peru*, p.78.

¹³⁷⁴ *Ibid*, p.77.

¹³⁷⁵ *Ibid*, p.78.

¹³⁷⁶ The CVR, *Hatun Willakuy*, p.7.

¹³⁷⁷ Root, *Transitional Justice in Peru*, pp.75-76.

government and foreign donors financed the CVR. Yet, the CVR encountered financial difficulties and sometimes its work was affected negatively. Nevertheless, the commission continued to operate even though the staff members were not paid.¹³⁷⁸ The CVR submitted the final report to the President of the Republic, the National Parliament and the National Chief Prosecutor's office officially. In addition, a public ceremony was held in Ayacucho to present the final report to Peruvian society.¹³⁷⁹ An abridged version of the final report, which was originally 8000 pages long, was also published after a few months to disseminate it to more people and raise greater awareness.¹³⁸⁰

It is observed that the final report of the CVR led to debates in Peru after its publication. Mainstream media criticised and undermined both the CVR's findings and the concerns about human rights. Many politicians, particularly the right-wing politicians, and retired military officials adopted a similar approach to the mainstream media; they criticised the commission and its findings by accusing them of being communists and of helping the subversive organisations inadvertently.¹³⁸¹ On the other hand, many civil society organisations, human rights groups and some politicians, including Alan Garcia who was seriously criticised in the report, commended the commission and its findings. In addition, according to a poll conducted after the publication of the report, 54% of the interviewees approved of the commission and the findings.¹³⁸²

After explaining the establishment and the operation of the CVR, its findings deserve to be mentioned as well. First of all, the final report of the CVR concluded that more than 69,000 people have been killed or forcibly disappeared by subversive groups or state agents during the conflict which lasted for two decades.¹³⁸³ Unlike other Latin American countries, the state was not responsible for the greater number of deaths and forced disappearances. According to the final report, 54% of the human loss was caused by the PCP-SL and the remaining fatalities were attributed to state agents, paramilitary groups, self-defence groups and the MRTA.¹³⁸⁴ The report remarked that indiscriminate violence was used against civilian populations by both subversive groups and state security forces, and both ignored the civilian losses by considering them as a price to be paid to achieve their goals.¹³⁸⁵ The report also points out that the crimes

¹³⁷⁸ Peru Support Group, *Truth and Reconciliation*, p.13.

¹³⁷⁹ The CVR, *Hatun Willakuy*, p.1.

¹³⁸⁰ *Ibid*, p.2.

¹³⁸¹ Peru Support Group, *Truth and Reconciliation*, pp.41-42.

¹³⁸² *Ibid*, p.42.

¹³⁸³ The CVR, *Hatun Willakuy*, p.5.

¹³⁸⁴ *Ibid*, pp.12-13.

¹³⁸⁵ *Ibid*, p.1.

were committed systematically by the subversive organisations and the state officials rather than being committed by “perverse individuals who acted outside the norms of their institutions.”¹³⁸⁶

Although the conflict in Peru was not identified as an ethnic conflict in the report, 75% of the victims were peasants whose native language was Quechua or another language other than Spanish, and they had been dispossessed and disdained by the state and the urban society. This marginalisation made destruction and death possible for these people.¹³⁸⁷ It is important to note that only one-fifth of the population spoke Quechua in Peru.¹³⁸⁸ Although Quechua speakers constitute 20% of the population, they constituted 75% of the deaths and disappearances in 20 years of conflict. It could be assumed that they had been the primary target in conflict. Furthermore, testimonies collected by the CVR depicted that these people were systematically insulted and abused racially prior to other human rights abuses such as rape, torture, kidnapping and killing.¹³⁸⁹ This shows that race was determining in victimhood. Yet, race was not really a determining factor regarding guerrillas, as only 23% of the captured guerrillas were of indigenous origin.¹³⁹⁰

As argued in the first chapter, the effects of testifying at a truth commission are controversial as there is no consensus in academia whether testifying is harmful or helpful. However, it must be admitted that the settings of the environment in which victims testify are quite important and this brings us to a point of consideration. Laplante conducted a research with Peruvian victims who had testified at the commission. The research depicts that all the interviewees gave positive feedback regarding their experiences. The scale of the research is not wide as Laplante interviewed only 20 people. This prevents us from generalising the results, but it still gives us significant insights about the process.¹³⁹¹ The positive feedbacks of the interviewees could be related to the CVR’s careful design of the settings. As previously mentioned, the testifiers were provided psychological assistance before, during and after their participation. And the settings of the room were different from courts in which victim-survivors were not cross-examined and not questioned. These might give an idea that if the settings are well designed, more positive outcomes may arise from giving testimony.

¹³⁸⁶ *Ibid*, p.6.

¹³⁸⁷ *Ibid*, p.5.

¹³⁸⁸ *Ibid*, p.15.

¹³⁸⁹ *Ibid*, p.5.

¹³⁹⁰ Figueroa, A. and Barron, M. (2005) *Inequality, Ethnicity and Social Disorder in Peru*, Centre for Research on Inequality, Human Security and Ethnicity (CRISE) Working Paper 8, p.18.

¹³⁹¹ Laplante and Theidon, *Truth with Consequences*, p.239.

Although there was a consultation process with civil society before the establishment of the CVR, the scope of the consultation was criticised for being narrow. Arce notes that the CVR also received criticism regarding its members as some of the members had been associated with leftist parties. Therefore, President Toledo, increased the number of members from 7 to 12.¹³⁹² As mentioned earlier, Toledo included a congress member from Fujimori's political party and a retired military officer in the commission. Perhaps, Toledo, with these moves, wanted to depict that the commission was not biased. Yet, it still received criticism from political opponents (especially right-wing groups), the business sector and army officials. They argued that the final report of the commission was biased, and the army should not be held responsible, as it was protecting the country from terrorists. Likewise, they claimed that the army should not be blamed for its members' individual crimes.¹³⁹³ Moreover, the members of the CVR were criticised for not being suitable for the tasks of the commission. Eleven of the twelve members of the CVR were from Lima, and ten of them were men. Only two members could speak Quechua, and the commission lacked Quechua-Spanish translators.¹³⁹⁴ Selection of the members of a truth commission is important because if it does not represent the society, it may not be accepted by the public.

The way the CVR operated was explained in detail above because understanding its *modus operandi* is crucial to analyse it. This is true for all commissions as implementation of a mechanism is as important as its design. In addition, if adequate attention is not given to implementation of a mechanism, it may not serve its purpose even if it is designed properly. Moreover, its *modus operandi* can be enlightening for other countries.

3.2.b. Reparations

The reparation program in Peru was a significant component of the transitional justice process and it will be explained in this section. The Comprehensive Reparations Plan (Spanish acronym PIR) was prepared pursuant to the CVR's recommendations, and more than 40 workshops were held with victims' organisations by the reparation study group of the CVR to designate the needs and expectations of the victims.¹³⁹⁵ The CVR's recommendations clarify that the reparation plan seeks to achieve reconciliation and address the socioeconomic injustices in the country. So, reparations do not only aim to redress the past violations but also aim to eliminate structural

¹³⁹² Arce Arce, G. A. (2010) Armed Forces, Truth Commission and Transitional Justice in Peru, *International Journal on Human Rights*, Vol.7, No.13, p.30.

¹³⁹³ Arce Arce, *Armed Forces*, pp.33-35.

¹³⁹⁴ Peru Support Group, *Truth and Reconciliation*, p.12.

¹³⁹⁵ Waardt, M. (2013) Are Peruvian Victims Being Mocked: Politicization of Victimhood and Victims' Motivations for Reparations, *Human Rights Quarterly*, Vol.35, No.4, p.835.

injustices in terms of social, economic and cultural rights.¹³⁹⁶ Waardt also comments on this and states that reparations should not aim to restore the status quo ante unquestioningly. The former situation may not be just for some people if people had been suffering from poverty and structural injustices. She claims that reparations should aim to improve the circumstances and correct historical injustices at least partially.¹³⁹⁷ Moreover, Laplante and Theidon claim that the PIR has been the most comprehensive reparations plan regarding its inclusivity of beneficiaries and its design of wide-ranging types of reparations. In addition, the PIR implicitly states that reparations aim to ensure sustainable peace and national reconciliation.¹³⁹⁸

The CVR's reparations plan designated six types of reparations: symbolic reparations, reparations in health, reparations in education, restoration of citizens' rights, economic reparations and collective reparations.¹³⁹⁹ Symbolic reparations included public gestures, memorials and acts of recognition which aimed to foster reconciliation and solidarity among the Peruvian society.¹⁴⁰⁰ Reparations in health were designed to redress the affected people and assist them to recover both mentally and physically. Reparations regarding education included scholarships, exemptions from tuition fees and adult education programs to provide recipients opportunities in their education.¹⁴⁰¹ According to the CVR's plan, reparations regarding restoration of citizens' rights aimed to empower victims to get equal footing with other citizens regarding their civil and political rights. These reparations encompass normalising the legal situations of people who were disappeared or were subjected to arrest warrants, abolishing legal, police and criminal records, and providing legal assistance.¹⁴⁰² Economic reparations aimed to compensate the victims of the sufferings caused by the conflict. These included both monetary reparations and non-monetary reparations in the form of services.¹⁴⁰³ Lastly, the goal of collective reparations is to achieve the reconstruction and consolidation of communities which were affected by the conflict. Collective reparations included: consolidation of institutions; restoration and reconstruction of productive infrastructure; restoration and expansion of basic services; and employment and income generation.¹⁴⁰⁴ Suchkova comments

¹³⁹⁶ Correa, C. (2013) *Reparations in Peru From Recommendations to Implementation*, New York: International Center for Transitional Justice, p.5.

¹³⁹⁷ Waardt, *Peruvian Victims Being Mocked*, p.836.

¹³⁹⁸ Laplante and Theidon, *Truth with Consequences*, p.234.

¹³⁹⁹ The CVR, *Hatun Willakuy*, pp.309-311.

¹⁴⁰⁰ *Ibid*, p.310.

¹⁴⁰¹ *Ibid*, p.310.

¹⁴⁰² *Ibid*, p.310.

¹⁴⁰³ *Ibid*, pp.310-311.

¹⁴⁰⁴ The CVR, *Hatun Willakuy*, p.311.

that Peru's collective reparations program was considered as one of the most developed ones in the world.¹⁴⁰⁵

In fact, the reparation program shows that the state acknowledged structural inequalities in social, economic and political terms in Peru. These inequalities were the basis of the PCP-SL's argument for the revolution, and the state admitted these wrongs and designed a plan to tackle them. In a way, the PCP-SL arguments were acknowledged by the state. Interestingly, the critics of the truth commission (the army and the right-wing) mostly focused on the accusations against the security forces rather than the acknowledgement of these inequalities.¹⁴⁰⁶ Perhaps, it was understood that ignoring these inequalities will not benefit the country in the future. Moreover, it can be comprehended that these reparations were used as a tool to address ESCR violations (the right to health, the right to education and the right to an adequate standard of living etc.) in Peru. The state also attempted to eliminate historical inequalities which were considered as a discrimination in the enjoyment of ESCR.

The CVR made recommendations regarding the funding of the reparations program. The commission remarks that the state is responsible for funding the reparations and it advises the establishment of a National Reparations Fund. According to the CVR, the national budget and extraordinary resources such as corruption-related money which is repatriated would be the primary sources of this funding. The CVR also remarks that the international community's contribution would be significant for the reparations program.¹⁴⁰⁷ Baldo and Magarrell consider Peru as a good example regarding states' responsibility for reparations. The state accepted full responsibility for the reparations in Peru, acknowledging that it could not protect its citizens. So, regardless of the perpetrators, all the victims will be granted reparations by the state.¹⁴⁰⁸

Following the CVR's recommendations, the government attempted to commence the implementation of the reparations program, but the steps taken were limited. In 2004, the High Level Multisectoral Commission (Spanish acronym CMAN) was formed to design the reparations plan but it was not provided adequate funding and administrative power¹⁴⁰⁹ due to the absence

¹⁴⁰⁵ Suchkova, M. (2011) *The Importance of a Participatory Reparations Process and its Relationship to the Principles of Reparation*, University of Essex, Transitional Justice Network, Reparations Unit, Briefing Paper No.5, p.13.

¹⁴⁰⁶ Root, *Transitional Justice in Peru*, pp.93-97.; Segura, *Reparations and Displacement in Peru*, p.9.; Arce Arce, *Armed Forces*, pp.29-33.

¹⁴⁰⁷ The CVR, *Hatun willakuy*, p.312.

¹⁴⁰⁸ Baldo, S. and Magarrell, L. (2007) *Reparation and the Darfur Peace Process: Ensuring Victims' Rights*, New York: International Center for Transitional Justice, p.15.

¹⁴⁰⁹ Correa, *Reparations in Peru*, p.5.

of political will and commitment.¹⁴¹⁰ The full version of the reparations program became law in 2005 and an executive decree detailed the law in 2006. A reparation council was formed under this law to identify beneficiaries and complete their registration.¹⁴¹¹ It is important to note that two types of beneficiaries were classified in the plan, individuals and collectives. According to this definition, peasant and native communities and settlements were recognised as being “collectively affected by the armed conflict through scorched-earth strategies, forced displacement, destruction of local institutions and loss of local private and public infrastructure, such as land, cattle and houses, community houses and community services.”¹⁴¹² This is important because recognition of communities as beneficiaries can pave the way for repairing the damages of these communities.

The PIR’s definition of victim was quite inclusive as it considered the victim of a violation regardless of the perpetrator and the victim’s affiliations. The definition excluded only the guerrilla members who were harmed during a battle by taking up arms against the state. Otherwise, even guerrilla members who were subjected to violations when they were not fighting could be considered as victims.¹⁴¹³ However, when the reparation plan was passed into law, the definition of victim was changed, and the new definition did not include convicted guerrilla members even though they were subjected to human rights abuses.¹⁴¹⁴ They were excluded because they took up arms against the state. Likewise, most of the Peruvians thought that these people did not deserve reparations as they considered ex-guerrillas as enemies.¹⁴¹⁵ Yet, this limitation was overturned in 2016 to eliminate the discrimination of some victims, and victims of the both sides of the conflict were entitled to receive reparations.¹⁴¹⁶

In fact, narrowing the definition of the victims was not the only problem with the new reparations law. There were other administrative, financial, political and logistical problems which affected the implementation of the program. Waardt explains that identifying the victims and determining the scope of reparations were onerous. Although the government launched the General Victims’ Registry, there were problems regarding the identification and registration of victims and the designation of individual reparations. For instance, the decree put some age limits for the beneficiaries (the beneficiaries had to be older than 65 years old and in some cases

¹⁴¹⁰ *Ibid*, p.21.

¹⁴¹¹ *Ibid*, p.6.

¹⁴¹² Garcia-Godos, *Victim Reparations*, p.76.

¹⁴¹³ Garcia-Godos, *Victim Reparations*, p.75.

¹⁴¹⁴ Waardt, *Peruvian Victims Being Mocked*, p.837.

¹⁴¹⁵ Garcia-Godos, *Victim Reparations*, p.79.

¹⁴¹⁶ Human Rights Watch - HRW (2017) *World Report 2017: Events of 2016*, New York: Seven Stories Press, pp.480-484.

the limit was 80) and some monetary limits to reparations (the maximum amount was 10,000 nuevos soles, which is about \$3847). Moreover, many victims were in rural areas and they did not have the means to travel to registration offices, and they lacked the necessary legal information to claim reparations.¹⁴¹⁷ Waardt criticises the implementation of the reparations program for not treating victims equally as the government created hierarchy among victims by prioritising the elderly over other victims.¹⁴¹⁸ Moreover, the government postponed the implementation of individual economic reparations a few times; then, it was said that it will be implemented after the completion of the registration of the victims by December 2011.¹⁴¹⁹ In 2011, Humala was elected to the presidency and the government started paying individual reparations. 287,260,779 soles (approx. \$88,789,586) was paid to 82,721 individual victims from 2011 to 2016 according to the CMAN's annual report. The report notes that there are 4199 pending cases for individual reparations.¹⁴²⁰

The implementation of collective reparations led to debates in Peru. Waardt explains that the state has not recognised the victims properly, and the way the government planned to grant collective reparations could easily be considered as the provision of basic services arising from general obligations of the state.¹⁴²¹ For instance, Toledo pledged to spend 800 million US dollars and promised some extra spending for Ayacucho and other regions which were affected by the conflict most. However, he did not clarify whether this spending was related to reparations.¹⁴²² White explains that reparation programs must be differentiated clearly from other development spending which concerns providing and enhancing basic social services, as reparations have a distinct purpose of compensating past abuses to give victims a sense of justice.¹⁴²³ It must be noted that reparations are different from development plans because reparations refer to the acknowledgement of the sufferings of the victims. Reparations show that the past violations are acknowledged and addressed by the state.¹⁴²⁴ Development spending and basic services, on the other hand, plan to eradicate poverty and enhance the living conditions of people regardless of past violations.

¹⁴¹⁷ Waardt, *Peruvian Victims Being Mocked*, p.838.

¹⁴¹⁸ *Ibid*, p.840.

¹⁴¹⁹ *Ibid*, pp.838-839.

¹⁴²⁰ High Level Multisectorial Commission (Comision Multisectoral de Alto Nivel-CMAN) Annual Report (2016), p.21.

¹⁴²¹ Waardt, *Peruvian Victims Being Mocked*, p.839.

¹⁴²² Peru Support Group, *Truth and Reconciliation*, p.40.

¹⁴²³ White, G. D. (2009) Displacement, decentralisation and reparation in post-conflict Peru, *Forced Migration Review*, No.33, p.44.

¹⁴²⁴ Mobekk, *Transitional Justice and Security Sector Reform*, p.62.

Reparations are quite important in the Peruvian context as a majority of the victims are impoverished and the effects of the conflict on them were destructive. So, in order to let them break the cycle of poverty, they need monetary reparations – both individual and collective. Waardt also reiterates that the socioeconomic profile of the victims is important regarding reparations. In other countries such as Northern Ireland, Argentina or Brazil, the victims did not accept reparations, considering them as blood money. However, in Peru, victims prioritise reparations as their socioeconomic conditions have been poor.¹⁴²⁵ It is noted that the socioeconomic profile of the victims has an important impact on their demands and choices. For instance, some Argentinian mothers of the disappeared rejected the compensation as they demanded retributive justice. Yet, this was not an option for many Peruvian victims who had been struggling with poverty for quite a long time.¹⁴²⁶ In short, reparations have an important role to play in the Peruvian context.

Understanding the motives of the victims for wanting reparations is necessary to analyse the reparations scheme in Peru. Waardt describes five motivations of the victims regarding reparations based on in-depth interviews with members of various victim associations.¹⁴²⁷ The first: Many victims were stigmatised by authorities or the public and being registered as a victim and receiving reparations prove that they were not terrorists.¹⁴²⁸ The second: Some victims expect benefits in return for participating in public hearings.¹⁴²⁹ The third: Some victims think that the state failed in its obligation to protect them.¹⁴³⁰ The fourth and fifth motivations are related to the victims' associations and their leaders. These groups made great effort for the rights of the victims and they consider reparations as "proof of associations' right to participate and to exist".¹⁴³¹ In short, reparations carry various meanings which go beyond the material benefits.

Peruvian victims have a strong desire for reparations. Theidon and Laplante's research depicts that all the interviewees remarked that they want reparations, whereas they did not all expect criminal investigations and trials.¹⁴³² Likewise, Arce depicts a survey, which was conducted in 2007 in different regions of Peru, which shows that people prioritise economic reparations and development of the poor regions over prosecution of the perpetrators of human rights abuses.

¹⁴²⁵ Waardt, *Peruvian Victims Being Mocked*, p.848.

¹⁴²⁶ Laplante and Theidon, *Truth with Consequences*, p.243.

¹⁴²⁷ Waardt, *Peruvian Victims Being Mocked*, p.840.

¹⁴²⁸ *Ibid*, pp.841-842.

¹⁴²⁹ *Ibid*, p.843-844.

¹⁴³⁰ *Ibid*, p.844-845.

¹⁴³¹ *Ibid*, p.845-846.

¹⁴³² Laplante and Theidon, *Truth with Consequences*, p.240.

This prioritisation was the same in every region from Lima to Ayacucho.¹⁴³³ Although we cannot generalise the result of this research, it still carries significant implications about the victims' desires. The authors remark that whilst the Peruvian victims seem to prioritise reparations over criminal justice and trials, this should not be interpreted as them not having any demands for justice. In fact, this is a complicated subject. Justice is often equated with trials, but it has many forms.¹⁴³⁴ Reparations may also be considered as a form of justice for some victims. Indeed, once again the importance of consultation with victims comes to the fore, as the context may determine the perceptions of justice. In some contexts, symbolic or material reparations may give victims a sense of justice being done, while in others, victims may not be satisfied without trials. That is why understanding the context and finding out the demands of the people is crucial to achieve reconciliation. Moreover, the demands vary even in a specific context. For some victim groups, trials might be considered as a necessary condition to achieve reconciliation.

3.2.c. Trials

Retributive justice is an important component of transitional justice processes. Some countries prefer international tribunals whereas others conduct prosecutions in their own justice systems. Peru conducted investigations and trials in its national justice system. In fact, Peru is the first country to prosecute and convict a democratically elected president (Fujimori) in its own justice system for human rights violations.¹⁴³⁵ Several presidents (Jorge Videla, Isabel Martinez de Peron and Roberto Viola) were convicted before him but they were not democratically elected leaders like Fujimori.¹⁴³⁶

In 2009, Fujimori was prosecuted by the Special Criminal Chamber of the Supreme Court for the involvement in human rights abuses and sentenced to 25 years.¹⁴³⁷ Fujimori was only convicted for the Barrios Altos and La Cantuta massacres and two kidnappings, not for other crimes.¹⁴³⁸ The court stated that these massacres were committed against civilians by death squad Grupo Colina which was "hierarchically subordinate to the organized apparatus of power under the control and will of" Fujimori.¹⁴³⁹ These massacres were considered as crimes against humanity.¹⁴⁴⁰ It must be noted that the court also ordered Fujimori to pay reparations to the

¹⁴³³ Arce Arce, *Armed Forces*, p.39.

¹⁴³⁴ Laplante and Theidon, *Truth with Consequences*, p.242.

¹⁴³⁵ Root, *Transitional Justice in Peru*, p.8.

¹⁴³⁶ Mendez, J. E. (2010) Significance of the Fujimori Trial, *American University International Law Review*, Vol.25, No.4, pp.650-651.

¹⁴³⁷ Sullivan, A. (2010) The Judgment Against Fujimori for Human Rights Violations, *American University International Law Review*, Vol.25, No.4, p.664.

¹⁴³⁸ Sullivan, *The Judgment Against Fujimori*, pp.834-836.

¹⁴³⁹ *Ibid*, p.678.

¹⁴⁴⁰ Sullivan, *The Judgment Against Fujimori*, p.802.

victims of massacres and disappearances for the pecuniary and non-pecuniary damages.¹⁴⁴¹ Burt thinks that Fujimori's trial is significant as it was done in domestic tribunals which allowed greater local acceptance of the trial, and Peru showed its citizens that its justice system can prosecute even the most powerful.¹⁴⁴² Fujimori's trial can be considered as a message to the people that everyone is equal before the law.

In addition to Fujimori's, more trials were conducted against the army officials and insurgents. Some high-ranking members of the state including three former army generals were also convicted and sentenced for murders and enforced disappearances.¹⁴⁴³ Root remarks that these trials were mostly considered as successful¹⁴⁴⁴ but the HRW considers that the trial process was not very successful as the vast majority of the perpetrators of the human rights abuses have not been put on trials as of 2017.¹⁴⁴⁵ These kinds of debates are common in transitional contexts because the expectations from people of the transitional justice mechanisms are different and, as a result, their evaluations are different. It must be reiterated that human rights violations were not investigated acutely during the conflict in Peru, and perpetrators of these crimes enjoyed impunity as the judicial system often abetted them.¹⁴⁴⁶ So, considering the pervasive impunity in the past, these trials can be considered as important steps to end impunity in Peru.

Considering the post-conflict circumstances of the country is also important when it comes to analyse the transitional justice efforts. Laplante and Theidon draw attention to some difficulties of pursuing criminal justice in Peru. They note that after 20 years of civil war and authoritarian rule, there was not a fully functioning legal system in Peru and people did not have much trust in state institutions as these institutions failed to protect them during the conflict. In addition, people did not have adequate resources to pursue criminal justice. Even the human rights organisations lack these resources and they admit that they only file the most heinous perpetrators and the most symbolic cases.¹⁴⁴⁷ There have been other problems regarding the trials: delays in trials due to legal technicalities which are often brought forward by defence lawyers, stalls in proceedings due to the lack of the cooperation of the armed forces, absence of a witness protection program and failure of some judges to abide by international jurisprudence.¹⁴⁴⁸ Despite these disadvantageous circumstances, Peru's trials could be regarded

¹⁴⁴¹ *Ibid*, p.837.

¹⁴⁴² Burt, *Guilty as Charged*, p.403.

¹⁴⁴³ HRW, *World Report 2017*, pp.480-484.

¹⁴⁴⁴ Root, *Transitional Justice in Peru*, p.8.

¹⁴⁴⁵ HRW, *World Report 2017*, pp.480-484.

¹⁴⁴⁶ Burt, *Guilty as Charged*, p.385.

¹⁴⁴⁷ Laplante and Theidon, *Truth with Consequences*, pp.243-244.

¹⁴⁴⁸ Burt, *Guilty as Charged*, p.404.

as successful to some extent as the president and several high-ranking military officials were convicted.

In the previous section, the importance of reparations was emphasised considering the socioeconomic circumstances of the victims, but this should not give an impression that trials are not important for victims in Peru. Laplante and Theidon's research depicts that some sectors of society in Peru have been seeking prosecutions for a long time.¹⁴⁴⁹ The authors note that in Chile and South Africa, victims still sought prosecutions in the long run after receiving reparations.¹⁴⁵⁰ It is important to understand that some form of justice will be necessary for people. And although other mechanisms may also give victims a sense of satisfaction, trials are important to fight impunity.

As indicated previously, the truth commission submitted its report not only to the president and the parliament but also to the National Chief Prosecutor's Office. In addition, the CVR handed over the evidence regarding about 47 cases to the Public Prosecutor's Office to prompt trials and the investigations were commenced by the office.¹⁴⁵¹ Yet, the success of these investigations was very limited as the Ministry of Defence has been reluctant to provide information.¹⁴⁵² Nevertheless, these efforts show that the commission also regarded trials with importance.

3.2.d. Institutional reforms

Institutional reforms are important for a sustainable peace and prevention of future abuses. The CVR designated various institutional reforms in its report as recommendations. It stated that "[t]he proposal for institutional reforms is aimed at modifying the conditions that led to and exacerbated the internal conflict."¹⁴⁵³ Before making the recommendations, the commission acknowledges that the absence of state presence in certain regions (mainly highlands), the state's insufficient response to protect people from subversive organisations, and the judicial system's failure of protecting the rights of the victims, had impacts on the course of events.¹⁴⁵⁴ In a way, people were left vulnerable against the subversive groups. The CVR notes that "subversion was unable to take root in places where there was a greater state presence and a more solid political and social fabric."¹⁴⁵⁵ In addition to the absence of state presence in various regions, Burt noted that the state institutions in general were damaged because of the

¹⁴⁴⁹ Laplante and Theidon, *Truth with Consequences*, p.243.

¹⁴⁵⁰ *Ibid*, p.249.

¹⁴⁵¹ Arce Arce, *Armed Forces*, p.36.

¹⁴⁵² *Ibid*, p.38.

¹⁴⁵³ The CVR, *Hatun Willakuy*, p.304.

¹⁴⁵⁴ *Ibid*, pp.304-305.

¹⁴⁵⁵ *Ibid*, p.304

authoritarian rule and corruption.¹⁴⁵⁶ The commission acknowledged the responsibility of the state and designated numerous recommendations to tackle these deficiencies and problems.

Recommendations regarding institutional reforms were composed of: strengthening the presence of democratic authority; consolidating democratic institutions; the reform of the judicial system; and educational reform to foster democratic values. The first set of recommendations aimed at enhancing democracy in the country and empowering the previously marginalised people. The second set of recommendations aimed at reforming the security forces – the military and the police. The third set of recommendations focused on reforming the judicial system to ensure that the system conforms to the human rights. The last set of recommendations focused on educational reform because it can provide an environment for both students and adults which would enable them to restore their dignity and opportunities in life.¹⁴⁵⁷

These recommendations were put in practice by the following government actions. First of all, many members of the armed forces were dismissed because of their involvement in corruption, bribery and human rights abuses. Many of them, including high-ranking officials, were put in jail.¹⁴⁵⁸ Likewise, more than 80 major generals and admirals were forced to retire by the government.¹⁴⁵⁹ Arce notes that the public exposure of the corruption network made it easier to purge military leaders in Peru.¹⁴⁶⁰ As these people were identified with a corruption network, their dismissals did not trigger reactions among the public. Additionally, after another document showing the army commanders and other high-ranking officials who had supported Fujimori's self-coup, they were forced by the new transitional government to retire.¹⁴⁶¹ The vetting of the corrupt military officials should be considered as an important step to fight impunity as these officials had enjoyed impunity for 20 years. This promises that human rights violations will not be tolerated in the future.

Reforms in the security sector are also significant to ensure that security forces will not enjoy impunity and they are under scrutiny of democratic government. It is noted that a commission was founded to design a military reform by the president Paniagua which would help to reform the corrupted army and military courts, and this commission published a report to make

¹⁴⁵⁶ Burt, *Guilty as Charged*, p.388.

¹⁴⁵⁷ The CVR, *Hatun willakuy*, pp.305-309.

¹⁴⁵⁸ Root, *Transitional Justice in Peru*, p.66.

¹⁴⁵⁹ Arce Arce, *Armed Forces*, p.29.

¹⁴⁶⁰ *Ibid*, p.28.

¹⁴⁶¹ *Ibid*, p.29.

recommendations. Following this report, the budget of the Defence Ministry was cut \$424 million, the number of high-ranking officers in the military was decreased, and military courts were transformed.¹⁴⁶² Yet, Root claims that the state was unable to make fundamental reforms to transform the civil-military relations in Peru, because the military was still powerful, and it has strong public support. She considers this as a disappointment for Peru.¹⁴⁶³

3.2.e. *Amnesties*

Amnesties have always been controversial in transitional contexts. As explained in the first chapter, advocates claim that amnesties foster reconciliation and peace, whereas opponents think that they promote impunity. Hence, they are detrimental to post-conflict situations. It must be acknowledged that amnesties have often been used to escape from prosecutions in many countries. Fujimori also enacted several amnesty laws for security forces during his presidency.¹⁴⁶⁴

Although the Fujimori regime passed amnesty laws to protect security forces from trials for the human rights abuses they committed, the Inter-American Court decided that: “Self-amnesty laws lead to the defenselessness of victims and perpetuate impunity; therefore, they are manifestly incompatible with the aims and spirit of the Convention.”¹⁴⁶⁵ The court also stated “that Amnesty Laws No. 26479 and No. 26492 are incompatible with the American Convention on Human Rights and, consequently, lack legal effect.”¹⁴⁶⁶ The court made clear that self-amnesty laws including Fujimori’s laws are not valid. The decision of the court was important as the victims were denied searching for justice because of these self-amnesty laws. After the Court’s decision, the Peruvian Supreme Court abrogated the self-amnesty law and this meant the human rights violations committed by the security forces could be investigated and prosecuted after a long time.¹⁴⁶⁷ Repeated attempts have been made to enact amnesty laws for members of the security forces accused of human rights abuses in 2008¹⁴⁶⁸ and 2010¹⁴⁶⁹ but they

¹⁴⁶² Root, *Transitional Justice in Peru*, p.68.

¹⁴⁶³ *Ibid*, p.162.

¹⁴⁶⁴ Crandall, *Truth Commissions in Guatemala And Peru*, p.12.

¹⁴⁶⁵ Inter-American Court of Human Rights, Case of Barrios Altos v. Peru, (Judgment of March 14, 2001), par.43.

¹⁴⁶⁶ *Ibid*, par.51.

¹⁴⁶⁷ Root, *Transitional Justice in Peru*, p.66.

¹⁴⁶⁸ Amnesty International, (7 November 2008) Peru: Amnesty Bill Setback to Human Rights. Available at: <https://www.amnesty.org/en/press-releases/2008/11/peru-amnesty-bill-setback-human-rights-20081107/> (access date: 30.07.2018).

¹⁴⁶⁹ Amnesty International, (15 September 2010) Peru revokes law denying justice for victims of past crimes. Available at: <https://www.amnesty.org/en/latest/news/2010/09/peru-deroga-ley-niega-justicia-victimas-crimes-pasado/> (access date: 30.07.2018).

were revoked.¹⁴⁷⁰ Yet, overthrowing amnesty laws does not mean that there is no impunity. During the transitional period, Peru did not grant an official amnesty to the perpetrators but the obstacles in the path of prosecutions led to a de facto impunity in the country apart from very few exceptions. These obstacles have been posed by the military and political actors.¹⁴⁷¹ To conclude, amnesties in the Peruvian context aimed to ensure impunity rather than contribute to reconciliation. Amnesties were explained in the first chapter in detail, and it can be said that they can be useful to promote reconciliation if applied carefully but this was not the case with Peru's amnesties.

3.3. ESCR and development

After explaining the historical background of civil war and transitional justice process thoroughly, the socioeconomic dimension of the subject will be illustrated in this section. Focusing on this dimension is necessary in relation to the research question of the thesis. Violations of ESCR are often left un(der)addressed compared to violations of CPR. Yet, redressing ESCR violations is as important as redressing violations of CPR, as described in the second chapter. Therefore, this section will concentrate on the violations of socioeconomic rights and significance of redressing them in the Peruvian context. Waardt states that it is critical to understand the socioeconomic dimension to analyse the conflict in Peru as there had been structural injustices prior to the conflict and this reflected in the victim profiles. The most affected victims belonged to the most vulnerable segment of society.¹⁴⁷²

3.3.a. Historical background of ESCR

Returning to the historical background of the socioeconomic disparities, Peruvian society had long been divided, and indigenous peoples who inhabited the rural areas had been ignored and marginalised by the state politically and socioeconomically. Barron explains that the marginalisation of the indigenous people dates to the colonial period. After invading the country, the Spanish relocated indigenous people, largely from farming to mining areas, and dismissed them from their most productive lands, moving them to least productive ones or to none. In addition to disrupting the economic system of the indigenous people, they were forced to pay heavy taxes for simply being indigenous which did not benefit them at all in return. Finally, the Spanish precluded indigenous people from formal education which prevented them from investing in their human capital.¹⁴⁷³ Barron also notes that the effects of this marginalisation

¹⁴⁷⁰ Burt, *Guilty as Charged*, p.404.

¹⁴⁷¹ Laplante and Theidon, *Truth with Consequences*, p.244.

¹⁴⁷² Waardt, *Peruvian Victims Being Mocked*, pp.834-835.

¹⁴⁷³ Barron, M. (2008) Exclusion and Discrimination as Sources of Inter-Ethnic Inequality in Peru, *Economía*, Vol.31, No.61, p.53.

continued after independence because landholding and literacy were requirements for voting in Peru and this left the majority of indigenous people politically powerless.¹⁴⁷⁴ So, the marginalisation and exclusion of indigenous people had been a protracted phenomenon in Peru, and it could be inferred that these policies left indigenous people without agency. They were disenfranchised and impoverished. Unfortunately, the conflict exacerbated the circumstances of the already poor populations as they were the ones who were affected most by the conflict. The disparities between the indigenous and non-indigenous peoples still prevail in Peru, although the economy has been progressing after the end of the conflict.¹⁴⁷⁵

Therefore, the commissioners of the CVR remarked that the divisions in society, and the marginalisation and neglect of indigenous communities played a role in the conflict.¹⁴⁷⁶ The final report explains that poverty was one of the sparking factors – rather than being the only factor – for the outbreak of the conflict. Moreover, just like poverty, inequality has had a significant importance in Peruvian society and this inequality was not limited to wealth. There was also unequal distribution of political and symbolic powers which left indigenous and poor populations voiceless and powerless. That was why the subversive organisations could attract these people by offering a discourse that promised them voice and agency.¹⁴⁷⁷ Yet, it should be clarified that although indigenous people were marginalised, and they were the initial target of the PCP-SL, this was not an ethnic conflict. The commission states that there was no evidence to prove that this was an ethnic conflict.¹⁴⁷⁸ This is because the PCP-SL's recruitment did not rely on ethnicity, and the discourse of the PCP-SL was established on class lines as poor vs. rich rather than on ethnic differences.¹⁴⁷⁹ In fact, less than a quarter of the captured guerrillas were of indigenous origin.¹⁴⁸⁰

Since the subversive groups were active in these poor communities, most of the damages of the conflict took place in these regions. The final report depicts that the vast majority of the deaths and forced disappearances took place in Ayacucho, Junín, Huánuco, Huancavelica and Apurímac which had been reported as the poorest departments of the country. The poorest departments

¹⁴⁷⁴ Barron, *Exclusion and Discrimination*, pp.53-54.

¹⁴⁷⁵ It should be noted that these two groups are not formed clear-cut and the boundaries between them are blurred.

¹⁴⁷⁶ Root, *Transitional Justice in Peru*, p.74.

¹⁴⁷⁷ The CVR, *Hatun Willakuy*, pp.248-249.

¹⁴⁷⁸ *Ibid*, p.5.

¹⁴⁷⁹ Thorp, R., Caumartin, C. and Gray-Molina G. (2006) Inequality, Ethnicity, Political Mobilisation and Political Violence in Latin America: The Cases of Bolivia, Guatemala and Peru, *Bulletin of Latin American Research*, Vol.25, No.4, p.455.

¹⁴⁸⁰ Figueroa and Barron, *Inequality, Ethnicity and Social Disorder*, p.18.

were the most vulnerable and affected parts of the country.¹⁴⁸¹ More than 40% of the deaths took place in Ayacucho, and 85% of them were reported in the five departments mentioned above.¹⁴⁸² The populations of these departments were already living in disadvantaged circumstances and the conflict exacerbated their lives. This was also the case in the Kurdish Question as depicted in the third chapter. The conflict mostly affected the Kurdish region which has been marginalised historically. The Kurdish region has been among the poorest parts of Turkey and the Kurds living in the region had already been struggling with socioeconomic problems prior to the conflict.

Portocarrero conducted a research with women in Ayacucho and the findings of the research stand as an example of the socioeconomic abuses during the conflict. The Peruvian security forces and the insurgent groups violated ESCR of the people in Ayacucho by taking over their homes, lands and animals. They forced people to flee to the cities or to the mountains. The victims were dispossessed as their homes and their means of livelihood were taken away from them. This exacerbated the poverty of victims.¹⁴⁸³ These activities of the security forces and insurgent groups clearly violated the right to housing, the right to an adequate standard of living and the right to work of these people as they lost their homes and means of livelihood. Furthermore, the powerful elites were criticised for being indifferent about the sufferings of these people because their negligence allowed the abuses to take place.¹⁴⁸⁴ These people had been marginalised for a long time, and they did not have agency in the society to prevent/stop these massacres as they were left powerless. The conviction of Fujimori is significant in this regard, as it shows that the victims of the La Cantuta and Barrios Altos massacres were considered as equal citizens. This conviction depicted that the victims were also human beings and killing them unlawfully constituted crimes against humanity.

3.3.b. Socioeconomic consequences of the conflict

The CVR's final report explains that there were three types of consequences of the conflict: psychological, socio-political and economic. Psychological consequences occurred because the conflict damaged people's identity, family and community. Socio-political consequences were about the deterioration of communal life and the breakdown of the democratic order in Peru. The economic consequences of the conflict were the loss of infrastructure and opportunities

¹⁴⁸¹ The CVR, *Hatun Willakuy*, pp.14-15.

¹⁴⁸² Peru support group, *Truth and Reconciliation*, p.5.

¹⁴⁸³ Portocarrero, S. (2012) A Case Study of the Effects of Participation in an Organization in the Lives of Women: Post-Conflict Ayacucho, Peru, *Berkeley Undergraduate Journal*, Vol.25, No.2, pp.105-106.

¹⁴⁸⁴ Laplante and Theidon, *Truth with Consequences*, p.233.

and the devastation of the production capacity and resources.¹⁴⁸⁵ Looking at socio-political and economic consequences of the conflict is important to understand the socioeconomic dimension of the conflict.

The communities were affected by the conflict as individuals. The conflict damaged the social bonds which should have been providing support and protection to community members. The report describes that communal life was disrupted because of fear, and cultural events, traditions and festivals were largely abandoned because of the fear of attacks.¹⁴⁸⁶ Portocarrero's study depicts that the conflict had serious societal impacts as community ties and trust in others were destroyed. Indigenous people, especially, were marginalised for being considered as potential "terrorists".¹⁴⁸⁷ Violence has become a way of dealing with problems, and many people admitted that they suffer from aggressiveness.¹⁴⁸⁸ It was noted that families would break-down when they lost family members, or they suffered other types of losses. Families fled to other places to survive but they were scattered, and it was difficult for them to adapt to new places.¹⁴⁸⁹ So, addressing these problems is a must to achieve reconciliation. Healing traumas of the individuals, reconstruction of the community bonds and rebuilding trust are necessary to overcome these problems.

Economic consequences of the conflict were disastrous for already impoverished populations. Men constituted 80% of the total deaths and disappearances during the conflict,¹⁴⁹⁰ and this meant many families lost their primary source of income, and also meant many widows and orphans. The commission explained that the economy was severely deteriorated because of the conflict, particularly in Ayacucho and Huancavelica which were the most affected regions.¹⁴⁹¹ Moreover, not only the people but the entire country's economy was affected. Root notes that the country's GDP decreased 12.3% in 1989 alone and salaries of white-collar and blue-collar workers decreased by 47.6% and 55% respectively between 1985 and 1989.¹⁴⁹² The funds which could be invested in the poor communities were allocated to the security sector and ordinary people had to bear the consequences.

¹⁴⁸⁵ The CVR, *Hatun Willakuy*, p.262.

¹⁴⁸⁶ *Ibid*, pp.264-265.

¹⁴⁸⁷ Portocarrero, *A Case Study in Ayacucho*, pp.106-107.

¹⁴⁸⁸ The CVR, *Hatun Willakuy*, pp.274-275.

¹⁴⁸⁹ *Ibid*, p.264

¹⁴⁹⁰ *Ibid*, p.37.

¹⁴⁹¹ The CVR, *Hatun Willakuy*, p.283.

¹⁴⁹² Root, *Transitional Justice in Peru*, p.25.

3.3.c. Current socioeconomic problems

Analysing the socioeconomic settings in post-conflict Peru can provide useful insights to understand the need of addressing socioeconomic abuses in the transitional process. This analysis can depict the important problems in the society so that they can be tackled through transitional justice mechanisms. First of all, the Peruvian economy has been growing rapidly since 2001 and it has become one of the largest economies in Latin America.¹⁴⁹³ From 2004 to 2015, there has been a significant decrease in poverty rates as moderate poverty was reduced from 58% to 22% and extreme poverty from 16% to 4%.¹⁴⁹⁴ However, the rate of the decline in poverty was different for non-indigenous and indigenous populations (61% and 41%). Since the decline of poverty was smaller for indigenous people, the difference between the two groups regarding the poverty incidence was widened.¹⁴⁹⁵ Gambetta analyses the 2003-2008 period and claims that poor households had not benefited from the fruits of the good economic performance equally due to the absence of efficient poverty reduction policies and social programs.¹⁴⁹⁶ According to the World Bank's data, moderate and extreme poverty are more extensive in the Andean and Amazonian regions where mainly indigenous people live, and rural areas have 80% of the extreme poor.¹⁴⁹⁷ The poverty rates are higher in rural areas, yet this does not exclusively mean that indigenous people are poorer because they are concentrated in rural areas. The World Bank's data reveals that there are disparities among indigenous and non-indigenous peoples in urban areas as well. Indigenous populations, even when they reside in urban areas, live in more disadvantaged circumstances in terms of health, education, employment and living conditions compared to non-indigenous urban people. That is why 31% of indigenous households are poor whereas this rate is 18% for non-indigenous households.¹⁴⁹⁸

The World Bank data depicts that human development levels were different in urban and rural areas. Child mortality and malnutrition rates and education outcomes were worse in rural areas.¹⁴⁹⁹ UNICEF's data depicts that there is a dramatic difference in poverty rates between indigenous (78%) and non-indigenous (40%) children and adolescents. Non-indigenous children and adolescents have better access to health, education and opportunities, and they have better

¹⁴⁹³ The World Bank Group Report (2017) *Systematic Country Diagnostic: Peru*, Report:112694-PE, p.9.

¹⁴⁹⁴ The World Bank Group Report, *Systematic Country Diagnostic: Peru*, p.12.

¹⁴⁹⁵ *Ibid*, p.43.

¹⁴⁹⁶ Gambetta, R. (2009) *A Note of Growth and Inequality in Peru, 2003-2008*, Munich Personal RePEc Archive (MPRA) Paper No. 16986, p.15.

¹⁴⁹⁷ The World Bank Group Report (2017) *International Bank for Reconstruction and Development International Finance Corporation and Multilateral Investment Guarantee Agency Country Partnership Framework for the Republic of Peru for the Period FY17-FY21*, Report No. 112299-PE, pp.5-6.

¹⁴⁹⁸ The World Bank Group Report, *Partnership Framework for Peru*, p.7.

¹⁴⁹⁹ The World Bank Group Report, *Systematic Country Diagnostic: Peru*, p.16.

living conditions compared to their indigenous peers.¹⁵⁰⁰ According to UNICEF's 2009 report, there is a considerable difference in children's situation regarding education and health between rural and urban settings. Children in urban centres are more likely to have better education, nutrition and health services compared to their peers in rural areas.¹⁵⁰¹ The Andean and Amazonian regions, especially, where indigenous populations mainly live, have the least developed conditions for children in terms of education, health and nutrition.¹⁵⁰² In addition, the stunting rate is higher for indigenous children compared to non-indigenous ones, and this also impacts their cognitive development and learning outcomes, which are also worse than their non-indigenous peers.¹⁵⁰³ Children who speak Quechua have lower school enrolment rates compared to Spanish-speaking children.¹⁵⁰⁴ These differences could be interpreted as discrimination in the enjoyment of ESCR, particularly the right to an adequate standard of living (poverty directly affects the standard of living), the right to health and the right to education of the indigenous people. Although transitional justice is not interested in generating economic growth or improving education and health services (which should be concerns of development), discrimination in the enjoyment of ESCR and failing to ensure the minimum core obligations of socioeconomic rights could be seen as a violation of these rights, and transitional efforts must contribute to redressing these violations. Transitional justice can play a diagnosing role in this, and it can trigger the state to eliminate inequalities and redress these violations.

The expenditure for education must be increased in Peru; otherwise, public schools in poor regions will provide a low-quality education which will not be able to equalise the opportunities of the children from different socioeconomic backgrounds.¹⁵⁰⁵ Results of international tests depict that there are still significant inequalities in education among different regions.¹⁵⁰⁶ Young indigenous people were the initial target of the PCP-SL as they had long been marginalised and disempowered. And the organisation was successful in radicalising and recruiting them.¹⁵⁰⁷ Addressing the poverty and development problems regarding children and adolescents is crucial

¹⁵⁰⁰ The United Nations Children's Fund (UNICEF), *Realizing the rights of indigenous children in MICs Experiences from Peru*. Available at: <https://www.unicef.org/peru/spanish/Realizing-the-rights-of-indigenous-children-in-MICs.pdf> (access date: 30.07.2018).

¹⁵⁰¹ The United Nations Children's Fund (UNICEF) and Instituto Nacional de Estadística e Informática (INEI) (2008) *Situation of Children in Peru: Executive Summary*, Lima, p.3.

¹⁵⁰² UNICEF and INEI, *Situation of Children in Peru*, pp.5-16.

¹⁵⁰³ The World Bank Group Report, *Systematic Country Diagnostic: Peru*, p.45.

¹⁵⁰⁴ UNICEF and INEI, *Situation of Children in Peru*, pp.17-18.

¹⁵⁰⁵ Jaramillo, M. and Saavedra, J. (2010) 'Inequality in Post-Structural Reform Peru: The Role of Market Forces and Public Policy' in López-Calva, L. F. and Lustig, N. (eds) *Declining Inequality in Latin America: A Decade of Progress*, Washington, DC.: Brookings Institution Press, p.237.

¹⁵⁰⁶ Jaramillo and Saavedra, *Inequality in Post-Structural Reform*, p.240.

¹⁵⁰⁷ Thorp et al., *Inequality, Ethnicity, Political Mobilisation*, p.469.

to prevent future conflicts and break intergenerational poverty; otherwise, poverty will be transmitted to future generations. Figueroa's Sigma theory provides important insights about the relationship between inequality, education and poverty.

According to the Sigma theory, inequalities in education, health, income and culture reproduce further inequalities for future generations. People who belong to marginalised and excluded groups in a society are born in a disadvantaged context in which their parents lack the necessary income to provide them enough nutrition, health care and education. The cognitive development of these people is not as good as their peers who belong to more advantaged groups. In addition to differences in their cognitive development, they receive a lower quality of education and health care. These also affect their capacities in investing their human capital. Moreover, if these marginalised groups speak their own language, they have a language barrier to survival in the market. They do not master the official language as others and this also sets them back.¹⁵⁰⁸ To illustrate, Figueroa mentions a study conducted in Peru's different regions which depicts that the degree of malnutrition negatively affects school performance.¹⁵⁰⁹ There are other studies which also show that malnutrition has detrimental impacts on school performance.¹⁵¹⁰ Barron notes that children from poor families have less education, both in years and in quality whereas this is the opposite for children from wealthy families. So, he concludes: "Poor people tend to remain poor and rich people tend to become richer."¹⁵¹¹ In short, belonging to a poor household means there is a higher risk of malnutrition which affects school performance. In addition, these children are more likely to have less schooling years and poor quality in education which also affects their human capital and income.

Although there are many problems to address to eliminate disparities in education, health and other social factors, there are also good examples showing that these problems can be solved. For instance, there has been progress in the learning outcomes of indigenous children between 2012 and 2014 through the joint work of the government and UNICEF. An intercultural education plan was introduced which provided educational materials in indigenous languages and teachers who would be responsible for bilingual education. As a result, there have been significant rises

¹⁵⁰⁸ Figueroa, A. (2008) *Education, Labour Markets and Inequality in Peru*, Centre for Research on Inequality, Human Security and Ethnicity (CRISE) Working Paper No.48, pp.11-13.

¹⁵⁰⁹ *Ibid*, p.29.

¹⁵¹⁰ Jyoti, D., Frongillo, E. and Jones, S. (2005) Food Insecurity Affects School Children's Academic Performance, Weight Gain, and Social Skills1-3, *The Journal of Nutrition*, Vol.135, No.12, pp.2831-2839.; Chandramouli, B. A., Rao Shobini, L. and Kar Bhoomika, R. (2008) Cognitive development in children with chronic protein energy malnutrition, *Behavioral and Brain Functions*, Vol.4, No.1, p.31.; Khanam, R., Nghiem, H. and Rahman, M. (2011) The Impact of Childhood Malnutrition on Schooling: Evidence From Bangladesh, *Journal of Biosocial Science*, Vol.43, No.4, pp.437-451.

¹⁵¹¹ Barron, *Exclusion and Discrimination*, p.66.

in indigenous language reading comprehension performances of children who belonged to different indigenous groups.¹⁵¹²

In addition to disparities in health and education, there is also a considerable difference in access to basic infrastructure in different regions of Peru. As of 2013, 17% of households had access to four basic services (water, sanitation, telephone and electricity) simultaneously in chronically poor districts, whereas it was 75% in non-chronically poor districts.¹⁵¹³ 64% of rural households have access to water, whereas the national average is 86%. Sanitation coverage is also different, as it is 44% in rural areas and 77% in national average.¹⁵¹⁴ It must be noted that there have been improvements in providing basic infrastructure and basic services, and the gap among different regions has been narrowed after the conflict by pro-poor policies.¹⁵¹⁵ Yet, it is suggested that there is still much to be done to eliminate the gap in access to these basic services and the inequalities in health, education and justice.¹⁵¹⁶

To conclude, disparities among rural and urban regions, and indigenous and non-indigenous peoples must be eliminated. These inequalities had been one of the causes of the conflict, and they had been consequences of the conflict likewise. To redress the past, they need to be included in the transitional justice and development agenda of Peru.

3.3.d. IDPs

Internal displacement has been one of the important consequences of the conflict. The CVR's final report remarks that displacement was widespread and massive, and it disrupted the daily lives of people, families and communities.¹⁵¹⁷ Displacement had many impacts on people's lives: they lost their homes, lands and means of income; education of children was disrupted; and IDPs had to establish a life from scratch at their destinations.¹⁵¹⁸ There are different figures on internally displaced persons in Peru. Perez-Leon-Acevedo stated that the figure was between half to one million,¹⁵¹⁹ National Committee for the Displaced estimated 430,000,¹⁵²⁰ and White

¹⁵¹² The United Nations Economic and Social Council, United Nations Children's Fund (2016) *Country programme document: Peru*, (E/ICEF/2016/P/L.28), par.9.

¹⁵¹³ The World Bank Group Report, *Systematic Country Diagnostic: Peru*, p.35.

¹⁵¹⁴ *Ibid*, p.36.

¹⁵¹⁵ Jaramillo and Saavedra, *Inequality in Post-Structural Reform*, p.234.

¹⁵¹⁶ *Ibid*, p.241.

¹⁵¹⁷ The CVR, *Hatun Willakuy*, p.275

¹⁵¹⁸ *Ibid*, p.276.

¹⁵¹⁹ Perez-Leon-Acevedo, J. P. (2016) Peruvian IDPs and the Search for Holistic Transitional Justice. Available at: <http://blogs.lse.ac.uk/humanrights/2016/06/29/peruvian-idps-and-the-search-for-holistic-transitional-justice/> (access date:30.07.2018).

¹⁵²⁰ Segura, *Reparations and Displacement in Peru*, p.5.

claimed that 600,000 people were displaced in the 1980s and 1990s because of the conflict.¹⁵²¹ It was noted that the figures are unclear because relatively few IDPs were registered officially.¹⁵²²

It is suggested that the government needs to assist the IDPs economically through credits and income-generating projects.¹⁵²³ Since most of the IDPs fled from rural areas where they engaged in agriculture, these people needed to make a living and their previous knowledge of agriculture did not help them to find jobs in cities. White asserts that IDPs have been dwelling in Lima and other cities in poor living conditions. They suffer from social, political, economic and cultural exclusion as they are not integrated into the society successfully. Moreover, they have been struggling to find jobs as 25% of them only spoke Quechua, 42% were illiterate, and 35% only had primary-level education.¹⁵²⁴

The CVR's report explains that some of the IDPs returned to their homes after the conflict, yet many of the returnees had to leave their homes once again due to the socioeconomic problems and insufficient support of the state.¹⁵²⁵ In addition to conflict-related displacements, some people have migrated to urban centres as there were no economic opportunities in the interior regions of Peru. And it is claimed that these people and IDPs will not go back to their hometowns unless the government provides economic opportunities and better education and health services.¹⁵²⁶ The government needs to understand that unless the socioeconomic conditions change in the rural areas, the IDPs will not return.

Segura explains that the Program for the Support of Resettlement (Spanish acronym PAR), as the first institution for IDPs, was established by the state to support the return of the IDPs in 1993. However, the works of this institution received criticism from the public as the program assumed that all the IDPs were willing to return. In fact, many of the IDPs were willing to integrate in the new cities but they were unable to get support for this; and even for the returnees, the PAR did not fulfil its promises.¹⁵²⁷ Moreover, there were NGOs, churches and other civil society organisations which worked with the IDPs to facilitate their return during the 1980s and 1990s.¹⁵²⁸ Although more than half of them could return to their homes in the 1990s,

¹⁵²¹ White, *Displacement, decentralisation and reparation*, p.44.

¹⁵²² United States Department of State - Bureau of Democracy, Human Rights and Labor Country Reports, *Peru 2016 Human Rights Report*, p.12.

¹⁵²³ White, *Displacement, decentralisation and reparation*, p.45.

¹⁵²⁴ *Ibid*, pp.44-45.

¹⁵²⁵ The CVR, *Hatun Willakuy*, p.285.

¹⁵²⁶ White, *Displacement, decentralisation and reparation*, p.45.

¹⁵²⁷ Segura, *Reparations and Displacement in Peru*, pp.6-7.

¹⁵²⁸ *Ibid*, p.6.

many of them are still displaced.¹⁵²⁹ The IDMC states that there are 59,000 conflict-related IDPs (in addition, 295,000 people were displaced in 2017 because of the natural disasters) in Peru as of 31st of December 2017,¹⁵³⁰ but it was 150,000 in 2015 according to the same body.¹⁵³¹ There is a stark decline in IDP figures from 2015 to 2017, yet the reason for this decline is unclear.¹⁵³² In addition, it must be noted that these are the IDPs who are registered officially. The real figure is probably higher as many of the victims were unable to make registry either because they were illiterate, or they were unable to travel to the registration centres.

In 2004, Peru enacted a law concerning IDPs which forbids arbitrary displacement of people and defines the rights of IDPs.¹⁵³³ The Peruvian Law Concerning Internal Displacement is designed to protect the rights of IDPs in Peru. The law prohibits discrimination against IDPs and obliges authorities to provide necessary assistance for them to either return to their homes or to resettle in another place in the country.¹⁵³⁴ The law is important to redress the past forced displacements and prevent future ones.

According to the PIR, the displaced communities and individuals were considered as the victims of the conflict and they would be eligible for reparations.¹⁵³⁵ White pointed out that reparations must address the specific needs of the IDPs which are different from general needs of the public.¹⁵³⁶ Considering the problems they faced, this is an important suggestion. Specific solutions must be brought forward for their specific problems. However, there were several obstacles to granting IDPs reparations. White explains that the lack of cooperation, trained staff and participation of the IDPs were significant challenges to the National Reparation Council. In addition, the IDPs were expected to prove their displacement with documents to complete the registration to get reparations. Yet, these people were unable to do so as they did not have identity cards, or they did not have a chance to get them during forced displacement.¹⁵³⁷

¹⁵²⁹ Perez-Leon-Acevedo, *Peruvian IDPs*.

¹⁵³⁰ IDMC, *Global Report on Internal Displacement 2018*.

¹⁵³¹ Norwegian Refugee Council (NRC) and Internal Displacement Monitoring Centre (IDMC), *Global Overview 2015: People internally displaced by conflict and violence*, Geneva: Norwegian Refugee Council, p.19.

¹⁵³² There is no information about this decline on the reports and website of the IDMC.

¹⁵³³ Deng, F. M. (2004) Secretary-General's Representative Congratulates Peru on New IDP Law, Brookings. Available at: <https://www.brookings.edu/articles/secretary-generals-representative-congratulates-peru-on-new-idp-law/> (access date:30.07.2018).

¹⁵³⁴ Oloka-Onyango, J. (2010) 'Movement-Related Rights in the Context of Internal Displacement' in Kälin, W., Williams, R. C., Koser, K. and Solomon, A. (eds) *Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges*, Studies in Transnational Legal Policy No. 41, Washington DC., pp.35-36.

¹⁵³⁵ Segura, *Reparations and Displacement in Peru*, p.10.

¹⁵³⁶ White, *Displacement, decentralisation and reparation*, p.44.

¹⁵³⁷ *Ibid*, p.44.

Furthermore, the National Register for Displaced Persons and the General Directorate for the Displaced and a Culture of Peace were established in 2004 to register and address the problems of IDPs.¹⁵³⁸

Segura notes that 5668 collective beneficiaries, 20 groups of displaced persons, and 120,000 individual beneficiaries were registered as victims of forced displacement by 2012, but the reparations program has not been implemented completely as it was initially planned. The focus was on collective reparations rather than individual reparations.¹⁵³⁹ The collective reparations were criticised because their allocation was considered as unjust and the way they were applied was more akin to the state's obligation of providing basic services rather than the reparation itself.¹⁵⁴⁰ Although the state passed a law for internal displacement and the CVR recommended reparations to the IDPs, the implementation of these plans was limited. The IDMC expresses its concern that the state has not implemented durable solutions to the problem.¹⁵⁴¹ Perez-Leon-Acevedo also notes that the IDPs still face economic and social challenges although the conflict ended years ago.¹⁵⁴² Particularly those in urban centres suffer from poverty, unemployment, poor access to health and education services, insufficient sanitation and housing, marginalisation and discrimination.¹⁵⁴³

Considering these socioeconomic consequences of the conflict, the state needs to address the problems of IDPs to achieve reconciliation. Implementing the reparations program properly can contribute to tackling the problems. These individuals and communities need the support of the government to overcome the difficulties resulting from the conflict. Although there were consultation processes before designing the reparations program, new channels should be found to evaluate the implementation process of the reparations to make them efficient.

Conclusion

East Timor and Peru have different contexts, but they share commonalities which are relevant to Turkey's Kurdish Question. These countries are both post-conflict societies and their transitional justice processes were concerned with socioeconomic issues. So, when Turkey

¹⁵³⁸ Segura, *Reparations and Displacement in Peru*, p.7.

¹⁵³⁹ *Ibid*, pp.11-12.

¹⁵⁴⁰ *Ibid*, p.12.

¹⁵⁴¹ Internal Displacement Monitoring Centre - IDMC (2017) *Global Report on Internal Displacement*, Geneva: IDMC, p.122.

¹⁵⁴² Perez-Leon-Acevedo, *Peruvian IDPs*.

¹⁵⁴³ Perez-Leon-Acevedo, *Peruvian IDPs*.

settles the conflict (and becomes a post-conflict society) and decides to pursue transitional justice, it can examine the experiences of these countries to gain insights from their experiences.

East Timor and Peru have had structural injustices and ESCR violations (particularly forced displacement) as in Turkey. The CAVR and the CVR examined socioeconomic dimension of the conflict in different ways: while the former looked at the issue from a rights perspective and identified ESCR violations, the CVR considered the issue in a more generalistic way and did not talk about violations of ESCR. Although both commissions made recommendations regarding eliminating historical inequalities and tackling socioeconomic problems, the CAVR's recommendations were more explicit regarding ESCR, whereas the CVR's recommendations did not really refer to ESCR explicitly. Adopting an approach which explicitly identifies socioeconomic problems as "violations" of socioeconomic rights is critical because this gives victims a power to seek redress for their violated rights. Therefore, Turkey should adopt a similar approach to East Timor and identify violations of ESCR explicitly to ensure that these violations are effectively addressed.

Trials have not necessarily been concerned with ESCR violations in East Timor and Peru. They often focused on CPR violations (killings, torture etc.) in both countries. As argued in the second chapter, there are arguments against the justiciability and enforcement of ESCR, and this certainly affected the transitional processes in these countries. Yet, there is no legal or moral basis for excluding ESCR from prosecutions, and Turkey should address ESCR violations when it pursues transitional justice.

Reparations aimed to address ESCR violations and historical inequalities in East Timor and Peru. This was significant because victims in both countries prioritised reparations over other transitional mechanisms. This may not be the case in Turkey because socioeconomic conditions of victims could be considered as better compared to East Timorese and Peruvian victims. Moreover, the conflict between the PKK and the Turkish security forces is an identity-based one, and the acknowledgement of the repression and accountability for crimes may be more important for the Kurdish victims. Yet, this should not mean that reparations will not be necessary in Turkey's future transitional process. Turkey can learn from East Timor and Peru in the context of designing and implementing reparations, particularly to address forced displacement. Regarding forced displacement, both countries aimed to resettle IDPs in their former hometowns but many IDPs wanted to stay in the big cities due to employment and better socioeconomic opportunities. As mentioned in the third chapter, this is likely to be the case for the IDPs in Turkey. So, reparation programs in a future transitional process should take this into

account and find ways to meet the demands of the IDPs. It should also be noted that distinguishing collective reparations and development was an important issue in both countries as many criticised the fact that these reparations could easily be considered as development programs which are already a responsibility of states. Therefore, Turkey needs to distinguish collective reparations and development programs.

Finally, Turkey needs to ensure the implementation of transitional justice mechanisms. In East Timor and Peru, the implementation of reparations and other recommendations of the CAVR and the CVR has been slow, and this led to disappointment among victims and communities. Designing a follow-up institution to monitor and facilitate the implementation of the reparations, reforms and other recommendations will be significant in Turkey.

Chapter 5: Transitional Justice Mechanisms to be Implemented in the Kurdish Question

1. Introduction

This chapter is going to examine which transitional mechanisms would be possible and desirable to address the human rights violations, particularly ESCR violations, concerning the Kurdish Question in the light of the lessons learnt from Peru and East Timor's transitional justice processes. It will do so by depicting which mechanisms can make what contribution to achieve peace and reconciliation in Turkey. The chapter will also analyse what is aimed for by the application of each mechanism and how these mechanisms should be designed and implemented. The importance of embracing a participatory, holistic and grassroots approach to the development of transitional justice mechanisms will also be elaborated. Before exploring these mechanisms, two points will be explained: why Turkey should confront its past and the significance of considering the local context and identifying the needs and expectations of victims and affected communities.

2. An important decision: facing the past

As argued in the first chapter, transitional states have a difficult choice regarding the past: to forget or to face the past. Forgetting the past used to be the trend to consolidate the new regime and peace, but this has started to change recently.¹⁵⁴⁴ Although there is an increasing tendency among states to pursue transitional justice, remembering the past may not be a choice for some states. There are numerous factors which affect countries' decision about pursuing transitional justice and dealing with their pasts. These include political, economic, historical, institutional and international factors.¹⁵⁴⁵ It was explained that "the characteristics of the authoritarian regime", "the type of transition", the resources of the new regime, political will, timing of the abuses (distant past or recent) and international pressure may all make an impact on the decision of adopting transitional justice mechanisms.¹⁵⁴⁶ For instance, if the predecessor regime has been in power for a long time and its abusive system has been institutionalised, it may be

¹⁵⁴⁴ Rieff, D. (2016) *In praise of forgetting: Historical memory and its ironies*, New Haven: Yale University Press.; Leebaw, *The Irreconcilable Goals of Transitional Justice*, p.96.; Minow, *Breaking the cycles of hatred*, p.28.; Hayner, *Unspeakable Truths: Transitional Justice*, p.23.; Kovras, *Explaining Prolonged Silences*, pp.730-756.; Walzer, *Judgment days*, pp.13-14.; Goti, *Editorial Note: A Turbulent Past*, p.153.

¹⁵⁴⁵ Olsen et al., *Transitional justice in balance*, pp.13-16.; Fletcher et al., *Context, Timing and the Dynamics of Transitional Justice*, pp.163-220.; Olsen et al., *At What Cost*, pp.165-184.

¹⁵⁴⁶ González-Enríquez, C., Aguilar, P. and Brito, A. (2001) 'Conclusion' in Gonzalez-Enriquez, C., Aguilar, P. and Brito, A. (eds) *The politics of memory: Transitional Justice in Democratizing Societies*, Oxford: Oxford University Press, pp.303-314.; Olsen et al., *Transitional justice in balance*, pp.13-16.; Huyse, *Justice after transition*, pp.51-78.; Fletcher et al., *Context, Timing and the Dynamics of Transitional Justice*, p.190.

more difficult to adopt retributive transitional justice mechanisms which would pose a risk of being prosecuted to the abusive regime. Likewise, lack of financial resources may prevent states from pursuing transitional justice.¹⁵⁴⁷ Yet, the opposite can also be true in these circumstances. Extreme repression may trigger individuals, human rights groups and civil society to strive for transitional justice, as happened in Latin America.¹⁵⁴⁸ Likewise, availability of financial resources may not always impact countries' decision as some countries (Sierra Leone and Haiti) with weak economies adopted costly transitional justice mechanisms and some others with strong economies (Thailand, Iran) forgot the past and did not pursue transitional justice.¹⁵⁴⁹ In short, there is no scientifically proven hypothesis on countries' decisions about transitional justice.¹⁵⁵⁰ All post-conflict and post-authoritarian countries have different contexts and dynamics, and this makes it difficult to make predictions on the subject.

2.1. Can Turkey pursue transitional justice?

Considering that Turkey has the 18th biggest economy in the world as of 2018,¹⁵⁵¹ a lack of resources should not be a constraint for the country to pursue transitional justice. Olsen, Payne and Reiter classified Turkey as a rich country in their research.¹⁵⁵² Turkey is advantageous as it has an established democracy and functioning state institutions with a well-developed judicial system (despite their shortcomings) compared to many transitional countries. Some transitional countries like East Timor, Cambodia and Sierra Leone did not have a strong rule of law, state institutions and established democracy and they were vulnerable to international pressures, whereas Argentina, Northern Ireland and South Africa could design their own transitional processes.¹⁵⁵³ Turkey is likely to be less dependent on international actors' resources due to its economy and institutional capacity. This enables the country to resist external actors' intervention in its transitional process. However, the international actors' involvement should not be demonised as their involvement can contribute to these processes. Even self-reliant states which designed their own paths in transitional justice had international involvement to some extent (indirect/minimalist or facilitative) as in Northern Ireland and Argentina.¹⁵⁵⁴

¹⁵⁴⁷ Muhlhausen, A. (2016) Conflict Management, Transitional Justice and De-radicalization – Different, but common goals, *Journal for Deradicalization*, Vol.9, pp.277-278.; Gonzalez-Enriquez et al., *Conclusion*, pp.308-309.

¹⁵⁴⁸ Olsen et al., *Transitional justice in balance*, p.14.

¹⁵⁴⁹ Olsen et al., *At What Cost*, p.176.

¹⁵⁵⁰ Olsen et al., *Transitional justice in balance*, pp.15-16.

¹⁵⁵¹ Statisticstimes (n.d.) List of Countries by Projected GDP (Source: International Monetary Fund World Economic Outlook). Available at: <http://statisticstimes.com/economy/countries-by-projected-gdp.php> (access date: 29.07.2018).

¹⁵⁵² Olsen et al., *At What Cost*, p.176.

¹⁵⁵³ Fletcher et al., *Context, Timing and the Dynamics of Transitional Justice*, pp.191-198.

¹⁵⁵⁴ Fletcher et al., *Context, Timing and the Dynamics of Transitional Justice*, pp.200-201.

Although international actors may have a role as a mediator which could be helpful, Turkey would be able to design and implement its own transitional process. Even though these points suggest that Turkey can pursue transitional justice regarding its financial and institutional capacity, it must be justified why Turkey must pursue transitional justice.

As the first chapter depicted, there is no empirical evidence for the generally accepted claims of transitional justice. The available evidence depicts that transitional justice mechanisms have little or no impact on reconciliation, democracy and rule of law.¹⁵⁵⁵ Moreover, as argued in detail in the first chapter, revealing the truth may not be desirable for some societies and the government needs to make an in-depth analysis of the circumstances (political, social and economic) and demands (of victims and public) to see what is possible and desirable for Turkey. This should be done so in an inclusive way and the demands of the victims, the Kurdish people in general, the Turkish people and other minorities should be analysed to make a decision on whether Turkey should pursue transitional justice.

2.2. Preparing people for the process

Political and societal concerns may have a discouraging impact on the government (or future governments) to adopt transitional justice mechanisms in Turkey as there is a strong opposition to the PKK among the public. For instance, although the majority of people (57%) supported the peace process (which ended in 2015) in Turkey, a considerable number of people (47%) believed that the peace process meant making concessions to the PKK.¹⁵⁵⁶ As mentioned in the third chapter, many of the Turkish people identify the Kurds with the PKK and still believe that the PKK wants to establish an independent state, even though the PKK transformed its aim from founding an independent state to an autonomous region in Turkey. Moreover, there are also negative sentiments among the Kurdish people towards the Turkish people as some consider “Turks as barbarians”.¹⁵⁵⁷ Even if the conflict is settled in the future and it is decided to pursue a transitional justice process in Turkey, if the government fails to pave the way for this process, there might be a backlash from the public.

¹⁵⁵⁵ Thoms, O., Ron, J. and Paris, R. (2010) State-Level Effects of Transitional Justice: What Do We Know, *International Journal of Transitional Justice*, Vol.4, No.3, pp.329-354.

¹⁵⁵⁶ Akyurek, S., Yilmaz, M. A., Atalay, E. and Koydemir, F. S. (2013) *Cozum Surecine Toplumsal Bakis*, Bilge Adamlar Stratejik Arastirmalar Merkezi (BILGESAM) Report No.57, Ankara: BILGESAM, p.24.

¹⁵⁵⁷ Celik, A. B. and Mutluer, N. (2015) ‘Socialization of the Peace Process’ in Celik, A. B., Celikkan, M., Balta, E., Mutluer, N. and Korkut, L. (eds) *Towards A Resolution: An Assessment of Possibilities, Opportunities and Problems*, Istanbul: Turkey Peace Assembly, p.30.; Bilali et al., *Psychological asymmetry in minority-majority relations*, pp.253-264.

Community level tensions in big cities are also critical and need to be eliminated as unaddressed grievances may exacerbate the individual and community level relationships. In the former peace process, the government was criticised for not pursuing a participatory approach as “NGOs outside of the Kurdish National Movement, other political parties, important leaders from different opinion groups and independent intellectuals in the region were not included in the process.”¹⁵⁵⁸ The inclusion of different actors is critical as both the Kurdish side and the Turkish side are not homogenous. It is noted that there are intra-group differences in demands among Kurds as in other groups such as Alevis and Armenians in Turkey.¹⁵⁵⁹ For instance, the demands of the secular Kurds and religious Kurds may differ, and all these groups must be included in the process. In fact, the JDP government took some steps to persuade the public. For instance, it established a committee named “Wise Persons Committee”¹⁵⁶⁰ (*Akil İnsanlar Heyeti* in Turkish) which held meetings with the public all over the country.¹⁵⁶¹ Although it was an important initiative, the committee was criticised for various reasons including the limited number of women (12 out of 63 members), the appointment of its members and its limited time and mandate.¹⁵⁶² Moreover, the JDP’s peace process was criticised for being ambiguous as the government was not successful in explaining the process to people, civil society and other political actors.¹⁵⁶³ A new peace and transitional process must take appropriate measures to inform people, civil society and political actors about the process and ensure their participation and support. Therefore, the government needs to persuade the public, political actors and civil society for a future transitional process.

Several scholars remarked that the government needs to prepare the public for peace as the state and media framed the PKK and the Kurdish actors as an enemy for decades.¹⁵⁶⁴ It is stated

¹⁵⁵⁸ Kose, T. (2017) Rise and Fall of the AK Party’s Kurdish Peace Initiatives, *Insight Turkey*, Vol.19, No.2, p.146.

¹⁵⁵⁹ Akturk, *One nation under Allah*, pp.523-551.

¹⁵⁶⁰ “In early April, a committee of “Wise Persons” consisting of 63 intellectuals, professionals, writers and NGO leaders was appointed by Prime Minister Erdogan. The committee was tasked with communicating the Government’s strategy regarding the current ‘process’ to the Turkish people and receiving their feedback on this approach.” (Democratic Progress Institute - DPI (2013) *Turkey’s Kurdish Conflict: An Assessment of the Current Process*, London: Democratic Progress Institute, p.7.)

¹⁵⁶¹ Kose, *Rise and Fall*, pp.139-165.; Democratic Progress Institute, *Turkey’s Kurdish Conflict.*; Hakyemez, S. (2017) Turkey’s Failed Peace Process with the Kurds: A Different Explanation, *Middle East Brief*, No. 111, pp.1-9.; Celik, A. B., Celikkan, M., Balta, E., Mutluer, N. and Korkut, L. (2015) ‘The peace process: Negotiations and the Law’ in Celik, A. B., Celikkan, M., Balta, E., Mutluer, N. and Korkut, L. (eds) *Towards A Resolution: An Assessment of Possibilities, Opportunities and Problems*, Istanbul: Turkey Peace Assembly, p.14.

¹⁵⁶² Democratic Progress Institute, *Turkey’s Kurdish Conflict*, p.7.; Celik et al., *The peace process: Negotiations and the Law*, p.14.; Celik and Mutluer, *Socialization of the Peace Process*, p.30.

¹⁵⁶³ Democratic Progress Institute, *Turkey’s Kurdish Conflict*, p.29.; Kose, *Rise and Fall*, p.146.

¹⁵⁶⁴ Celik et al., *The trajectory of the Peace Process*, p.13.; Hasimi, C. (2009) Mapping the Pathways: Public Perception and Kurdish Question, *Insight Turkey*, Vol.11, No.4, pp.21-27.

that “[a] serious obstacle to peace perceived by the Kurdish people is that the Turks seem to be totally unaware of the pain and the violations of the rights of Kurds in the Kurdish regions, according to the reports of the Wise Persons Delegation.”¹⁵⁶⁵ For instance, in Colombia, the urban population was less supportive of the peace accord compared to the rural population which has been severely affected by the conflict. It was asserted that the support for the peace accord was the highest in the most affected regions.¹⁵⁶⁶ A similar pattern to Colombia was observed in Turkey. The support for the previous peace process was much stronger among the Kurds (86%) compared to the Turks (52%).¹⁵⁶⁷ Likewise, the support for the peace process was significantly higher in cities which were affected by the conflict (86%), compared to the others (54%).¹⁵⁶⁸ So, the government has an important role to prepare people for a future transitional justice process, and this must be done so in an inclusive and participatory way. For instance, there are many civil society organisations and research institutions which have been concerned with the Kurdish Question for years such as Turkish Economic and Social Studies Foundation (Turkish acronym, TESEV), the Association for Human Rights and Solidarity for the Oppressed (Turkish acronym, MAZLUMDER), the Human Rights Association (Turkish acronym, IHD), the Human Rights Foundation of Turkey (Turkish acronym, TIHV) and so on. The government must cooperate with these organisations to get a better grasp of the dynamics in the society and benefit from the knowledge that these organisations have produced for decades.

Although it is not easy to find out people’s motives for not supporting the peace accord in Colombia, the reason may be that the peace was not as significant to them as it is for the rural population since the urban population was not affected by the conflict as much as the rural population. The Colombian government has been criticised for not preparing people for the peace process properly. As the process was not explained well, people were not given enough time to understand the details, and false accusations (produced by spoilers of peace) were not eliminated efficiently.¹⁵⁶⁹ Gomez-Suarez depicts the need for preparing people for peace by explaining the peace process well in transitional contexts and calls this “peace process pedagogy”.¹⁵⁷⁰ In Colombia, the public was highly sceptical about the negotiations with the

¹⁵⁶⁵ Celik and Mutluer, *Socialization of the Peace Process*, p.30.

¹⁵⁶⁶ Feldmann, A. E. (2017) *Will Colombia’s Peace Accord Boost Its Democracy*, Washington, DC.: Carnegie Endowment for International Peace.; Grandin, G. (2016) Did Human Rights Watch Sabotage Colombia’s Peace Agreement. Available at: <https://www.thenation.com/article/did-human-rights-watch-sabotage-colombias-peace-agreement/> (access date: 03.08.2018).

¹⁵⁶⁷ Akyurek et al., *Cozum Surecine Toplumsal Bakis*, p.8.

¹⁵⁶⁸ Akyurek et al., *Cozum Surecine Toplumsal Bakis*, p.9.

¹⁵⁶⁹ Gomez-Suarez, A. (2017) Peace Process Pedagogy: Lessons from the No-Vote Victory in the Colombian Peace Referendum, *Comparative Education*, Vol.53, No.3, pp.462-482.

¹⁵⁷⁰ Gomez-Suarez, *Peace Process Pedagogy*, pp.462-482.

Revolutionary Armed Forces of Colombia (Spanish acronym FARC), but the government still conducted meetings (first in secrecy then openly) to end the conflict.¹⁵⁷¹ A similar instance can happen in pursuing transitional justice or specifically in implementing a transitional justice mechanism. In Peru and East Timor, some people were sceptical about granting reparations to specific groups such as members of the Shining Path and the integration supporters. Yet, this did not prevent the governments from granting reparations to these groups. Therefore, the public's scepticism should not prevent Turkey from pursuing transitional justice, rather, the public and other actors should be motivated and mobilised for the peace.

Roth explains how naming and shaming can be used by international human rights organisations to make pressure on governments by persuading the public with three elements: a violation of a right, a violator of this right and a remedy which can be implemented to redress the violation.¹⁵⁷² Persuading the public about the need to redress the violations is critical. For instance, Goes explains that the general public had very limited interest in facing the violent past in Brazil. She remarks that even most educated people consider the past violations as "a necessary evil".¹⁵⁷³ This is also crucial in Turkey. A similar naming and shaming approach can be used for promoting a solution to the Kurdish Question. People should be persuaded that there have been myriad human rights violations committed against the Kurdish people, these violations were committed by the PKK and the Turkish security forces, and there are remedies which could be implemented to redress these violations and achieve peace. A truth commission can be useful to explain these points to people because the clarity of these points is important. Roth claims that it is more difficult to clarify these points for ESCR violations compared to CPR violations.¹⁵⁷⁴ Yet, the second chapter clarified that the vagueness, the aspiration and the justiciability arguments regarding ESCR stem from false assumptions. Therefore, ESCR violations can also be depicted to people clearly. Roth claims that "the nature of the violation, violator, and remedy is clearest when it is possible to identify arbitrary or discriminatory governmental conduct that causes or substantially contributes to an ESC rights violation."¹⁵⁷⁵ Considering the perception of discrimination among the Kurdish people, this can also be demonstrated to the public to ensure that they realise the perceptions of the Kurds.

¹⁵⁷¹ Bieri, M. (2016) *Peace and Violence in Colombia*, Zurich: Center for Security Studies (CSS) Analyses in Security Policy, No.191.

¹⁵⁷² Roth, *Defending ESCR*, pp.67-68.

¹⁵⁷³ Goes, *Between Truth and Amnesia*, p.93.

¹⁵⁷⁴ Roth, *Defending ESCR*, pp.68-69.

¹⁵⁷⁵ Roth, *Defending ESCR*, p.69.

2.3. Why should Turkey pursue transitional justice?

Given these points, this research suggests that Turkey must pursue transitional justice due to various reasons. First, unless there is a considerable risk of renewed conflict, Turkey must face its past as there is a moral duty to the victims and survivors. Considering the exclusion, marginalisation and negative sentiments against the Kurdish people, their sufferings must be acknowledged, and their honour must be restored. Thoms and others claim that even though there is not sufficient evidence which depicts that transitional justice mechanisms have positive impacts, “moral and legal rationales exist for pursuing TJ policies.”¹⁵⁷⁶ Therefore, pursuing transitional justice in Turkey can be promising. It is pointed out that if a state is going to choose to forget the past over facing the past, this must be based on a social consensus rather than the decision of political elites.¹⁵⁷⁷

Second, socioeconomic problems of the region, particularly the problems of the Kurdish IDPs, require a full-fledged solution to which a successful transitional process can make a huge contribution. It is remarked that

Kurds in the rest of Turkey do not form an underclass. There are opportunities for them to succeed within the Turkish economy. In the Southeast however, economic underdevelopment means economic opportunities are constrained. This combined with the effects of 20-plus years conflict has created a sense of hopelessness among many in the region.¹⁵⁷⁸

This hopelessness must be eliminated, and it can be done so “through skills-building, individual reconciliation, and helping individuals cope with past trauma.”¹⁵⁷⁹ Mani emphasises the importance of distributive justice in transitional contexts and notes that: “I propose, therefore, a two-fold approach, whereby first past economic (and political) inequalities are redressed through a backward-looking economic strategy focused on equity, before forward-looking policies of generalized economic growth and development for the society at large are implemented.”¹⁵⁸⁰ Even settling the conflict can make a positive impact on the economy as observed during the previous peace process. Kose noted that: “Within this process [which collapsed in 2015], tourism and other economic activities also prospered from the effect of this positive atmosphere.”¹⁵⁸¹

¹⁵⁷⁶ Thoms et al., *State-Level Effects of Transitional Justice*, p.353.

¹⁵⁷⁷ Rotondi, J. V. and Eisikovits, N. (2016) ‘Forgetting after War: A Qualified Defense’ in Corradetti, C., Eisikovits, N. and Rotondi, J. (eds) *Theorizing transitional justice*, London: Routledge, p.16.

¹⁵⁷⁸ Celik and Blum, *Track II Interventions*, p.70.

¹⁵⁷⁹ Celik and Blum, *Track II Interventions*, p.70.

¹⁵⁸⁰ Mani, *Balancing Peace with Justice*, p.32.

¹⁵⁸¹ Kose, *Rise and Fall*, p.146.

Another reason for Turkey to pursue transitional justice is about conflict prevention. Many scholars and practitioners agree that a failure in addressing the root causes will leave transitional justice efforts incomplete. The violations of ESCR are significant in the Kurdish Question as explained in the third chapter. Both CPR and ESCR violations must be addressed to have a full-fledged solution and to ensure sustainable peace and reconciliation in Turkey. Considering that conflicts emerge due to many complex reasons, and evidence regarding the triggering effect of poverty and inequalities on the emergence of conflict is contradictory in the literature, it is difficult to say that there will be no conflict in the future if the root causes of the conflict are dismantled. Yet, the risk of renewed violence can be reduced by eliminating the causes which produced violence or contributed to the emergence of violence.

The socioeconomic roots of the conflict argument is tricky in the context of the Kurdish Question as the state adopted a discourse stating that the Kurdish unrest is based on under-development of the region. The government must address the socioeconomic dimension of the Kurdish Question carefully to avoid readopting the same problematic discourse. The state must acknowledge the oppression and the political dimension of the problems first, then recognise that socioeconomic problems are among the root causes of the conflict. A future transitional justice process in Turkey needs to address both ESCR abuses which were deliberately committed during the conflict and structural violence which is among the root causes of the conflict.

It is difficult to identify how much of today's poverty and inequalities in health, education and other development indicators come from the oppression of the Kurdish people and the conflict. Yet, in every scenario, the government needs to deal with these problems, and transitional justice can be an important tool for this. Transitional justice mechanisms can help in diagnosing these socioeconomic problems and open a path for development to eliminate poverty and historical inequalities. Even though Turkey did not marginalise the Kurdish region deliberately, it still has a duty to ensure its development. Moreover, it must redress the damages and losses Kurds suffered due to its failure in protecting them from violence. So, while transitional justice mechanisms redress ESCR violations directly, it can contribute to elimination of poverty and other socioeconomic inequalities indirectly. For instance, remedying the problems of IDPs is critical and the solution needs to "increase security, reconstruct infrastructure, generate employment opportunities, and strengthen equitably accessible social services."¹⁵⁸² Celik asserted that states have several responsibilities regarding IDPs:

¹⁵⁸² Bradley, M. (2012) *Displacement, transitional justice and reconciliation: Assumptions, challenges and lessons*, Forced Migration Policy Briefing, No.9, Oxford: Refugee Studies Centre, p.3.

- a) establishment of prevention mechanisms for conflict-induced displacements;
- b) the need to provide assistance during and after the emergency; c) protection of individual rights (the right to life, the right to property, etc.) during the forced movement; d) safe and voluntary return of the IDPs; and e) the overall improvement and strengthening of state institutions to guarantee and protect these rights.¹⁵⁸³

So, Turkey needs to address the problems arising from forced displacement and other human rights violations in the context of the Kurdish Question. Yet, it is important to distinguish the roles of transitional justice and development. Transitional justice will not concern generating employment and eliminating poverty as these are development's concerns. Even so, transitional justice can buttress development by pinpointing these problems in a historical context (by a truth commission) and highlighting the significance of tackling these problems.

3. Considering the local

As argued in the first chapter, transitional justice has been criticised for being legalistic and distant from victims and affected communities as its mechanisms are often designed and implemented by non-local actors who do not engage with people and society to identify their needs.¹⁵⁸⁴ Likewise, it has been criticised for becoming an industry with experts, standardised programs and tools.¹⁵⁸⁵ It is acknowledged that there is no magic formula in transitional justice which would work in all transitional contexts with different cultures and experiences, and attention to the importance of locality has been increasing recently.¹⁵⁸⁶ Robins and Wilson claimed that “[m]any disappointments of transitional justice arise from the failure of institutionalised, procedural mechanisms that resonate with the goals of liberal statebuilding but not with the priorities of those affected by conflict.”¹⁵⁸⁷ Understanding local contexts and identifying the needs of people are crucial for a successful transition process, as transitional

¹⁵⁸³ Celik, *Transnationalization of Human Rights Norms*, p.977.

¹⁵⁸⁴ McEvoy, *Beyond Legalism*, pp.411-440.; McCargo, *Transitional Justice and Its Discontents*, pp.5-20.; Gready, *Analysis: Reconceptualising transitional justice*, pp.3-21.; Nagy, *Transitional Justice as Global Project*, p.279.; Muvungi, *Donor-Driven Transitional Justice*, p.17.; Madlingozi, *On Transitional Justice Entrepreneurs*, pp.210-213.; Balasco, *The Transitions of Transitional Justice*, p.206.; Lundy and McGovern, *The Role of Community*, p.100.

¹⁵⁸⁵ Theidon, *Editorial Note*, p.296.; Arenhövel, *Democratization and Transitional Justice*, p.578.; Madlingozi, *On Transitional Justice Entrepreneurs*, p.225.; Nagy, *Transitional Justice as Global Project*, p.275.

¹⁵⁸⁶ Orentlicher, D. F. (2007) 'Settling Accounts' Revisited: Reconciling Global Norms with Local Agency, *International Journal of Transitional Justice*, Vol.1, No.1, p.18.; Fletcher et al., *Context, Timing and the Dynamics of Transitional Justice*, p.206.; Shaw, R. and Waldorf, L. (2010) *Localizing transitional justice: Interventions and priorities after mass violence*, Stanford, Calif.: Stanford University Press.; Sharp, D. (2014) Addressing dilemmas of the global and the local in transitional justice, *Emory International Law Review*, Vol.29, No.1, pp.71-117.

¹⁵⁸⁷ Robins, S. and Wilson, E. (2015) Participatory Methodologies with Victims: An Emancipatory Approach to Transitional Justice Research, *Canadian Journal of Law and Society*, Vol.30, No.2, p.236.

contexts are extremely complex with different dynamics and realities.¹⁵⁸⁸ It is noted that “accountability measures should be sensitive to local contexts and must be driven by and respond to local demands and needs.”¹⁵⁸⁹ Every transitional context requires “politically and culturally rooted responses.”¹⁵⁹⁰ Likewise, transitional justice must be victim-centred as the needs and priorities of affected people and communities must be taken into consideration for a successful transition.¹⁵⁹¹

3.1. What is actually local and why is locality critical for transitional justice?

As noted above, the popularity of locality is increasing but there is an ambiguity about what locality really is. Sharp notes that “despite the acknowledged centrality of the local, concepts like local ownership remain vague and poorly understood, being marshaled in different ways by different actors for different ends, often being associated more with aspirational rhetoric than concrete policy reality.”¹⁵⁹² For instance, Lundy questions “if state-based efforts can be regarded as local, home-grown or even bottom-up, or whether these terms apply only to initiatives that operate outside the structures of the state and are rooted in ‘the community.’”¹⁵⁹³ So, what *does* constitute the “local”? Does it have to be outside of the state? If so, should the state facilitate these local organisations, or should it refrain from any kind of intervention in the process? If it must be rooted in communities, what kind of organisation are we looking for? Considering some NGOs are formed and managed by political elites and have no close relationship with the affected communities whatsoever, do they count as “local” as well? These questions require answers to identify locality because as Lundy rightly states “different meanings attached to concepts will produce different practices, outcomes and possibilities. If concepts such as home-grown, local and bottom-up transitional justice are not clearly defined, they could be co-opted, misappropriated, manipulated and abused.”¹⁵⁹⁴

Several scholars remarked that transitional justice would be local if local people have agency and ownership throughout the development of the mechanisms and the processes are

¹⁵⁸⁸ Fletcher et al., *Context, Timing and the Dynamics of Transitional Justice*, pp.163-220.

¹⁵⁸⁹ Engstrom, P. (2013) ‘Transitional Justice and Ongoing Conflicts’ in Sriram, C. L., Garcia-Godos, J., Herman, J. and Martin-Ortega, O. (eds) *Transitional Justice and Peacebuilding on the Ground: Victims and Ex-Combatants*, Abingdon, Oxon; New York: Routledge, p.57.

¹⁵⁹⁰ Huyse, L. (2003) ‘The Process of Reconciliation’ in Bloomfield, D., Barnes, T. and Huyse, L. (eds) *Reconciliation After Violent Conflict: A Handbook*, Stockholm: International Institute for Democracy and Electoral Assistance (IDEA), p.25.

¹⁵⁹¹ Fletcher et al., *Context, Timing and the Dynamics of Transitional Justice*, p.219.

¹⁵⁹² Sharp, *Addressing dilemmas of the global and the local*, p.73.

¹⁵⁹³ Lundy, *Exploring Home-Grown Transitional Justice*, p.323.

¹⁵⁹⁴ Lundy, *Exploring Home-Grown Transitional Justice*, p.323.

consistent with the local context, culture and realities.¹⁵⁹⁵ It is also suggested that marginalised people must be at the centre of knowledge production as there is a “need for a new transitional justice research paradigm to facilitate democratized knowledge production capable of challenging external, prescriptive understandings of appropriate responses to violence while accounting for the role and influence of existing power relations.”¹⁵⁹⁶ In general, “[d]emocratisation of the transitional justice process, which results in local ownership and capacity building, is more likely to contribute to sustainable peacebuilding.”¹⁵⁹⁷ In a nutshell, locals must be empowered and have authority and agency to have a successful transitional process which responds to the local context. They must be subjects rather than objects.

Considering the local context is critical to prevent transitional justice efforts from making adverse impacts in post-conflict contexts. In general, it should not be assumed that applying transitional justice mechanisms will always lead to democratic and peaceful societies. Mihr and McAuliffe argue that transitional justice mechanisms may also contribute to consolidating autocratic and oppressive regimes as they are tools which can be used by actors to further their agenda (both democratic and oppressive).¹⁵⁹⁸ Likewise, Haider wrote: “Transitional justice can inadvertently exacerbate conflict if it increases social tensions or divisions between groups.”¹⁵⁹⁹ So, transitional justice mechanisms may have negative impacts in transitional societies and this can happen both intentionally or unintentionally. For instance, political elites may exploit the mechanisms to retain their power or the mechanisms could be applied in a way which puts an ethnic or religious group into a more advantaged position compared to others due to poor design of the process. Considering that the most common form of conflict has changed from inter-state to intra-state, there is often severe competition among societal groups (ethnic, religious or tribal) in these contexts.¹⁶⁰⁰ Exploring the role of group dynamics in intergroup conflicts and exploring how societal beliefs, perceptions and goals affect conflict situations are

¹⁵⁹⁵ Nyseth Brehm, H., & Golden, S. (2017) Centering Survivors in Local Transitional Justice, *Annual Review of Law and Social Science*, Vol.13, No.1, p.102.; Mani, *Balancing Peace with Justice*, p.33.; Lundy, *Exploring Home-Grown Transitional Justice*, p.329.

¹⁵⁹⁶ Robins and Wilson, *Participatory Methodologies with Victims*, p.221.

¹⁵⁹⁷ Lambourne, *Transitional Justice and Peacebuilding*, p.47.

¹⁵⁹⁸ Mihr, A. (2017) Regime Consolidation through Transitional Justice in Europe: The Cases of Germany, Spain and Turkey, *International Journal of Transitional Justice*, Vol.11, No.1, pp.113-131.; McAuliffe, P. (2011) Transitional Justice’s Expanding Empire: Reasserting the Value of the Paradigmatic Transition, *Journal of Conflictology*, Vol.2, No.2, pp.37-38.

¹⁵⁹⁹ Haider, H. (2017) Breaking the cycle of violence: applying conflict sensitivity to transitional justice, *Conflict, Security & Development*, Vol.17, No.4, p.334.

¹⁶⁰⁰ Fletcher, L. and Weinstein, H. (2002) Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation, *Human Rights Quarterly*, Vol.24, No.3, pp.575-576.

beyond the scope of this chapter.¹⁶⁰¹ Yet, it must be underscored that transitional justice practitioners (local, national or international) need to adopt the “do no harm” principle to avoid inflicting unintended harm.¹⁶⁰² Haider suggests that transitional justice must embrace a conflict sensitivity approach,¹⁶⁰³ and to do so, transitional justice practitioners need to be careful not to “inadvertently replicate or amplify existing tensions”, “introduce resources which become the focus of a struggle for control” or “challenge power and vested interests” without examining their consequences. Instead, they must ensure “local participation and inclusiveness”, “incorporating local traditions” and “social cohesion”.¹⁶⁰⁴

Local communities must be empowered to achieve social reconstruction, which is often necessary in post-conflict situations as social fabric is damaged considerably.¹⁶⁰⁵ Local and traditional practices should be integrated into transitional justice processes to ensure the local ownership of the process – as happened in East Timor. As explained in detail in the fourth chapter, the CRP was based on a traditional practice and although it received criticisms, it made a considerable contribution to the transitional process. It aimed to promote reconciliation in communities by reintegrating perpetrators of less serious crimes into their communities. Therefore, local approaches should also be developed in Turkey.

3.2. What do locals want and how do they analyse the concepts of transitional justice?

It was noted that transitional justice literature prioritised examining institutional determinants of the mechanisms and often ignored public opinion pertaining to the field.¹⁶⁰⁶ Even though

¹⁶⁰¹ See: Bar-Tal, D., Halperin, E. and De Rivera, J. (2007) Collective Emotions in Conflict Situations: Societal Implications, *Journal of Social Issues*, Vol.63, No.2, pp.441-460.; Bar-Tal, D. and Bennink, G. H. (2004) ‘The Nature of Reconciliation as an Outcome and as a Process’ in Bar-Siman-Tov, Y. (ed) *From Conflict Resolution to Reconciliation*, New York: Oxford University Press, pp.11-38.; Colletta, N. J. and Cullen, M. L. (2000) *The Nexus between Violent Conflict, Social Capital and Social Cohesion: Case Studies from Cambodia and Rwanda*, Washington, DC.; World Bank.; Halpern, J. and Weinstein, H. M. (2004) ‘Empathy and Rehumanization after Mass Violence’ in Stover, E. and Weinstein, H. M. (eds) *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, New York: Cambridge University Press, pp.303-322.

¹⁶⁰² “Do no harm is an approach that recognises the presence of ‘dividers’ and ‘connectors’ in conflict. It seeks to analyse how an intervention may be implemented in a way that supports local communities to address the underlying causes of conflict rather than exacerbating conflict (How to guide).” (Haider, H. (2014) *Conflict Sensitivity: Topic Guide*, Birmingham, UK: GSDRC, University of Birmingham, p.2.)

¹⁶⁰³ “Conflict sensitivity means the ability to: understand the context in which you operate; understand the interaction between your intervention and the context (how the context affects the intervention and how the intervention affects the context); and act upon the understanding of this interaction, in order to avoid negative impacts and maximise positive impacts.” (Haider, *Conflict Sensitivity: Topic Guide*, p.2.)

¹⁶⁰⁴ Haider, *Breaking the cycle of violence*, pp.333-360.

¹⁶⁰⁵ Fletcher and Weinstein, *Violence and Social Repair*, pp.633-635.

¹⁶⁰⁶ Aguilar, P., Balcells, L. and Cebolla-Boado, H. (2011) Determinants of attitudes toward transitional justice: An empirical analysis of the Spanish case, *Comparative Political Studies*, Vol.44, No.10, pp.1397-1430.

victims are often at the centre of the arguments, locals include both victims and non-victims. So, transitional justice actors need to analyse both the demands and expectations of victims and the public opinion. There are various determinants which affect the individuals' and the public's opinion. For instance, Aguilar et al.'s research depicts that age, religiosity, ideology and victimisation (and intergenerational trauma) had impacts on the Spanish people's opinion regarding transitional justice mechanisms.¹⁶⁰⁷ There are likely to be different determinants for different contexts. Consultation with the public can provide governments direction, as happened in Afghanistan. In 2004, a nationwide consultation was conducted in Afghanistan to examine people's views about justice and a report was published after the process. Then, the government acted on the report's findings.¹⁶⁰⁸ This could be an efficient way for Turkey as well. Public opinion and victims' expectations vary from one country to another as contexts and realities often differ greatly. Moreover, Vinck and Pham reiterate that "while consulting the population is an important step in designing and implementing programs, other stakeholders must be consulted, and lessons learned from other countries must be integrated."¹⁶⁰⁹

Truth, reconciliation and justice are important concepts in transitional justice, and there are numerous (at times contesting) definitions of them. Although it is nearly impossible to have universal definitions of these concepts, the specific context and local definitions and understandings of these important concepts need to be understood to have a successful transitional process. Martin conducted research in Sierra Leone and her findings suggest that "many Sierra Leoneans were able to find peace and justice by regaining a sense of normality."¹⁶¹⁰ However, this may not be the case for other transitional states; people in different contexts may not find peace and justice in merely regaining a sense of normality. Regarding the Kurdish Question, what victims and society understand from truth, reconciliation and justice must be analysed, and mechanisms should be designed according to these understandings. Transitional justice practitioners must avoid imposing preconceived perceptions of these concepts on victims and affected communities. For instance, "[i]f reconciliation in its present interpretation is brought to a post-conflict society as a ready-made social vision, it deprives the population of the possibility to decide how and under what conditions a new society and a new social order are to

¹⁶⁰⁷ Aguilar et al., *Determinants of attitudes toward transitional justice*, pp.1397-1430.

¹⁶⁰⁸ Unger, T. and Wierda, M. (2009) 'Pursuing Justice in Ongoing Conflict: A Discussion of Current Practice' in Ambos, K., Large, J. and Wierda, M. (eds) *Building a Future on Peace and Justice: Studies on Transitional Justice, Peace and Development - The Nuremberg Declaration on Peace and Justice*, Berlin, Heidelberg: Springer Berlin Heidelberg, pp.291-292.

¹⁶⁰⁹ Vinck and Pham, *Ownership and Participation*, p.410.

¹⁶¹⁰ Martin, L. S. (2016) Practicing Normality: An Examination of Unrecognizable Transitional Justice Mechanisms in Post-Conflict Sierra Leone, *Journal of Intervention and Statebuilding*, Vol.10, No.3, p.401.

be established.”¹⁶¹¹ So, the determinants and the public opinion must be analysed in every transitional context.

3.3. Women and youth as locals

Although this research does not focus on women and youth specifically, it still advocates addressing their specific problems in the Kurdish Question. It is argued that the gender aspect of transitional justice should not be confined to sexual crimes as there are other problems concerning women in transitional societies such as marginalisation and exclusion of women.¹⁶¹² For instance, “approximately 75-80 per cent of the displaced are women and children. Women suffer differently during conflict and displacement and have particular needs.”¹⁶¹³ Moreover, Rubio-Marin wrote:

the accounts of women’s experiences in conflict show that, even when women are subject to the same violations as men, their pre-existing socioeconomic and legal status, as well as the cultural meanings around the construction of the male and the female in patriarchal societies, may imply that the ensuing harms for men and women are not the same.¹⁶¹⁴

Therefore, these gender specific harms must be addressed in transitional societies.

In the Kurdish Question, the Kurdish women IDPs require gender-sensitive measures to address their problems. The participation of women was limited in the previous peace process, although the importance of this participation has been emphasised throughout the process. In general, the previous peace process was not successful in focusing on the specific groups (such as women and youth) which need special attention.¹⁶¹⁵ Like the Kurdish women, the Kurdish youth also requires specific measures. As depicted in the third chapter, the Kurdish youth have been frustrated and more prone to radical forms of ethno-nationalism compared to older generations. It is noted that they are alienated and marginalised by the Turkish population and this form their identities.¹⁶¹⁶ So, the problems of the Kurdish women and youth must be

¹⁶¹¹ Renner, *The Local Roots of the Global Politics of Reconciliation*, p.285.

¹⁶¹² Lemaitre, J. and Sandvik, K. (2014) Beyond Sexual Violence in Transitional Justice: Political Insecurity as a Gendered Harm, *Feminist Legal Studies*, Vol.22, No.3, pp.243-261.; Rooney, E. and Aolain, F. (2018) Transitional Justice from the Margins: Intersections of Identities, Power and Human Rights, *International Journal of Transitional Justice*, Vol.12, No.1, pp.1-8.

¹⁶¹³ Newman, E. (2003) ‘Refugees, International Security, and Human Vulnerability: Introduction and Survey’ in Newman, E and Selm, J. (eds) *Refugees and Forced Displacement: International Security, Human Vulnerability, and the State*, New York: UN University Press, p.25.

¹⁶¹⁴ Rubio-Marin, R. (2006) ‘The gender of reparations: Setting the agenda’ in Rubio-Marin, R. (ed) *What happened to the women? Gender and reparations for human rights violations*, New York: Social Science Research Council, p.22.

¹⁶¹⁵ Celik and Mutluer, *Socialization of the Peace Process*, pp.34-37.

¹⁶¹⁶ Celik and Mutluer, *Socialization of the Peace Process*, p.36.

understood well, and transitional justice measures must be designed to respond to these specific issues.

3.4. Limitations of locality

There are several limitations of locality in pursuing transitional justice. Leebaw remarks on a dilemma of transitional justice institutions regarding the locality: “they seek to respond to local practices in order to be perceived as legitimate, yet they also seek to challenge and transform the basis of political legitimacy by rejecting traditions and practices implicated in systematic political violence.”¹⁶¹⁷ So, local approaches and practices are important in transitional processes but it should be remembered that the local traditions and power structures may have played a role in past abuses. In the Kurdish Question, the role of traditions and social structures in the conflict requires an in-depth analysis. The promotion of locality, participation and empowerment should not reinforce the traditions and power dynamics which enabled or contributed to violence. Turkey needs to find locally relevant mechanisms and processes which do not reproduce problematic circumstances.

Local and international actors often interpret the conflict and the aims of transitional justice differently, and this may cause problems in transitional contexts. Moreover, “local practices and solutions can also lead to stark clashes with international human rights standards.”¹⁶¹⁸ There have been such contestations in the transitional process of the Democratic Republic of Congo which hindered and slowed down the transitional justice efforts.¹⁶¹⁹ Likewise, HRW was against the peace accord in Colombia.¹⁶²⁰ Therefore, Sharp writes that “finding the right balance between global and local agency, priorities, practices, and values stands out as one of the key policy challenges of 21st century transitional justice.”¹⁶²¹ Furthermore, governments and elites may exploit participatory approaches to pursue their own benefits and further their agendas.¹⁶²² They may use transitional justice mechanisms “as a means of jockeying for gain, furthering partisan political agendas, and attempting to re-impose pre-conflict power structures that may be discriminatory or otherwise not consistent with international human rights standards.”¹⁶²³

¹⁶¹⁷ Leebaw, *The Irreconcilable Goals of Transitional Justice*, p.117.

¹⁶¹⁸ Sharp, *Addressing dilemmas of the global and the local*, pp.73-74.

¹⁶¹⁹ Arnould, V. (2016) Transitional Justice in Peacebuilding: Dynamics of Contestation in the DRC, *Journal of Intervention and Statebuilding*, Vol.10, No.3, pp.321-338.

¹⁶²⁰ Grandin, *Did Human Rights Watch Sabotage Colombia's Peace Agreement*.

¹⁶²¹ Sharp, *Addressing dilemmas of the global and the local*, pp.73-74.

¹⁶²² Lundy, *Exploring Home-Grown Transitional Justice*, pp.321-340.

¹⁶²³ Sharp, *Addressing dilemmas of the global and the local*, p.103.

Lastly, we often talk about understanding the demands of people and meeting their needs in transitional justice, but identifying those needs and demands is a complex issue. For instance, regarding truth-telling, Rotondi and Eisikovits ask important questions on how to understand that there is a consensus for putting the past behind and not pursuing transitional justice. They ask whether a decision of political elites be enough, or would it need a broad consensus? If so, what kind of majority (simple or super-majority) would count?¹⁶²⁴ There are no simple answers to these questions. Therefore, every transitional justice effort should ask these questions and find appropriate answers which fit in the context.

4. Adopting a participatory, holistic and grassroots approach

Pursuing transitional justice itself is important, but the way it is pursued is important too. The approaches adopted by transitional justice actors would have a considerable impact on the outcomes of the transitional justice efforts. Olsen, Payne and Reiter identify four approaches in transitional justice regarding the application of mechanisms: the maximalist approach which defends the application of trials focusing on accountability and rule of law; the minimalist approach advocates for amnesties claiming that strictly pursuing accountability may jeopardise transitions, and peace and stability is more important; the moderate approach supports truth commissions as the best option since it still holds perpetrators accountable but is less destabilising compared to trials; finally, the holistic approach suggests that instead of choosing one single mechanism, different combinations of mechanisms should be adopted according to the context to ensure different kinds of problems are addressed through appropriate mechanisms.¹⁶²⁵ This study advocates for a holistic approach considering the complex issues of transitional societies. The International Center for Transitional Justice admits that: “After two decades of practice, experience suggests that to be effective transitional justice should include several measures that complement one another. For no single measure is as effective on its own as when combined with the others.”¹⁶²⁶

Although transitional justice has been dominated by legalism and trials (and accountability) are often put in the centre of the field, Turkey should not follow the same path and should instead adopt a holistic approach. As explained in the previous chapters, post-authoritarian and post-conflict societies have complex and multidimensional problems which require different perspectives and approaches beyond legalism. It is pointed out that legal justice (which is pursued through trials and truth commissions) is only one constituent of post-conflict redress.

¹⁶²⁴ Rotondi and Eisikovits, *Forgetting after War*, p.21.

¹⁶²⁵ Olsen et al., *Transitional justice in balance*, pp.16-25.

¹⁶²⁶ ICTJ, *What is transitional justice*, Fact Sheet.

It must be complemented “with rebuilding infrastructure, psycho-social programs, economic development, political reform, etc.”¹⁶²⁷ These require the cooperation of a wide set of disciplines including “anthropology, cultural studies, development studies, economics, education, ethics, history, philosophy, political science, psychology, sociology and theology.”¹⁶²⁸ The complementarity of the mechanisms was explained in the first chapter. As an example of complementarity, Celikkan writes that reparations would be seen as “blood money” by the victims, if they are not accompanied by other mechanisms which ensure recognition of the wrongdoings and justice.¹⁶²⁹ So, multiple mechanisms must be joined through the cooperation of diverse disciplines.

Regarding the holistic and localised approaches of transitional justice Annan said: “Approaches focusing only on one or another institution, or ignoring civil society or victims, will not be effective.”¹⁶³⁰ So, a participatory, holistic and grassroots approach is critical for a successful transitional process. Participation is also related to the grassroots approach because meaningful participation is often not achieved if transitional processes are conducted by external actors.¹⁶³¹ Orr suggests that even the most vulnerable local members need to be empowered and to participate in the processes, and they should be trained by international actors and given critical roles.¹⁶³² This could mean “developing the social and political legitimacy of transitional justice mechanisms.”¹⁶³³

The state should not adopt a top-down and one-size-fits-all approach in the Kurdish Question, instead, it must engage with communities and victims to identify their needs and demands. The form of participation is critical though. It must be a meaningful participation in which locals are actively involved in decision-making, design, planning, management and implementation processes, and they find the appropriate solutions to their problems with transitional justice

¹⁶²⁷ Fletcher et al., *Context, Timing and the Dynamics of Transitional Justice*, p.209.

¹⁶²⁸ Bell, *Transitional Justice, Interdisciplinarity*, p.9.

¹⁶²⁹ Celikkan, M. (2015) ‘The Peace Process and Dealing with the Past’ in Celik, A. B., Celikkan, M., Balta, E., Mutluer, N. and Korkut, L. (eds) *Towards A Resolution: An Assessment of Possibilities, Opportunities and Problems*, Istanbul: Turkey Peace Assembly, p.59.

¹⁶³⁰ The United Nations Security Council - Secretary-General report (2004) *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, New York: United Nations, p.1. Available at: <http://www.ipu.org/splz-e/unga07/law.pdf> (access date: 03.08.2018).

¹⁶³¹ Colvin, *Purity and Planning*, p.419.; Rooney and Aolain, *Transitional Justice from the Margins*, p.2.; Gready, P. and Robins, S. (2014) From Transitional to Transformative Justice: A New Agenda for Practice, *International Journal of Transitional Justice*, Vol.8, No.3, pp.339-361.; Muvingi, *Donor-Driven Transitional Justice*, p.17.; Madlingozi, *On Transitional Justice Entrepreneurs*, pp.210-213.

¹⁶³² Orr, *Governing When Chaos Rules*, pp.140-145.

¹⁶³³ Friedman, R. and Jillions, A. (2015) The Pitfalls and Politics of Holistic Justice, *Global Policy*, Vol.6, No.2, p.141.

practitioners.¹⁶³⁴ Yet, the dominance of international actors in transitional justice processes has a negative impact on local ownership and participation.¹⁶³⁵ As explained in the fourth chapter, there have been some efforts to ensure the participation of locals in East Timor's transitional process, but this was symbolic. International actors have been in charge of decision-making and management of the mechanisms.¹⁶³⁶ Imposing top-down mechanisms to transitional societies without consulting and engaging with locals is likely to face resistance from these societies.¹⁶³⁷ For instance, the UN imposed a retributive approach in East Timor's transition although the local leadership prioritised reconciliation and development. Yet, the leadership resisted this approach by granting apologies and conducting local practices.¹⁶³⁸ Likewise, the South African TRC was criticised for adopting a top-down reconciliation approach which fell short of promoting reconciliation at the local and community levels.¹⁶³⁹

On the other hand, Engstrom argued that participation can be tricky as there are different groups in transitional societies (such as different victim groups, perpetrators, communities and people who are not directly affected) and their interests may conflict with each other. It is a complex task to determine what "public interest" is.¹⁶⁴⁰ Therefore, participation should be balanced between victims (and among different victim groups) and non-victims to respond to the demands of everyone, rather than meeting the expectations of victims exclusively. As depicted in the second chapter's section 3.4.b, development can contribute to transitional justice processes by sharing its experience in participatory and grassroots approaches. Yet, it should be kept in mind that this will not be an easy task in Turkey considering the potential challenges: who is going to be incorporated in the processes as locals? The victims only or the people in the region in general? Although the Kurdish region is predominantly inhabited by the Kurds, there are also non-Kurdish populations. So, to what extent will the Turkish people and other non-Kurdish minorities have a say in the process as locals? The demands and expectations of these groups need to be balanced in a constructive way.

As explained in the third chapter, the PKK dominates the Kurdish political sphere, but transitional justice process should not let other Kurdish political actors and constituencies, who do not support the PKK, be silenced during the process. They must participate in the development of

¹⁶³⁴ Lundy, *Exploring Home-Grown Transitional Justice*, pp.321-340.

¹⁶³⁵ Engstrom, *Transitional Justice and Ongoing Conflicts*, p.49.

¹⁶³⁶ Huang and Gunn, *Reconciliation as State-Building*, p.33.

¹⁶³⁷ McGregor, *International Law as a 'Tiered Process'*, p.50.; Muvingi, *Donor-Driven Transitional Justice*, pp.17-19.

¹⁶³⁸ Muvingi, *Donor-Driven Transitional Justice*, pp.18-19.

¹⁶³⁹ Huyse, *The Process of Reconciliation*, pp.25-26.

¹⁶⁴⁰ Engstrom, *Transitional Justice and Ongoing Conflicts*, p.45.

the process, as well as the victims of the PKK. Yet, the JDP government has been criticised for neglecting the voices of different groups in the Kurdish Question (particularly Kurdish Muslims who do not support the PKK) and it is noted that “there have been few official attempts to bring Turkish and Kurdish civil-society organizations to work toward a long-lasting peace, despite the acknowledgment that a successful peace-building process will require grassroots input from both Turkish and Kurdish groups.”¹⁶⁴¹ Therefore, the engagement of the victims (particularly the Kurdish IDPs) and other local citizens is vital in a potential transitional justice process. Since the Kurdish Question is complex, there are different groups (victim and non-victim, Turkish and Kurdish, etc.) whose voices need to be heard. For instance, if the final report of the truth commission is going to recommend a measure to address the problems of the Kurdish IDPs in urban centres, these IDPs must participate in the process and they must have a say in this measure as happened in East Timor. As explained in the fourth chapter’s section 2.3.d, the East Timorese government consulted with the IDPs through dialogue initiatives and visits to IDP camps to find a solution to their problems. Moreover, when the state establishes a follow-up process to follow these recommendations, the locals must also be a part of this process. If the participation of the locals is not ensured, the measures are not likely to be successful.

5. Designing the mechanisms

Designing the mechanisms is an arduous exercise in transitional societies. Even though the “do everything, engage everyone”¹⁶⁴² attitude is promoted, choosing appropriate mechanisms and designing a process which will include necessary actors is critical. Transitional contexts are complex and full of dilemmas (moral and political) which are not easily solved, and it is often impossible to meet the demands of “all affected parties”.¹⁶⁴³ The goals of a transitional process may conflict with each other as in the conflict between short-term goals which prioritise stability and long-term goals which concern reconciliation.¹⁶⁴⁴ Therefore, they must be set attentively and coherently. This also affects the design of the mechanisms. Impacts of different mechanisms and approaches must be examined by transitional justice actors according to the local context and realities.¹⁶⁴⁵ It was noted that the important question in transitional justice is: “what is most

¹⁶⁴¹ Yavuz and Ozcan, *Turkish Democracy and the Kurdish Question*, p.78.

¹⁶⁴² Gready, *Analysis: Reconceptualising transitional justice*, p.7.

¹⁶⁴³ Engstrom, *Transitional Justice and Ongoing Conflicts*, p.53.; Friedman and Jillions, *The Pitfalls and Politics of Holistic Justice*, p.148.; Fletcher et al., *Context, Timing and the Dynamics of Transitional Justice*, p.169.

¹⁶⁴⁴ Leebaw, *The Irreconcilable Goals of Transitional Justice*, p.118.

¹⁶⁴⁵ Haider, *Breaking the cycle of violence*, p.334.

beneficial to the people whose lives have been disrupted or even destroyed by the perpetrators of violence?”¹⁶⁴⁶

As noted above, a holistic approach is promising in transitional contexts. Yet, even though transitional justice mechanisms can be adopted complementarily, there might be conflicts among them. It is noted that: “A complementarity of means does not emerge organically: effective cooperation requires greater strategic coordination in both the short and long term.”¹⁶⁴⁷ Friedman and Jillions suggest “an oversight mechanism” which can “orchestrate and manage the tensions between the various transitional justice mechanisms.”¹⁶⁴⁸ Moreover, important concepts of the field (reconciliation, justice, peace and truth) must be identified according to the contexts. Since the goals of every transitional justice process are linked to these concepts, identifying them first is crucial. For instance, finding the truth is among the goals of truth commissions. Yet, which truth will be found in this commission, a forensic or a historical truth? So, even though it is difficult to find definitions which would represent different perceptions of individuals, groups and communities, a common ground must be found upon which to base the transitional process. This can be done through (not limited to) public surveys, consultation mechanisms, meetings and workshops with all the actors. Furthermore, Fletcher and others emphasise that the transitional justice process should not be considered as a clear-cut process. Even if a country designs and implements a set of mechanisms, there might always be alternatives, and people may advocate for the alternatives even after long years. This was the case for numerous countries such as Chile, Brazil, Spain, Argentina and South Africa. Moreover, the needs of people, political commitment and support may also change in time.¹⁶⁴⁹

As mentioned earlier, the local context has a huge impact on determining and designing the processes since every country has different dynamics, realities and types of resources (financial and institutional). Clark and Palmer remarked that: “Who implements transitional justice processes, what needs they respond to, and how particular interventions are ultimately understood by affected populations, are critical in determining the legitimacy and efficacy of transitional responses.”¹⁶⁵⁰ For instance, politics often have a significant influence on transitional

¹⁶⁴⁶ Fletcher et al., *Context, Timing and the Dynamics of Transitional Justice*, p.165.

¹⁶⁴⁷ Friedman and Jillions, *The Pitfalls and Politics of Holistic Justice*, p.141.

¹⁶⁴⁸ Friedman and Jillions, *The Pitfalls and Politics of Holistic Justice*, p.148.

¹⁶⁴⁹ Fletcher et al., *Context, Timing and the Dynamics of Transitional Justice*, pp.163-220.; Aguilar et al., *Determinants of attitudes toward transitional justice*, pp.1397-1430.; Goes, I. (2013) Between Truth and Amnesia: State Terrorism, Human Rights Violations and Transitional Justice in Brazil, *European Review of Latin American and Caribbean Studies*, No.94, pp.90-92.; Huyse, *The Process of Reconciliation*, p.26.

¹⁶⁵⁰ Clark, P. and Palmer, N. (2016) *Challenging Transitional Justice*, King's College London Dickson Poon School of Law Legal Studies - Research Paper Series: Paper No.2016-12, p.20.

justice processes because decisions on the mechanisms (such as which mechanisms are going to be adopted and how they are going to operate) are often political decisions.¹⁶⁵¹ Likewise, the availability of resources to allocate for the process has a significant impact on these decisions. Transitional justice mechanisms must be designed realistically to avoid overburdening them.¹⁶⁵² Even the mandate of a tribunal or a truth commission would affect the costs as a broader mandate would mean greater costs.¹⁶⁵³ So, their objectives and mandates must be clear to avoid disappointments.

Considering that this research focuses on ESCR violations and other socioeconomic problems (such as root causes and structural violence), it concerns finding the most appropriate mechanisms to address these issues. Fletcher and others remarked that trials and truth commissions have not been successful in addressing structural violence and socioeconomic inequalities which led/contributed to violence. They argue that addressing root causes of violence (socioeconomic inequalities) and achieving structural change must be a priority in transitional processes. Without doing so, accountability and impunity do not mean “dealing with the past.”¹⁶⁵⁴ Yet, this study suggests that each transitional justice mechanism can contribute to addressing socioeconomic issues in different ways. Therefore, Turkey should embrace a holistic approach and adopt a set of mechanisms to have a successful transitional justice process.

Given the complex nature of the current status quo in Turkey, it will be arduous to design a possible application of transitional justice mechanisms. Yet, incorporating lessons learnt into transitional efforts can be useful in exploring the promises and pitfalls of mechanisms. All transitional countries have different histories, realities, characteristics and dynamics. These differences make it difficult to compare different countries as there are numerous determinants and factors which influence transitional processes. Yet, looking at other examples is critical to learn lessons from other countries. Comparison and consultation could be beneficial to learn lessons from other experiences. For instance, in Ireland, a program, “Healing Through Remembering”, was initiated after a consultation process which included Dr. Alex Boraine (the Deputy Chair of the South African TRC).¹⁶⁵⁵ So, lessons learnt (particularly from East Timor and Peru) will be incorporated into the current discourse.

¹⁶⁵¹ Haider, *Breaking the cycle of violence*, pp.338-339.; Vinjamuri, L. and Snyder, J. (2015) Law and Politics in Transitional Justice, *Annual Review of Political Science*, Vol.18, No.1, pp.303-327.; Engstrom, *Transitional Justice and Ongoing Conflicts*, pp.54-55.

¹⁶⁵² Engstrom, *Transitional Justice and Ongoing Conflicts*, p.53.

¹⁶⁵³ Rotondi and Eisikovits, *Forgetting after War*, p.17.

¹⁶⁵⁴ Fletcher et al., *Context, Timing and the Dynamics of Transitional Justice*, p.218.

¹⁶⁵⁵ Fletcher et al., *Context, Timing and the Dynamics of Transitional Justice*, p.180.

Nickson and Braithwaite emphasise that “a wide gap between hopes and expectations is particularly endemic to transitional justice.”¹⁶⁵⁶ It is impossible to prosecute all the perpetrators in transitional states and this causes disappointment among victims and affected populations. Nickson and Braithwaite suggest that embracing a broadened, deepened and lengthened justice conception (which includes restorative, religious and traditional forms of justice) could contribute to closing the gap between what people expect regarding justice and what transitional justice can deliver.¹⁶⁵⁷ Therefore, adopting different transitional justice toolkits can be promising to deliver more justice. Finally, it must be acknowledged that “[t]ransitional justice will always be an imperfect, messy process involving hard decisions about which goals and whose priorities to focus on.”¹⁶⁵⁸ Keeping this in mind and considering limitations, this section is going to look at five transitional justice mechanisms and analyse how can they contribute to addressing ESCR violations and historical inequalities in the light of the experiences of East Timor and Peru.

5.1. Trials

Although there have been contrasting views on trials in transitional justice literature and practice since the emergence of the field, trials have been adopted by many transitional state in different forms (national, international and hybrid courts). They are often seen as the “primary response” to mass violence in transitional justice literature.¹⁶⁵⁹ Regarding ESCR abuses and socioeconomic wrongs, the justiciability of ESCR has long been debated. Yet, as depicted in the second chapter, ESCR violations are justiciable just like CPR abuses. In the Kurdish Question, there have been numerous human rights violations (both CPR and ESCR violations) which could be addressed in courts.

East Timor and Peru can provide important insights for Turkey’s choice. Since East Timor had been colonised by Portugal for hundreds of years and occupied by Indonesia for more than two decades, the country did not have a functioning judicial system during its transition. Due to lack of trained judges and lawyers, and the absence of legal infrastructure and financial resources, East Timor was not able to prosecute the perpetrators without international support.¹⁶⁶⁰ The UN established various mechanisms (special panels, hybrid tribunals and units) to prosecute the

¹⁶⁵⁶ Nickson, R. and Braithwaite, J. (2014) Deeper, broader, longer transitional justice, *European Journal of Criminology*, Vol.11, No.4, p.445.

¹⁶⁵⁷ Nickson and Braithwaite, *Deeper, broader, longer transitional justice*, pp.445-463.

¹⁶⁵⁸ Friedman and Jillions, *The Pitfalls and Politics of Holistic Justice*, p.148.

¹⁶⁵⁹ Fletcher et al., *Context, Timing and the Dynamics of Transitional Justice*, p.166.

¹⁶⁶⁰ Kingston, *Balancing justice and reconciliation*, pp.273-276.; Cumes, *Conflict and International Intervention*, p.286.

perpetrators of serious crimes, yet these crimes were limited to direct and individual crimes; socioeconomic wrongs and structural injustices were not addressed in these trials.¹⁶⁶¹ Considering that the vast majority of deaths in East Timor took place due to socioeconomic wrongs including starvation and illness,¹⁶⁶² trials should have dealt with ESCR abuses as well. This has not been the case because the UN designed a very limited mandate which excluded socioeconomic wrongs.

In Peru, the context was different. Even though there were shortcomings, Peru had a functioning judicial system during its transition, and the country chose to prosecute perpetrators in its domestic courts which enabled local acceptance of the trials.¹⁶⁶³ The most responsible perpetrators such as Fujimori (former president of Peru) and various high-ranking officials were convicted for human rights abuses which has been a great success for the country.¹⁶⁶⁴ Yet, the trials are still criticised for not prosecuting the majority of perpetrators by some human rights organisations such as the HRW.¹⁶⁶⁵ Similar to East Timor, there was a lack of political will, particularly from the Ministry of Defence which shared very limited information for the trials.¹⁶⁶⁶ It is noted that “prosecuting state sponsored crimes is more difficult than prosecuting individual crimes because the evidences are often incomplete or unavailable.”¹⁶⁶⁷ Therefore, political will is critical for a successful prosecution process. Turkey, like Peru, has an established and functioning judicial system despite its shortcomings, and it can prosecute perpetrators in domestic courts. There is no reason to establish an international court to try the perpetrators concerning the Kurdish Question. Considering that trials generally fail to deliver justice (as they often try only a few perpetrators and give light sentences) despite their enormous budgets, it is not appropriate for Turkey to adopt international tribunals.

East Timor and Peru witnessed gross violations of ESCR, but these crimes were not brought to trials in either country. On the other hand, the International Criminal Tribunal for the former Yugoslavia and the Extraordinary Chambers in the Courts of Cambodia heard criminal cases concerning forced displacement (or other human rights violations which caused displacement).¹⁶⁶⁸ ESCR violations (such as forced displacement and famine) may constitute serious crimes (war crimes and crimes against humanity) as explained in the second chapter,

¹⁶⁶¹ Kent, *Interrogating the "Gap"*, p.1034.

¹⁶⁶² The CAVR, *Chega*, p.44.

¹⁶⁶³ Laplante and Theidon, *Truth with Consequences*, pp.243-244.; Burt, *Guilty as Charged*, p.403.

¹⁶⁶⁴ Root, *Transitional Justice in Peru*, p.8.; Sullivan, *The Judgment Against Fujimori*, pp.657-842.

¹⁶⁶⁵ HRW, *World Report 2017*, pp.480-484.

¹⁶⁶⁶ Arce Arce, *Armed Forces*, p.38.

¹⁶⁶⁷ Goes, *Between Truth and Amnesia*, p.86.

¹⁶⁶⁸ Duthie, *Transitional Justice and Displacement*, p.247.

and Turkey must not ignore ESCR abuses as other countries often did. Even though Turkey did not initiate a transitional justice process, there have been some efforts which could be considered as steps taken to address the past wrongdoings. For instance, a few trials (Temizoz and Others, Gendarmerie Intelligence and Counter-Terrorism (Turkish acronym JITEM), The Trial of the Musa Anter Murder, etc.) began in the 2000s to face the wrongdoings of the past, particularly enforced disappearance and extra-judicial killings cases. Although these trials had serious shortcomings, they contributed, even a little, to unearthing the truth about the past.¹⁶⁶⁹ Woefully, the perpetrators (especially state officials) of human rights violations committed against the Kurds largely enjoy impunity in Turkey.¹⁶⁷⁰

It is more difficult and precarious to prosecute perpetrators when there is still support for the predecessor regime among the public and they do not consider the past wrongs as “wrongs”.¹⁶⁷¹ Considering the Turkish context, as many people still identify the Kurds with the PKK, the Kurdish victims may be viewed as “terrorists”. Moreover, there has always been strong support for the military in Turkey and prosecuting the military officials may cause a backlash in the country.¹⁶⁷² Orentlicher writes that “societies that are unable to mount prosecutions (or, as the case of Argentina suggests, to sustain them) during the early years of their democratic transition may have greater political space to do so with the passage of time.”¹⁶⁷³ This may also be the case in Turkey. It does not seem realistic to expect that perpetrators of human rights violations (both CPR and ESCR) will be prosecuted properly in the near future. Even if the conflict is settled and transitional process begins at some point, it will probably take time to expect trials due to the public support for the army. Yet, in time, the public can be informed about the abuses, the oppression and the sufferings that the Kurds have endured. After that, trials can be considered in Turkey. To conclude, considering the high cost and limited success of international trials, Turkey can and should prosecute perpetrators in national courts, even if it happens with the passage of time.

¹⁶⁶⁹ Atilgan, M. and Isik, S. (2012) *Disrupting the Shield of Impunity: Security Officials and Rights Violations in Turkey*, Istanbul: TESEV Publications.; Avsar, G., Ozdil, K. and Kirmizidag, N. (2013) *The Other Side of the Ergenekon: Extrajudicial Killings and Forced Disappearances (Abridged Version)*, Istanbul: TESEV Publications.; Budak, *Dealing with the Past*, pp.235-237.

¹⁶⁷⁰ Celikkan, *The Peace Process and Dealing with the Past*, pp.52-55.

¹⁶⁷¹ Goes, *Between Truth and Amnesia*, pp.86-93.

¹⁶⁷² Sarigil, *Public Opinion and Attitude toward the Military*, pp.282-306.; Sahin and Kara, *A Quantitative Review of Factors*, pp.347-358.; Center for Turkish Studies – Kadir Has University (2018) *Research on Social & Political Trends in Turkey*, Istanbul: Center for Turkish Studies, p.17.

¹⁶⁷³ Orentlicher, *‘Settling Accounts’ Revisited*, p.22.

5.2. Truth Commissions

Although the right to truth has not been recognised in the Constitution of Turkey and in national legislation,¹⁶⁷⁴ a truth commission can be useful in tackling the Kurdish Question. Celikkan suggested that “formation of an independent history commission in Turkey, discussing particularly the inequalities, discrimination and historical demands concerning the Kurdish Issue must be taken as being fundamental.”¹⁶⁷⁵ This section is going to explore the prospect of a truth commission in Turkey.

5.2.a. Contribution to healing of individuals and societies

As the first chapter conceptualised truth commissions, there are so many goals attributed to them, and vigorous debates continue to enrich the field on whether they can achieve these goals or not. There are manifold ways of truth-telling and considering them all the same would be oversimplification of these processes. Truth-telling can contribute healing under certain circumstances. For instance, the truth commission in Peru provided victims psychological support before, during and after the process to prevent re-traumatisation.¹⁶⁷⁶ However, the CTF did not do so, and did not even inform people about the process.¹⁶⁷⁷ Likewise, the South African victims participated in the truth-telling process when they were against the amnesties which were still granted against their wishes.¹⁶⁷⁸ Therefore, design, planning and implementation of a truth commission would be decisive on its impacts. Daly noted: “Few truth commissions or allied institutions have the resources to ensure that the truth heals rather than hurts.”¹⁶⁷⁹ To ensure that their participation will not harm them, victims must be informed properly about the mechanisms before they participate.

As explained previously, violence causes trauma at different levels (such as individual and societal) in transitional societies and it is often transferred to future generations.¹⁶⁸⁰ This was also the case in the Kurdish Question as young generations (in addition their own experiences and sufferings) grew up listening to stories of violations which were committed against their

¹⁶⁷⁴ Celikkan, *The Peace Process and Dealing with the Past*, p.57.

¹⁶⁷⁵ Celikkan, *The Peace Process and Dealing with the Past*, p.51.

¹⁶⁷⁶ Root, *Transitional Justice in Peru*, p.78.

¹⁶⁷⁷ Hirst, *Too Much Friendship*, p.35.

¹⁶⁷⁸ Pigou, *False Promises and Wasted Opportunities*, p.39.

¹⁶⁷⁹ Daly, E. (2008) Truth Skepticism: An Inquiry into the Value of Truth in Times of Transition, *International Journal of Transitional Justice*, Vol.2, No.1, p.31.

¹⁶⁸⁰ Rauchfuss and Schmolze, *Justice heals: The impact of impunity*, p.40.; Danieli, *Massive Trauma*, p.352.; Minow, *Breaking the cycles of hatred*, p.16.; Andrieu, *Transitional Justice: A New Discipline*, p.21.

parents.¹⁶⁸¹ Therefore, these traumas need to be healed to achieve reconciliation and prevent renewed violence in Turkey. Revealing the truth has a different meaning in enforced disappearance cases (since it helps with closure),¹⁶⁸² and it would also be significant in the Kurdish Question as there are large number of disappeared persons in Turkey. Lastly, potential challenges of truth-telling must be considered before designing the process. The government needs to take necessary steps to include other political parties, different actors from the Kurdish political movement and civil society to ensure that there is adequate support for the process. Likewise, a future truth-telling process must include the violations of the PKK as well to ease a potential backlash from the Turkish public.

5.2.b. *Setting a true account of history*

As the first chapter explained, repressive regimes often distort narratives of the past and hide the truth from people through media and state institutions.¹⁶⁸³ It is important to recover the official history to prevent future conflicts as distorted narratives may produce chauvinistic ideologies which may be exploited by political groups to generate violence.¹⁶⁸⁴ These are significant matters in Turkey, as the Turkish state has constructed a negative discourse on the Kurdish people since the early years of the Turkish Republic.¹⁶⁸⁵ Although this discourse has gone through some changes from the 1920s to today, the state always narrated the problems from its point of view and suppressed other narratives.¹⁶⁸⁶ Likewise, the Turkish media and academia have largely adopted the state's discourse due to suppression and identified the Kurdish Question with economic backwardness and terrorism until the 2000s.¹⁶⁸⁷ In short, the narrative on the Kurdish Question has been dominated by the state, and narratives and truths of the Kurds have not been heard and recognised by the public. The violations they have been subjected to and the sufferings they endured remain largely unknown to the Turkish people. Public opinion

¹⁶⁸¹ Yavuz, *Five stages of the construction*, p.14.; Abbas and Yigit, *Perspectives on Ethno-National Conflict*, pp.303-304.; Bilgin, *The Problem with Children*, pp.135-151.; Baser and Celik, *Imagining peace in a conflict environment*, p.271.

¹⁶⁸² Rauchfuss, and Schmolze, *Justice heals: The impact of impunity*, p.42.; Hayner, *Unspeakable Truths: Transitional Justice*, p.2.

¹⁶⁸³ Hamber and Wilson, *Symbolic closure through memory*, p.36.; Alidu et al., "Truths" and "Re-Imaging", p.136.; Escudero, *Road to Impunity*, p.140.

¹⁶⁸⁴ Mendeloff, *Truth-Seeking, Truth-Telling*, p.369.

¹⁶⁸⁵ Yavuz, *Five stages of the construction*, p.8.; Ergin, *The racialization of Kurdish identity*, pp.325-327.; Karakoc, *A critical note*, pp.730-736.

¹⁶⁸⁶ Yegen, *The Kurdish Question in Turkish State Discourse*, pp.564-565.; Keyman, *Rethinking the Kurdish question*, p.471.; Ergin, *The racialization of Kurdish identity*, p.327.

¹⁶⁸⁷ Sagnic, *Mountain Turks*, p.132.; Barkey and Fuller, *Turkey's Kurdish Question*, pp.118-122.; Dixon and Ergin, *Explaining Anti-Kurdish Beliefs*, p.1330.; Coban, *Turkey's 'War and Peace'*, pp.452-455.; Karakoc, *A critical note*, p.734.; Saracoglu, *Exclusive recognition*, pp.640-644.

on the Kurdish Question has been shaped by this negative discourse.¹⁶⁸⁸ So, establishing a truth commission and disseminating the information about violations may contribute to the process by raising public awareness and enabling people to empathise with the victims, as happened in Peru.¹⁶⁸⁹

The conflict has exacerbated the anti-Kurdish discourse, and some community-level tensions occurred between the Kurds and the Turks in some Western cities as the third chapter elaborated.¹⁶⁹⁰ These negative perceptions must be defused to secure a future peace and transitional process. Unearthing the truth can help challenge the official narrative which portrayed the Kurds in a negative way, but this must be done carefully. Although revealing the truth is important, forging one version of history through truth-telling mechanisms can be problematic.¹⁶⁹¹ For instance, the CAVR was criticised for creating one version of truth (from the FRETILIN's perspective) and suppressing the others.¹⁶⁹² Therefore, instead of setting one account of history on the Kurdish Question, various truth-telling initiatives and memory projects should be developed at different levels (like community-level and national-level) in Turkey. These different initiatives may also enrich each other. Yet, it must be borne in mind that a truth commission can be more effective, since it is an official body, in convincing the public that the rights of the Kurdish people have been violated.¹⁶⁹³ Therefore, establishing a truth commission is more significant compared to other memory initiatives.

5.2.c. Addressing ESCR violations and root causes of the conflict

As the second chapter depicted, truth commissions can make a substantial contribution to peace and reconciliation by addressing ESCR violations, diagnosing root causes of the conflicts, identifying circumstances which promoted or allowed violations to take place, and making recommendations for tackling these issues. Especially, forced displacement must be addressed in truth commissions as happened in Guatemala, Liberia and East Timor.¹⁶⁹⁴ The Guatemalan

¹⁶⁸⁸ Stefanovic et al., *Home is Where the Heart is*, p.281.; Celik, *I miss my village*, p.142.; Saracoglu, *Exclusive recognition*, p.641.; Yavuz and Ozcan, *Turkish Democracy and the Kurdish Question*, p.83.; Yavuz and Ozcan, *The Kurdish question and JDP*, p.103.; Yegen, *Prospective-Turks or Pseudo-Citizens*, pp.597-615.

¹⁶⁸⁹ Peru support group, *Truth and Reconciliation*, p.11.

¹⁶⁹⁰ Sagnic, *Mountain Turks*, pp.131-132.; Barkey, *Turkey's Kurdish Dilemma*, pp.57-58.; Celik and Blum, *Track II Interventions*, p.65.; Ergin, *The racialization of Kurdish identity*, pp.322-323.; Saracoglu, *The changing image of the Kurds*, pp.239-260.; Gambetti, *Linc girisimleri*, pp.7-34.; Celik, *I miss my village*, pp.141-145.; Yavuz and Ozcan, *The Kurdish question and JDP*, p.103.; Celik et al., *Towards A Resolution*, p.27.

¹⁶⁹¹ Daly and Sarkin, *Reconciliation in Divided Societies*, pp.142-146.; Andrieu, *Transitional Justice: A New Discipline*, pp.11-12.; Wallis, *Victors, Villains and Victims*, p.136.

¹⁶⁹² Kent, *Local Memory Practices*, p.440.; Kent, *After the Truth Commission*, pp.57-58.

¹⁶⁹³ Daly and Sarkin, *Reconciliation in Divided Societies*, p.143.

¹⁶⁹⁴ Duthie, *Transitional Justice and Displacement*, pp.245-248.

Commission for Historical Clarification (CEH) was considered as successful in terms of addressing forced displacement because the investigators of the commission “hiked into remote areas of the country to interview thousands of civilians who were displaced by the war.”¹⁶⁹⁵ The Peruvian and East Timorese truth commissions also looked at the context and root causes of the conflicts as demonstrated in detail in the previous chapter.¹⁶⁹⁶ Although the Kurdish Question is primarily an ethno-political conflict, socioeconomic issues played an important role.¹⁶⁹⁷ The oppression on the identity and culture of the Kurdish people, the economic marginalisation of the Kurdish region and the significance of socioeconomic problems and ESCR abuses in the Kurdish Question were explained in the third chapter. A truth commission can make a great contribution to Turkey’s future peace process by making an in-depth analysis of these issues and depict their roles in the Kurdish Question.

The conflict between the Turkish army and the PKK inflicted great damages to individuals, communities and the region. The truth commission should examine how the victims have been affected from these. Since the perception of discrimination is quite strong and this is one of the strong reasons for ethno-nationalism for the Kurdish people,¹⁶⁹⁸ addressing these issues is vital for achieving peace and reconciliation. As the third chapter’s section 2.4 explained, the socioeconomic problems are more significant regarding the Kurdish youth who are frustrated with poverty and unemployment, and they are more inclined to joining the PKK.¹⁶⁹⁹ So, the truth commission must focus on this issue and recommend ways in which these problems can be eliminated, and the Kurdish youth can be prevented from engaging in violence.

Lastly, the third chapter’s section 3.2 made an in-depth analysis of forced migration in the Kurdish Question as it has been one of the most wide-spread human rights violations in the conflict. The forced migration caused other socioeconomic problems such as unemployment, poverty, health and education problems for the Kurds. Therefore, forced migration requires a

¹⁶⁹⁵ Bradley, M. (2006) FMO Research Guide: Reparations, Reconciliation and Forced Migration, *Forced Migration Online*. Available at: <http://www.forcedmigration.org/research-resources/expert-guides/reparations-reconciliation-and-forced-migration/fmo044.pdf> (access date: 23.07.2018).

¹⁶⁹⁶ The CAVR, *Chega*, pp.19-20.; The CVR, *Hatun Willakuy*, pp.1-2.

¹⁶⁹⁷ Gokalp, *A gendered analysis of violence*, p.568.; Yavuz, *Five stages of the construction*, p.2.; Sirkeci, *Exploring the Kurdish population*, p.172.; Mousseau, *An inquiry into the linkage*, pp.45-55.; Celik, *I miss my village*, p.148.; Sarigil, *Curbing Kurdish ethno-nationalism*, pp.538-539.; Sarigil and Fazlioglu, *Exploring the roots*, pp.446-451.

¹⁶⁹⁸ Sarigil and Fazlioglu, *Exploring the roots*, p.437.

¹⁶⁹⁹ Kirisci and Winrow, *The Kurdish Question and Turkey*, p.126.; Sarigil and Fazlioglu, *Exploring the roots*, p.448.; Yavuz, *Five stages of the construction*, pp.11-12.; Romano, *The Kurdish Nationalist Movement*, pp.88-89; Bilgel and Karahasan, *The Economic Costs of Separatist Terrorism*, p.462.; Mousseau, *An inquiry into the linkage*, p.56.; Vilellas, *Turkey and The Kurdish Question*, p.11.; Abbas and Yigit, *Perspectives on Ethno-National Conflict*, pp.303-304.; Celik et al., *Towards A Resolution*, pp.35-36.; Yanmis, *Resurgence of the Kurdish Conflict*, p.26.

special emphasis in the solution of the Kurdish Question. Although transitional justice does not concern eliminating these socioeconomic problems directly (creating employment or building houses and hospitals), a truth commission can still contribute to tackling these problems by diagnosing the problems and their causes. So that the state can plan a program to solve these issues. To conclude, socioeconomic problems and ESCR abuses should not be considered as a historical background or context only; they require deliberate attention and remedies in the transitional process.

5.2.d. Formation and mandate of the truth commission

As the first chapter illustrated, the formation and mandate of a truth commission is decisive for its success. These processes should develop in an extensive consultation with public, civil society and political actors. It is important to identify what people understand from “truth” in establishing truth commissions, otherwise there might be a discrepancy between victims’ and the commission’s understandings of truth, as happened in East Timor.¹⁷⁰⁰

The time frame that the commission will look at, the aims it will pursue and the approach it will adopt must be identified by a consultation process to ensure that it will meet the demands of people and be accepted by the victims and the society. Firstly, the mandate of the commission should be determined. As explained in the previous chapter, some truth commissions (such as East Timor and Peru) include ESCR violations and broader socioeconomic issues in their mandates to analyse. Turkey should also set a mandate which includes examining the root causes of the conflict, structural violence and ESCR abuses. The public and victims must be informed about these matters, otherwise they may get disappointed with the outcomes. Considering the oppression of the Kurds since the 1920s, determining the time frame is likely to be a critical issue in the Kurdish Question. Therefore, the time frame must be determined after a consultation process with victims, political actors and civil society. Moreover, the transitional process in general, and the truth commission in particular, need to take a balanced approach between the individual and collective good (and demands) as they may conflict with each other. This approach must be shaped through a consultation process as a top-down decision may face criticism and resistance from people.

The aims of the commission must also be identified modestly and clearly through a consultation process. Managing the expectations realistically and acknowledging the limitations are significant in this regard. Therefore, the needs and demands of the Kurdish people and the wider public must be understood well to design a realistic mandate for the commission. Even the

¹⁷⁰⁰ Robins, *Challenging the Therapeutic Ethic*, p.101.

language matters when establishing a transitional justice mechanism, as too ambitious phrases such as “achieving reconciliation” or “tackling the Kurdish Question” can be problematic. For instance, the South African TRC promised to achieve “full reconciliation” but this has not been the case, and Desmond Tutu admitted that the commission should have promised to “promote reconciliation” as the former was not realistic.¹⁷⁰¹ Even if achieving a full-fledged reconciliation through transitional justice mechanisms is not realistic and attainable, this should not prevent transitional states from *pursuing* reconciliation.¹⁷⁰²

The approach of the commission must be determined according to the context as well. For instance, the CAVR focused on social justice rather than legal justice as it did not act like a trial (by looking at individual cases); instead, it considered victims collectively.¹⁷⁰³ Considering victims in a collective manner could be efficient in the Kurdish Question too as there are large numbers of victims and the lifespan of the conflict and oppression is quite long. Yet, this does not mean that the commission should not document individual human rights violations. As noted earlier, truth commissions’ documentation of abuses is important both for the process (for instance, it could be beneficial for identifying the victims for reparations) and for future generations. Finally, the commission should adopt the “do no harm” principle and avoid anything which may damage victims and the society. For instance, victims who participate in the commission should not be forced to forgive the perpetrators, as this may lead to new traumas.¹⁷⁰⁴ Lastly, the operating time of the commission should not be too short as truth commissions often require additional time (as happened in East Timor) due to their work-load. Likewise, preparing victims for participation may require time as “the most traumatized victims often take longest to be ready to participate in transitional justice.”¹⁷⁰⁵

5.2.e. Commissioners and staff

The appointment of commissioners is a critical point as they have a major impact on the commission’s work. They should be appointed through an extensive consultation process, otherwise the victims and public may not accept the commission. For instance, the CTF was criticised for this, as the appointment of its commissioners and the selection of witnesses were made without any consultation with the public, victims and civil society.¹⁷⁰⁶ Moreover,

¹⁷⁰¹ Hayner, *Unspeakable Truths: Transitional Justice*, p.184.

¹⁷⁰² Evans, *A future without forgiveness*, pp.687-688.

¹⁷⁰³ Nevins, *The CAVR: Justice and Reconciliation*, p.600.; The CAVR, *Chega*, pp.16-20.

¹⁷⁰⁴ Hamber and Wilson, *Symbolic closure through memory*, p.47.

¹⁷⁰⁵ Nickson and Braithwaite, *Deeper, broader, longer transitional justice*, p.454.

¹⁷⁰⁶ Hirst, *Too Much Friendship*, pp.15-28.; The UN report (2005), *Report to the Secretary-General of the Commission of Experts*, p.84.; Evans, *The Right to Reparation*, p.198.

appointing commissioners from different backgrounds is important as post-authoritarian and post-conflict contexts are complex and multidimensional, and this requires different perspectives to be employed. In Peru, the commissioners were from different backgrounds including academics, journalists and religious leaders.¹⁷⁰⁷ Yet, they were criticised as almost all of them were far from representing the affected population in terms of culture and language.¹⁷⁰⁸

So, when Turkey establishes a truth commission, it must appoint commissioners from different backgrounds in terms of profession, ethnicity, gender and language. For instance, commissioners must include women and Kurdish speakers. Moreover, the commission should recruit and train local people who are from the Kurdish region and familiar with the context and the Kurdish culture. Recruiting locals can also be beneficial to increase the commission's legitimacy and local ownership, as happened in East Timor (even though it was mostly symbolic).¹⁷⁰⁹ As mentioned previously, the commission must employ a wide-range of staff from different professions such as social workers, psychologists, information-systems specialists and interpreters.

5.2.f. Structure and settings

The structure of a truth commission may vary in different contexts as can be seen in the examples of East Timor and Peru. Turkey should also design its commission according to the context in the most appropriate way. Yet, it must be noted that de-centralisation of the commission is important to ensure that victims in remote parts of the country should be able to engage in the work of the commission. Although there have been deficits, East Timor and Peru made an effort to achieve this by forming regional offices, appointing regional commissioners and staff, and holding regional hearings.¹⁷¹⁰ Yet, in East Timor, victims often experienced difficulties when they participated in the hearings because they were not comfortable in talking to foreigners in an unfamiliar setting.¹⁷¹¹ The environment and protection are important for the witnesses and victims. In Rwanda, Tutsi victims had to testify surrounded by former enemies who are the majority in the country.¹⁷¹² Different settings may be more appropriate for different crimes in order to prevent re-traumatisation of victims who participate. Unlike the CAVR, the CVR designed the settings of hearings carefully to prevent re-traumatisation, where victims were

¹⁷⁰⁷ Root, *Transitional Justice in Peru*, pp.73-74.

¹⁷⁰⁸ Peru Support Group, *Truth and Reconciliation*, p.12.

¹⁷⁰⁹ Evans, *The Right to Reparation*, p.201.

¹⁷¹⁰ Rae, *Peacebuilding and transitional justice*, p.190.; The CAVR, *Chega*, pp.18-19.; Peru support group, *Truth and Reconciliation*, p.11.

¹⁷¹¹ Rae, *Peacebuilding and transitional justice*, pp.187-190.

¹⁷¹² Brouneus, *Truth-Telling as Talking Cure*, p.66.

provided a safe and comfortable environment to share their stories.¹⁷¹³ As the fourth chapter's section 3.2.a explains in detail, the feedback of the victims was generally positive due to the design of the settings in Peru's truth-telling process. Therefore, Turkey should recruit locals for the commission and they should participate in the proceedings, especially when cultural differences or language can be a problem for the victims. Moreover, the settings of the hearings must be designed sensitively to prevent re-traumatisation and to enable victims a cathartic experience. This could contribute to the prevention of re-traumatisation.

5.2.g. Operation

The CAVR operated in several languages and its report was translated to these languages to disseminate its findings to everyone.¹⁷¹⁴ Unlike the CAVR, the CVR and the CTF were not well-equipped regarding different languages as they lacked interpreters and did not publish the final report in the languages of the victims.¹⁷¹⁵ This is also important in the Kurdish Question as some Kurdish people cannot speak Turkish, or they may be more comfortable in expressing themselves in their mother tongue. Therefore, the truth commission should operate in both Turkish and Kurdish (and other relevant) languages, and its final report must be published in these languages to make it available to everyone.

Conducting thematic hearings, projects and workshops can be useful to address the needs and demands of specific groups such as women, youth and IDPs. East Timor and Peru adopted this method and they produced promising outcomes as explained in the fourth chapter.¹⁷¹⁶ Moreover, the CAVR conducted specific workshops and meetings for communities to identify the community-level impacts of the conflict and the needs of these communities.¹⁷¹⁷ Turkey should also adopt this approach and pay specific attention to more vulnerable groups (women, youth and IDPs) and communities. Moreover, hearings were broadcasted in East Timor and Peru to ensure that testimonies of the victims were heard by the public.¹⁷¹⁸ Turkey should also consider this to ensure that the stories of the victims are heard by the public. Finally, truth commissions need to give proper recommendations avoiding rhetorical statements and slogans since they have experts on the matters they look into. The recommendations should be applicable to the context.

¹⁷¹³ Root, *Transitional Justice in Peru*, pp.77-78.

¹⁷¹⁴ The CAVR, *Chega*, p.6.

¹⁷¹⁵ Peru Support Group, *Truth and Reconciliation*, p.12.; Rae, *Peacebuilding and transitional justice*, p.186.

¹⁷¹⁶ The CAVR, *Chega*, pp.32-40.

¹⁷¹⁷ The CAVR, *Chega*, pp.31-40.

¹⁷¹⁸ Crandall, *Truth Commissions in Guatemala and Peru*, p.16.; The CAVR, *Chega*, p.33.

5.2.h. Follow-up measures

Recommendations of truth commissions are often left unimplemented as many transitional states do not establish follow-up processes for implementation.¹⁷¹⁹ This is a serious problem in transitional states because truth commissions should not be seen as an end in themselves. Unfortunately, this was the case in East Timor.¹⁷²⁰ Yet, after five years, East Timor established an institute (Institute for Memory) to promote and monitor the recommendations of the truth commissions (the CAVR and the CTF).¹⁷²¹ Recommendations of truth commissions are important and need to be implemented. Turkey must avoid this mistake and design follow-up processes when it establishes a truth commission. Failure in implementing the recommendations also affects victims as they get disappointed when there is no consequence. They may think that their sufferings are simply used by the commission for its purposes rather than helping the victims.¹⁷²²

To conclude, although the benefits and success of truth commissions are still debated, the research which has been done so far depicts that they are not harmful.¹⁷²³ Unless there is a valid reason for not establishing a truth commission, such as people's opposition or the possibility of doing harm, there is a moral duty to remember towards the victims and truth commissions should be implemented. Yet it must be borne in mind that the truth is often not easily acknowledged by the public and elites in transitional societies.¹⁷²⁴ This may also be true for the Kurdish Question since the Turkish state discourse (which promoted negative sentiments against the Kurds) has been quite strong among the public, and it will probably take time to change this narrative.

5.3. Reparations

The first chapter explained reparations in detail and illustrated that they are victim-centred because they (particularly material reparations) have tangible impacts on victims' lives. Therefore, victims prioritised reparations over other mechanisms in many transitional contexts including East Timor and Peru.¹⁷²⁵ They take many different forms including material

¹⁷¹⁹ Laplante and Theidon, *Truth with Consequences*, pp.229-230.; Hayner, *Commissioning the truth*, pp.24-28.; Wiebelhaus-Brahm, *Truth commissions and transitional societies* p.146.

¹⁷²⁰ Vieira, *The CAVR and the 2006 Displacement Crisis*, p.14.; Kent et al., *Chega! Ten Years On*, p.2.

¹⁷²¹ Kent et al., *Chega! Ten Years On*, p.5.

¹⁷²² Madlingozi, *On Transitional Justice Entrepreneurs*, pp.208-228.; Rooney and Aolain, *Transitional Justice from the Margins*, pp.1-8.; Laplante and Theidon, *Truth with Consequences*, pp.240-241.; Evans, *A future without forgiveness*, pp.686-687.

¹⁷²³ Wiebelhaus-Brahm, *Truth commissions and transitional societies*, p.6.

¹⁷²⁴ Daly and Sarkin, *Reconciliation in Divided Societies*, p.147.

¹⁷²⁵ Waardt, *Peruvian Victims Being Mocked*, p.848.; Robins, *Challenging the Therapeutic Ethic*, p.102.; Kent, *Local Memory Practices*, p.450.; ICTJ, *Unfulfilled Expectations: Victims' perceptions*, pp.11-12.

compensation, public apologies, restitution, monuments and psychological assistance. Although there are non-financial reparations such as apologies, they often require large financial resources, and this makes them less popular among transitional states.¹⁷²⁶ Economically and democratically strong countries tend to grant reparations more compared to countries which have weak democracies and economies.¹⁷²⁷ Turkey has signed various international treaties which recognised the right to a remedy and reparation.¹⁷²⁸ Considering that its economy and democracy are strong (despite the deficits) compared to many transitional states, the Turkish government can and must implement reparations in the Kurdish Question.

Political violence and conflict have a wide-range of negative impacts in transitional societies both tangible (killings, torture and destruction of buildings) and intangible (damages to societies, socioeconomic institutions and family relations; increasing fear and trauma; decline in trust) which disrupt the functioning of societies.¹⁷²⁹ To repair the societal problems and achieve social reconstruction, the root causes of the problems must be understood and eliminated. This requires engaging with communities and examining their needs and aspirations.¹⁷³⁰ Numerous workshops were conducted in East Timor and Peru to identify the needs and demands of people before designing reparation programs.¹⁷³¹ The CVR clearly remarked that reparations should address socioeconomic and structural injustices in the country.¹⁷³² Likewise, the CAVR recommended wide-ranging reparations (material and symbolic) at national, community and individual levels to remedy the past wrongs. Since there was a large number of victims (almost all citizens), the commission decided to grant reparations to the most vulnerable. These included medical and psychological support, memorialisation efforts, exhumations and material support which was in the form of provision of services in health and education.¹⁷³³ Woefully, transitional

¹⁷²⁶ Powers and Proctor, *Victim's Justice*, p.793.; Mobekk, *Transitional Justice and Security Sector Reform*, pp.63-64.; Daly and Sarkin, *Reconciliation in Divided Societies*, p.42.; Roht-Arriaza, *Reparations in the aftermath of repression*, pp.121-122.; Vandeginste, *Reparation*, pp.159-160.

¹⁷²⁷ Powers and Proctor, *Victim's Justice*, p.788.; Loyle, C. and Binningsbo, H. (2018) Justice during Armed Conflict: A New Dataset on Government and Rebel Strategies, *Journal of Conflict Resolution*, Vol.62, No.2, p.459.

¹⁷²⁸ The Universal Declaration of Human Rights; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Covenant on Civil and Political Rights; International Convention on the Elimination of All Forms of Racial Discrimination.

¹⁷²⁹ Haider, *Breaking the cycle of violence*, pp.333-335.; Fletcher and Weinstein, *Violence and Social Repair*, p.576.

¹⁷³⁰ Fletcher and Weinstein, *Violence and Social Repair*, p.633.

¹⁷³¹ ICTJ, *Unfulfilled Expectations: Victims' perceptions*, pp.11-12.; Waardt, *Peruvian Victims Being Mocked*, p.835.

¹⁷³² Correa, *Reparations in Peru*, p.5.

¹⁷³³ The CAVR, *Chega*, pp.201-206.

states often have a limited capacity for addressing the demands of all victims. This makes identifying victims an arduous task.

5.3.a. Identifying victims

As depicted in the previous chapters, identifying “the victim” is often difficult (also political). For instance, in East Timor, the commission made an objective definition and did not consider people’s political affiliations.¹⁷³⁴ It was similar in Peru as the CVR only considered the violation as a condition and did not look at the political affiliations of the victim or the perpetrator.¹⁷³⁵ However, defining victims is often contentious as public or political elites often think various groups do not deserve reparations as happened in Peru and East Timor. This is likely to happen in Turkey due to negative sentiments against the Kurds among the public. Currently, the state identifies martyrs (members of the security forces who lost their lives due to the conflict) and war veterans as victims of the conflict and gives priority to them (including their families) in education and employment as a form of reparation in Turkey.¹⁷³⁶ Civilian victims must also be identified as victims in the Kurdish Question. There may be negative discourses against granting reparations to victims of the conflict, but this should be overcome by a well-designed reparation program. As mentioned above, the public should be prepared for the process. So, they can be supportive of the mechanisms.

Transitional states must avoid establishing a hierarchy among victims as happened in East Timor where veterans received significant benefits from the state and other victim groups were ignored.¹⁷³⁷ It also happened in Peru and Sierra Leone which caused resentment and “social envy” among victims.¹⁷³⁸ Turkey also needs to be careful when it applies a reparation program to avoid fuelling new resentments among people. The victims of ESCR abuses should not be excluded from reparation programs as happened in East Timor. Even though the CAVR addressed ESCR abuses, the victims of these violations were not granted reparations, unlike victims of CPR abuses. Only a small number of ESCR victims received reparations on the basis of vulnerability (such as widows).¹⁷³⁹ East Timor identified some victims as the most vulnerable and prioritised them in granting reparations. So, Turkey must include the victims of ESCR violations,

¹⁷³⁴ The CAVR, *Chega*, p.206.

¹⁷³⁵ Garcia-Godos, *Victim Reparations*, p.75.

¹⁷³⁶ Celikkan, *The Peace Process and Dealing with the Past*, p.59.

¹⁷³⁷ ICTJ, *Unfulfilled Expectations: Victims’ perceptions*, pp.9-17.; Robins, *Challenging the Therapeutic Ethic*, p.99.; Kent and Kinsella, *A Luta Continua*, p.478.; Kent and Wallis, *Timor-Leste’s Veterans’ Pension Scheme*, p.2.; Rothschild, *Victims versus Veterans*, pp.457-459.

¹⁷³⁸ Waardt, *Peruvian Victims Being Mocked*, p.840.; Haider, *Breaking the cycle of violence*, p.340.

¹⁷³⁹ Cahill-Ripley, A. (2014) Foregrounding Socioeconomic Rights in Transitional Justice: Realising Justice for Violations of Economic and Social Rights, *Netherlands Quarterly of Human Rights*, Vol.32, No.2, p.206.

particularly the Kurdish IDPs, when it designs a reparation program. Though, it must be borne in mind that identifying the victims will be difficult in Turkey considering the long lifespan of the conflict. It has been almost four decades since the conflict has started and the number of victims continues to grow. The large number of victims will be a significant challenge, both institutional and financial, despite the resources of Turkey.

5.3.b. Individual and community reparations

Both individual and community reparations are applied in transitional contexts as explained in the first chapter. Individual reparations are significant for victims because they mean that the state acknowledges and repairs their sufferings. They may have multiple forms in different contexts. Reparations have a major importance in the Kurdish Question as they have the potential to redress myriad ESCR violations. Individual reparations can be a significant measure to redress the violations arising from forced displacement. “The enactment of the Compensation Law in 2004 is without doubt the most significant step taken to date towards addressing the problem of internal displacement in Turkey.”¹⁷⁴⁰ This law, its implementation and its shortcomings are analysed in the third chapter. This law can be a good starting point for the government to remedy the problems of the Kurdish IDPs. Likewise, the RVRP’s shortcomings are explained in the third chapter. The RVRP must be improved and other mechanisms should be created to address the problems of the IDPs.

Restitution, a form of reparation, has become an important component in transitional justice processes, and it is particularly significant in forced displacement cases. Numerous transitional countries (like Guatemala, Bosnia and South Africa) adopted this measure which aimed to return homes, properties and lands to the victims.¹⁷⁴¹ In Bosnia, for instance, restitution helped one million people (half of the displaced people) return to their homes.¹⁷⁴² Regarding the large number of Kurdish IDPs, restitution of homes, properties and lands of these people can be a promising measure in the Kurdish Question. Yet, as Williams noted, it should not be conditioned on return.¹⁷⁴³ The state must provide necessary conditions for ensuring the return of the IDPs, but it should not force them to return. Bradley notes “[a]dvocates of transitional justice and reconciliation must be clear and modest in their expectations, avoiding the idealisation of return

¹⁷⁴⁰ Kurban et al., *Overcoming a Legacy of Mistrust*, p.33.

¹⁷⁴¹ Williams, R. C. (2007) *The Contemporary Right to Property Restitution in the Context of Transitional Justice*, New York: International Center for Transitional Justice.; Duthie, *Transitional Justice and Displacement*, p.246.

¹⁷⁴² Williams, *The Contemporary Right to Property Restitution*, p.41.

¹⁷⁴³ Williams, *The Contemporary Right to Property Restitution*, executive summary.

as a manifestation of reconciliation.¹⁷⁴⁴ There are several studies which examine the necessary conditions.¹⁷⁴⁵ Although this study will not analyse these conditions, it must be remarked that the government must analyse the context and find out necessary conditions which can remedy the problems of the Kurdish IDPs. As explained in the previous chapters, proving a verification of lost homes and properties has been a problem in East Timor's transitional process and Turkey's compensation law. Mooney remarked that: "Lack of documentation is a common characteristic among the internally displaced as documentation frequently is lost or confiscated during flight."¹⁷⁴⁶ Therefore, the government must find the ways in which the Kurdish IDPs will not be stripped from their right to remedy due to lack of documents and proof. Engaging with the process should be simple and free. At the individual level, psychological support can be provided to contribute to the healing of victims.¹⁷⁴⁷ Victims of both CPR and ESCR abuses should be provided psychological support to overcome their traumas. Indeed, the reparations program should be designed after a consultation process with victims, so that it can respond to their needs and expectations.

Contemporary conflicts often inflict serious damages on communities because people are often terrorised indiscriminately.¹⁷⁴⁸ Therefore, community level reparations are important to restore the societal relationships. Though, it is asserted that transitional justice has limited capacity to transform societies which are rife with identity-related divisions, marginalisation and exclusion.¹⁷⁴⁹ Since transitional justice tends to prioritise direct and high-profile abuses such as killings and disappearances, these societal problems, which may be among root causes of violent conflict, are often ignored completely or given little attention in transitional processes.¹⁷⁵⁰ Yet there is an extending literature on how transitional justice can contribute to transforming divided societies.¹⁷⁵¹ It was noted that strong and negative emotions (such as hostility, distrust,

¹⁷⁴⁴ Bradley, *Displacement, transitional justice and reconciliation*, p.16.

¹⁷⁴⁵ Deininger, K., Ibanez, A. M. and Querubin, P. (2004) *Towards Sustainable Return Policies for the Displaced Population: Why Are Some Displaced Households More Willing to Return than Others*, Working Paper 07, Brighton: Households in Conflict Network (HICN).; Sert, D. (2014) Internal Displacement: Return, Property, Economy, *International Migration*, Vol.52, No.5, pp.227-244.; Cantor, D. (2011) The Colombian guerrilla, forced displacement and return, *Forced Migration Review*, No.37, pp.20-22.

¹⁷⁴⁶ Mooney, E. (2005) The Concept of Internal Displacement and the Case for Internally Displaced Persons as a Category of Concern, *Refugee Survey Quarterly*, Vol.24, No.3, p.17.

¹⁷⁴⁷ Fletcher and Weinstein, *Violence and Social Repair*, p.631.

¹⁷⁴⁸ Fletcher and Weinstein, *Violence and Social Repair*, pp.576-577.

¹⁷⁴⁹ Arthur, P. (2011) 'Introduction: Identities in Transition' in Arthur, P. (ed) *Identities in Transition: Challenges for Transitional Justice in Divided Societies*, Cambridge: Cambridge University Press, p.13.

¹⁷⁵⁰ Rooney and Aolain, *Transitional Justice from the Margins*, pp.1-8.

¹⁷⁵¹ Haider, H. (2011) Social repair in divided societies: Integrating a coexistence lens into transitional justice, *Conflict, Security & Development*, Vol.11, No.2, pp.175-203.; Aiken, N. (2008) Post-Conflict Peacebuilding and the Politics of Identity: Insights for Restoration and Reconciliation in Transitional Justice, *Peace Research*, Vol.40, No.2, pp.9-38.; Barsalou, J. (2005) *Trauma and Transitional Justice in*

hatred, fear and anger) play a key role in intergroup conflicts and they need to be addressed to heal societies.¹⁷⁵² Conflicting parties often adopt discourses which dehumanise and delegitimise the other group.¹⁷⁵³ Woefully, “distrust and fear do not automatically disappear with ceasefires or the signing of peace agreements.”¹⁷⁵⁴ Therefore these troubling discourses must be eliminated. New communication channels must be established between conflicting parties, and societies must be reconstructed. It can be done through “[c]oexistence initiatives such as intergroup projects and associations aimed at achieving shared goals, dialogue facilitation, and media campaigns”.¹⁷⁵⁵ In the Kurdish Question, these initiatives can be promising to eliminate societal tensions between the Kurds and the Turks. As communities are affected by violence in various ways, they need specific measures in post-conflict states.¹⁷⁵⁶ These measures must be designed and implemented with the affected communities to ensure the acceptance of them.

Collective reparations may play an important role in addressing structural injustices.¹⁷⁵⁷ KONDA’s survey depicts that “the Kurdish are more likely to feel depressed regardless of economic class, and the Kurdish in the lower income groups present even a higher tendency for depression.”¹⁷⁵⁸ Considering the development deficits, structural violence and socioeconomic problems in the Kurdish region, community level reparations can contribute to eliminating them. Affected communities (including its members, leaders and civil society from the region) must have agency in finding the ways in which these problems can be eliminated. Achieving development in the region, creating employment opportunities and enhancing the provision of health, education and infrastructure could be useful in transforming the society and eliminating the root causes of the conflict. As depicted in previous chapters, collective reparations and development projects are sometimes considered substitutes for each other. Both in East Timor

Divided Societies (Special Report), United States Institute of Peace, Washington DC.; Aiken, N. (2010) Learning to Live Together: Transitional Justice and Intergroup Reconciliation in Northern Ireland, *International Journal of Transitional Justice*, Vol.4, No.2, pp.166-188.; Arthur, P. (2011) *Identities in Transition: Challenges for Transitional Justice in Divided Societies*, Cambridge: Cambridge University Press.; Stover, E. and Weinstein, H. M. (2004) ‘Conclusion: a common objective, a universe of alternatives’ in Stover, E. and Weinstein, H. M. (eds) *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, New York: Cambridge University Press, pp.323-342.

¹⁷⁵² Senehi, J. (2009) ‘Building peace: storytelling to transform conflicts constructively’ in Sandole, D. J. D., Byrne, S., Sandole-Staroste, I. and Senehi, J. (eds) *Handbook of Conflict Analysis and Resolution*, Oxon: Routledge, p.206.

¹⁷⁵³ Kelman, H. C. (2009) ‘A Social-psychological Approach to Conflict Resolution’ in Sandole, D. J. D., Byrne, S., Sandole-Staroste, I. and Senehi, J. (eds) *Handbook of Conflict Analysis and Resolution*, Oxon: Routledge, p.175.

¹⁷⁵⁴ Haider, *Breaking the cycle of violence*, p.335.

¹⁷⁵⁵ Haider, *Social repair in divided societies*, p.176.

¹⁷⁵⁶ Fletcher and Weinstein, *Violence and Social Repair*, pp.632-633.

¹⁷⁵⁷ Vandeginste, *Reparation*, p.147.

¹⁷⁵⁸ KONDA Research and Consultancy (2015) *Turkey’s Mood December 2015*, Istanbul: KONDA, p.12.

and Peru, governments employed development projects and considered that they would serve as collective reparations. Yet, they are different because the state must acknowledge responsibility for the past wrongs and recognise the victims in reparations. Turkey must implement collective reparations and development projects distinctively to avoid this mistake. Lastly, tensions may occur between individuals and societies as the latter may want the state to prioritise collective good whereas the former wants the state to pursue individuals' claims. Therefore, the transitional justice practitioners should balance their needs and demands.

5.3.c. Material and symbolic reparations

As explained in the first chapter, material reparations can take many different forms including restitution of homes and properties, provision of rehabilitation (physical and psychological) and monetary payments. They vary according to the context. For instance, in Brazil, the government implemented a variety of reparations to redress past crimes including one-time payments, life-long wages and enabling victims (who were political dissidents) to complete their university education which was disrupted under the military regime.¹⁷⁵⁹ The fourth chapter depicted that the CVR and the CAVR recommended both material and symbolic reparations, yet both governments were reluctant to implement them properly. Even though some IDPs and most vulnerable groups received material support in East Timor, it was very limited. Likewise, the Peruvian government was criticised for the shortcomings in the implementation process of its reparations, even though its reparation plan was considered as one of the best reparation plans in the world. So, in the context of reparations, the implementation becomes more critical. Turkey should form follow-up measures when it designs its reparation program.

The first chapter depicted that there are various symbolic reparations including apologies, memorialisation, exhumation and reburials, public ceremonies and rewriting the history books. As in material reparations, they also took multiple forms in different contexts. In Peru, the state officially apologised to the victims¹⁷⁶⁰ but this was not the case in East Timor as the main perpetrator of abuses was Indonesia and it did not deliver an apology. Even though material reparations have more tangible impacts on victims, Gibson's research in South Africa depicts that less-costly mechanisms (sincere apologies) are as important as costly ones (compensations).¹⁷⁶¹ Yet, issuing an official apology is not independent from the context. For instance, the military has been powerful in Brazil and even though the state established a truth

¹⁷⁵⁹ Goes, *Between Truth and Amnesia*, p.90.

¹⁷⁶⁰ Correa, *Reparations in Peru*, p.5.

¹⁷⁶¹ Gibson, J. L. (2002) Truth, Justice, and Reconciliation: Judging the Fairness of Amnesty in South Africa, *American Journal of Political Science*, Vol.46, No.3, pp.540-556.

commission and granted reparations to victims, it did not issue an official apology due to the military's pressure.¹⁷⁶² An official apology could be useful in the Kurdish Question as the state denied their sufferings for decades. Considering the suffering they endured, the IDPs also deserve an official apology from the state.¹⁷⁶³ Yet, considering the social and political realities (the negative perceptions against the Kurds, the strong support for the military etc.), this is not likely to happen easily. Truth-telling, memorialisation and other similar efforts can be employed to pave the way for offering an official apology.

As in other mechanisms, the implementation of symbolic reparations is critical. Symbolic reparations must be balanced and decentralised, otherwise the stories of some victims may be ignored or forgotten. Turkey also needs a balanced and decentralised approach to symbolic reparations. In addition to apologies, memorialisation, exhumation and reburials should be adopted in the Kurdish Question. Moreover, the Turkish historiography must be rewritten from a more balanced perspective of the historical truths, and this should be done by "an independent commission composed of diverse sections of the public and historians from Turkish, Kurdish and other groups in society".¹⁷⁶⁴ In addition to official memorialising efforts, local and traditional practices must be facilitated. Incorporating both the Kurdish and the Turkish actors in these practices can be promising for their acceptance by the public.

To conclude, Turkey should not aim to restore status quo ante indubitably because the pre-violence socioeconomic conditions have been unjust and among the root causes of the conflict. Therefore, reparations should aim to contribute to the elimination of these injustices rather than restoring status quo ante. Lastly, the Peruvian state acknowledged full responsibility for all the reparations regardless of who committed the violations. This approach should be adopted in Turkey as well. The state should grant reparations to the victims of both the state's security forces and the PKK. The state has responsibility even for the crimes committed by the PKK as it has an obligation to protect its citizens from the PKK's violations. Therefore, victims of the PKK must also be granted reparations.

5.4. Institutional Reforms

The first chapter's section 4.4 described institutional reforms (including vetting, security sector reform and legislative reform) which are designed to reform state structures to prevent future violations. Transitional governments must introduce reforms regarding institutions and civil

¹⁷⁶² Goes, *Between Truth and Amnesia*, p.91.

¹⁷⁶³ Celik et al., *Towards A Resolution*, pp.47-49.

¹⁷⁶⁴ Celikkan, *The Peace Process and Dealing with the Past*, p.51.

servants that committed violations or allowed them to take place.¹⁷⁶⁵ Moreover, public officials, particularly security sector personnel, must be trained about human rights.¹⁷⁶⁶ These reforms must be context-specific as each context has its own dynamics and problems. East Timor had very limited capacity in terms of state institutions and civil servants, yet the CAVR and the CTF recommended many institutional reforms to eliminate circumstances which allowed abuses to take place.¹⁷⁶⁷ In the case of East Timor, the government established many institutions from scratch rather than reforming corrupted institutions. The CVR, on the other hand, acknowledged the state's responsibility in abuses and the deficiencies of state institutions. As depicted in the fourth chapter's section 3.2.d, the CVR recommended various institutional reforms including democratic reform, security sector reform, judicial reform and educational reform.¹⁷⁶⁸

The Turkish context is more similar to the Peruvian one as Turkey has well-established institutions and needs to reform them rather than building new ones from scratch. Firstly, Turkey needs to acknowledge its responsibility in crimes. The legal framework, governance and state institutions enabled violations to take place in the Kurdish region. The state took several steps in acknowledging the responsibility and redressing its wrongs, but they have been so modest and inadequate considering the large-scale abuses of both CPR and ESCR. As the third chapter mentioned, there have been some attempts at democratic and judicial reforms to alleviate the oppression of the Kurdish people and prevent future abuses. Likewise, the government developed several plans and projects to redress its past violations such as forced displacements. However, they have been far from fully addressing the past wrongs. Turkey needs to initiate a full-fledged program to achieve both democratic and legal reforms to ensure that violations will not take place in the future. As explained previously, truth commissions play an important role in recommending institutional reforms as they diagnose the problems during their inquiry.

Vetting is one of the key institutional reforms in transitional states, but it must be applied to the specific public employees who committed crimes rather than removing people from public offices due to their political affiliations. States may exploit vetting to eliminate their rivals, therefore, this mechanism must be applied carefully, and vetted individuals must be given a right to defend themselves.¹⁷⁶⁹ Vetting was not a significant mechanism in East Timor because abusive state officials were mostly from Indonesia and they left East Timor after independence.

¹⁷⁶⁵ Fletcher and Weinstein, *Violence and Social Repair*, p.630.

¹⁷⁶⁶ Mayer-Rieckh, *On Preventing Abuse*, pp.495-496.

¹⁷⁶⁷ The CAVR, *Chega*, pp.161-183.; The CTF, *Per Memoriam Ad Spem*, p.296.

¹⁷⁶⁸ The CVR, *Hatun willakuy*, pp.305-309.

¹⁷⁶⁹ Huyse, *Justice after transition*, p.62.; Mobekk, *Transitional Justice and Security Sector Reform*, p.73.

However, Peru took important steps to implement the recommendations of the CVR as many of the security sector officials (including high-ranking members of the army) were vetted, prosecuted, jailed or forced to retire.¹⁷⁷⁰ Security sector reform is also critical and it must accompany the vetting process to ensure that security forces and institutions will not commit and tolerate human rights abuses again. Analysing the context and identifying the problems is important for security sector reform to prevent future abuses.¹⁷⁷¹ In addition, Peru formed a follow-up commission to implement security sector reform, and despite its shortcomings, the government took important steps to implement this commission's plan.¹⁷⁷²

As mentioned in the third chapter, the Turkish security forces are responsible for many human rights abuses such as enforced disappearances, extrajudicial killings and forced displacement. These individuals must be removed from public employment to prevent recurrence of abuses and to reestablish trust in state institutions, particularly in security forces. Vetting human rights abusers from the state may make a significant contribution regarding forced displacement cases, as many of the Kurdish IDPs stated that the village guards, who have been involved in crimes and human rights violations, are an important impediment to their return. Yet, vetting must be applied in a way which does not lead to new human rights violations. In addition to vetting, the Turkish state must reform its appointment to office procedures and examine the candidates' human rights records, particularly "in those institutions that gave way to human rights violations."¹⁷⁷³ Moreover, as mentioned in the first chapter's section 4.4, resource constraints may be an impediment to vetting for some states (as training new staff for vetted positions requires resources), but this is not likely to be a problem for Turkey due to its financial and institutional capacity.

The third chapter depicted that the identity, culture and language of the Kurds have been oppressed and they demand the lifting of this oppression. Even though the JDP government took some steps to alleviate this, these are far from meeting the demands of the Kurds. Therefore, the government must adopt institutional reforms to eliminate this oppression. Celikkan stated that the state needs to reform some articles of the laws (including the Election Law, Law on Political Parties, Basic Law of National Education, and the Criminal Law) which give rise to abuses and "a legal arrangement is needed for teaching in the mother tongue."¹⁷⁷⁴ It must be kept in mind that public opinion may change in time even on thorny issues. For instance, while a great

¹⁷⁷⁰ Root, *Transitional Justice in Peru*, p.66.; Arce Arce, *Armed Forces*, pp.28-29.

¹⁷⁷¹ Van Zyl, *Promoting Transitional Justice*, pp.219-220.; Wulf, *Security sector reform*, pp.6-9.

¹⁷⁷² Root, *Transitional Justice in Peru*, p.68.

¹⁷⁷³ Celikkan, *The Peace Process and Dealing with the Past*, p.62.

¹⁷⁷⁴ Celikkan, *The Peace Process and Dealing with the Past*, p.62.

majority of the Kurds want the provision of education in Kurdish, a considerable majority of the population (65%) was against education in Kurdish in 2006.¹⁷⁷⁵ Yet, this has changed considerably as a more recent survey conducted in 2016 by KONDA (a prominent research and consultancy company in Turkey) depicts that 55% of the population do not oppose education in the Kurdish language.¹⁷⁷⁶ Gurses remarked that “genuine democratic reforms seem to be the only way out of bloodshed and conflict” in Turkey.¹⁷⁷⁷ So, the government must introduce institutional reforms to realise the identity and rights (both CPR and ESCR) of the Kurdish people.

As mentioned earlier, Turkey has considerably low levels of social trust, and Kurdish people have severely limited levels of trust in the Turkish state. Remembering the past and redressing the past grievances may help to improve these negative conditions in the country. Trust can be increased through institutional reforms. It is crucial for achieving development as well. To conclude, the government needs to adopt measures to reform the institutions, personnel and practice to prevent future abuses and to reestablish trust in the state.

5.5. Amnesties

The first chapter explained amnesties in detail and depicted that they are highly contentious in transitional justice. Amnesties are often criticised for weakening accountability and furthering impunity. It is explained that forgiveness belongs to the victims and states must not strip the right of forgiveness from victims by granting amnesty to perpetrators.¹⁷⁷⁸ Considering the criticisms, there is a dilemma in their application. Although granting amnesty may cause psychological harm to victims, it is “an integral part of peace agreements” and amnesties are widely implemented.¹⁷⁷⁹ Proponents of amnesties advocate them by claiming that well-designed amnesties can contribute to justice and prevent future crimes. Engstrom asserted that: “Amnesties, for instance, when appropriately designed, can constitute a legitimate form of accountability.”¹⁷⁸⁰ Although in some cases they are implemented to escape from prosecutions, amnesties may be granted for various reasons such as prioritising harmony and unity over individual justice, lack of financial resources or demobilisation of combatants.¹⁷⁸¹

¹⁷⁷⁵ KONDA Research and Consultancy (2006) *Social Structure Survey 2006*, Istanbul: KONDA.

¹⁷⁷⁶ KONDA Research and Consultancy and Istanbul Politikalar Merkezi (2016) *Vatandaslik Arastirmasi 2016*, Istanbul: KONDA.

¹⁷⁷⁷ Gurses, *Partition, Democracy*, p.349.

¹⁷⁷⁸ Goes, *Between Truth and Amnesia*, pp.85-90.

¹⁷⁷⁹ Muhlhausen, *Conflict Management*, p.280.

¹⁷⁸⁰ Engstrom, *Transitional Justice and Ongoing Conflicts*, p.57.

¹⁷⁸¹ Muhlhausen, *Conflict Management*, p.278.

As in implementation of other mechanisms, the context is critical for amnesties. For instance, amnesties can be supported by public and civil society organisations as happened in Brazil – although they wanted amnesty for political prisoners and exiles, not for the military forces.¹⁷⁸² If amnesties can be designed properly to benefit transitional processes, they may contribute to justice, peace and reconciliation. Mallinder noted that there are several criteria which are necessary for designing an efficient amnesty: “democratic legitimacy”, “a genuine desire to promote peace and reconciliation”, “limited in scope”, “conditional” and “accompanied by reparations”.¹⁷⁸³ These criteria can be a useful starting point to design amnesties in a transitional context. In addition, the experiences in East Timor and Peru can provide insights for Turkey.

In East Timor, amnesty was not a significant mechanism since an overwhelming majority of perpetrators were Indonesians and they enjoy impunity in Indonesia. Even though a majority of people were against granting amnesties for gross human rights violations, the East Timorese government still granted several amnesties to perpetrators (including the ones who committed serious crimes like crimes against humanity).¹⁷⁸⁴ In Peru, several amnesty laws were passed by the regime to ensure the members of the security forces who committed violations would not be prosecuted. Yet, the decisions of the Inter-American Court and the Peruvian Supreme Court abrogated these laws.¹⁷⁸⁵ The amnesties in Peru and East Timor aimed to escape accountability rather than contribute to reconciliation, and it is impossible to advocate these types of amnesties. Turkey must avoid adopting this kind of amnesty. Unconditional and blanket amnesties which are designed to overcome accountability would be detrimental to peace and reconciliation. Considering that the alternative to granting amnesties is often de facto impunity (“where the vast bulk of perpetrators are untouched by any legal process”)¹⁷⁸⁶, Turkey must consider adopting amnesties in the Kurdish Question. Yet, they should be designed carefully to ensure that they comply with the criteria stated above. Especially, the government must ensure that they are conditional and limited, and there is public and political support for them. Considering that amnesties should not be granted to the perpetrators of serious crimes, some ESCR abuses (forced displacement and famine) would not fit in the scope of amnesties. Yet, amnesties can be granted for low-level perpetrators who committed ESCR violations. If they are accompanied by other transitional justice mechanisms, they can contribute to the process.

¹⁷⁸² Goes, *Between Truth and Amnesia*, pp.89-90.

¹⁷⁸³ Mallinder, *Can Amnesties and International Justice Be Reconciled*, pp.228-229.

¹⁷⁸⁴ ICTJ, *Impunity in Timor-Leste*, p.25.; CIGI, *Security Sector Reform Monitor: Timor-Leste*, pp.1-7.; The Asia Foundation Report, *Law and Justice in Timor-Leste*, p.42.

¹⁷⁸⁵ Inter-American Court of Human Rights, *Case of Barrios Altos v. Peru*, (Judgment of March 14, 2001), par.43 and 51.; Root, *Transitional Justice in Peru*, p.66.

¹⁷⁸⁶ McEvoy and Mallinder, *Amnesties in Transition*, p.422.

6. Concluding remarks

This chapter explored the prospect of pursuing transitional justice in Turkey for tackling the Kurdish Question with a specific focus on ESCR violations and considered which transitional justice mechanisms could be employed in a future transitional process. It answered the questions “Can Turkey pursue transitional justice?” and “Why should Turkey pursue transitional justice?”. Then, the chapter pointed out the significance of considering the local context and adopting a participatory, holistic and grassroots approach to transitional justice efforts. The chapter concluded by analysing the application of five mechanisms (trials, truth commissions, reparations, institutional reforms and amnesties) in the Kurdish Question in the light of lessons learnt from East Timor and Peru.

As in most conflicts in the world, the Kurdish Question is multidimensional, and the solution needs to be multidimensional as well. It cannot be tackled by socioeconomic or political means alone. Yet, as explained throughout the thesis, addressing ESCR violations is a must in the Kurdish Question to have a full-fledged solution. Eliminating the root causes of conflict is also crucial to ensure sustainable peace and reconciliation in Turkey. In addition, the state’s commitment to transitional justice is critical for its success.¹⁷⁸⁷ Therefore, the Turkish government must commit itself to solve the Kurdish Question. Transitional justice processes must be designed, planned and implemented carefully. The commitment of the government must also manifest itself in preparing people for the process. Getting the support of wider populations is critical in Turkey to prevent a potential backlash during the process. Lastly, it must be understood that people are not always rational and even if transitional justice mechanisms are applied successfully, they may not produce the expected results such as preventing future violence, as Colvin noted “Individuals and groups do not act in universal or predictable patterns.”¹⁷⁸⁸ So, the problems faced during the transitional process should not discourage the government from pursuing transitional justice.

¹⁷⁸⁷ Fletcher et al., *Context, Timing and the Dynamics of Transitional Justice*, pp.201-202.; Hayner, *Unspeakable Truths: Transitional Justice*, pp.5-6.; Wiebelhaus-Brahm, *Truth commissions and transitional societies*, p.147.

¹⁷⁸⁸ Colvin, *Purity and Planning*, p.423.

Conclusion

1. Introduction

This study has attempted to look at the possibility of pursuing transitional justice in Turkey to tackle the Kurdish Question with the aim of finding the appropriate mechanisms and approaches to address ESCR violations, historical inequalities and root causes of the conflict. Socioeconomic problems are central to the Kurdish Question and forced displacement has been one of the most wide-spread human rights violations in Turkey. This study aims to contribute to future peace and transitional justice processes in Turkey by depicting the significance of addressing socioeconomic issues. Moreover, considering that Turkey has a strong economy, democracy and well-established institutions compared to most transitional states, it has the potential to enrich the transitional justice field by applying a wide-range of transitional justice mechanisms due to its financial and institutional capacity. This study has made an in-depth analysis of East Timor and Peru's transitional processes as these countries did not neglect ESCR violations and addressed socioeconomic issues during their transitional justice efforts. By looking at their experiences and incorporating the lessons learnt from these countries (and others), Turkey can design and implement transitional mechanisms which are relevant to the local needs and realities. This should be done through a participatory, holistic and grassroots approach to ensure the efficiency of mechanisms and guaranteeing their acceptance by the locals.

Adopting a participatory, holistic and grassroots approach is critical in Turkey as in other transitional contexts. It has been well-documented that the success of top-down and one-size-fits-all transitional mechanisms, which are applied by external actors (who are far from the local context and affected populations), have been limited in transitional contexts. Every transitional state has its own culture, dynamics and realities. Their problems are complex, and they require context-specific solutions to be successful. Therefore, transitional states must adopt participatory and grassroots approaches to ensure they achieve the goals of transitional justice. Locals must have agency in these processes and they should be part of decision-making, design, management and implementation processes. Moreover, adopting a holistic approach is crucial as well, considering the complexity of the problems which need to be addressed. Given the complex nature and the long life-span of the conflict and oppression, the Kurdish Question requires a complex and carefully designed solution. This can be achieved by a transitional justice process which is applied thorough a participatory, holistic and grassroots approach.

The Kurdish Question is complicated as it is a political problem based on identity-related oppression, and yet, socioeconomic issues are significant and need to be addressed for a

successful solution. The Turkish state discourse makes it more complicated as it has portrayed the Kurdish Question as a terrorism problem which was based on socioeconomic problems and underdevelopment of the Kurdish region. The Kurdish people and political actors have long objected to this discourse by demanding political, lingual and cultural rights. So, there is a dilemma for a future transitional process. The process needs to clarify the true nature of the conflict (political and identity-related), but it must also admit that addressing socioeconomic problems and ESCR violations is an absolute must. As the previous chapters made a detailed analysis, addressing root causes of the conflict, structural violence and ESCR violations are crucial in transitional contexts. Although they are often neglected, addressing these issues is critical for a sustainable peace. They are also critical in the Kurdish Question as depicted in the third chapter. For instance, the Kurdish youth, who have been frustrated with unemployment and poverty (mainly resulting from the conflict), are more prone to joining the PKK and adopting more radical means against the state's oppression. A future solution has to tackle the problems of the Kurdish youth to ensure sustainable peace.

Analysing the experiences of East Timor and Peru (and various other countries) shows that pursuing transitional justice is an extremely arduous task considering there are multiple actors (victims, affected communities, donors, international actors and politicians) to be satisfied; various interests of these actors (such as individual accountability and community reparations) to be balanced; and limited resources to be allocated to transitional justice mechanisms (and other post-conflict efforts such as DDR and development programs). Considering these complexities, transitional justice efforts require political will, careful design and cooperation of different actors (donors, local and global agents, state institutions and different segments of affected societies etc.) for producing positive results. Moreover, potential risks, such as renewal of violence and disappointment of victims, must be analysed well to avoid them. Being realistic on what can be achieved is also critical for a successful transitional justice process. Finally, given the differences in transitional contexts in terms of culture, traditions and dynamics, the notions of transitional justice (truth, reconciliation and memory) should not be formulated narrowly, and transitional justice practitioners must be open to consider new and traditional practices (such as *nahe biti* in East Timor) which may have a potential to contribute to transitional justice processes. To conclude, this study proposes that Turkey should adopt trials, truth commissions, reparations, institutional reforms and amnesties in a holistic approach to address the wrongdoings of the past. They can all play different roles in solving the Kurdish Question and contribute to addressing the socioeconomic issues.

2. Policy Recommendations

The following recommendations remark some of the most important points (by no means exhaustive) which must be taken into consideration by the state, transitional justice actors (internal and external), NGOs and civil society:

1. The local context must be understood well. The historical background and root causes of the conflict must be analysed attentively. The needs and demands of the victims, affected communities and the public must be identified to design a process which responds to them properly.
2. The participation of local actors must be ensured in a meaningful way. They should be empowered and be subjects in the process. They must participate in every stage of the design, management and implementation processes of the mechanisms. In addition, the participation of local and external actors must be balanced well.
3. The public must be prepared for the peace and transitional process carefully. Different segments of the society must be brought together to eliminate prejudices. Workshops, meetings, dialogue groups should be designed to achieve this. Moreover, necessary measures must be taken to avoid the interruption of spoilers and exploitation of political actors.
4. Socioeconomic issues must not be neglected, and they must be given adequate attention in the process. This must be done in a way which clearly acknowledges that the Kurdish Question is a political problem arising from identity-based claims.
5. Specific focus must be placed on women, youth and IDPs (and other relevant victim groups) as these are vulnerable groups in the Kurdish Question.
6. The transitional process should not be dominated by a legalistic perspective, different disciplines and perspectives should be welcomed to find innovative solutions to the problems.
7. Transitional justice efforts must be connected to peacebuilding and development efforts, and they should be coordinated to avoid possible tensions and competitions among these fields.
8. The transitional process must be de-centralised to reach all the victims to avoid implementing mechanisms which are distant from affected people and communities.
9. The transitional process should not be considered as a clear-cut process which has a short time limit. In addition, mechanisms should not be seen as ends in themselves. The society and institutions (which enabled violence) must be transformed

and this requires time. Therefore, follow-up measures should be taken to ensure this transformation and prevent future violence.

10. Transitional justice actors (both external and internal) must avoid imposing their perceptions (regarding concepts, aims and objectives of transitional justice) on locals.

11. The “do no harm” principle must be embraced to ensure that transitional justice efforts will not inflict further harms. Likewise, the process should be conflict sensitive to prevent exacerbating the conflict and tensions.

12. The government should seek the cooperation of international transitional justice experts and learn from the experiences of different countries.

3. Contribution

As explained in the introduction chapter, this thesis makes an original contribution to transitional justice literature in various ways. Firstly, this is the first study to consider the Kurdish Question through transitional justice lens in depth as a doctoral thesis. Moreover, this is the first and the only study which concerns the Kurdish Question and specifically focuses on ESCR abuses, structural violence and root causes of the conflict in the context of transitional justice. This research substantially develops the existing studies which suggested that the Kurdish Question can be considered in the context of transitional justice. It does so by making a comparative analysis of the transitional justice processes of East Timor and Peru and analysing five transitional justice mechanisms by incorporating lessons learnt from these two countries’ experiences. Secondly, this study contributes to the field by examining the prospect of pursuing transitional justice in Turkey, a country which has significant financial and institutional resources to allocate to transitional justice efforts. Given that many countries which emerged from the conflict lack necessary resources, Turkey can be an important example due to its financial and institutional capacity. Thirdly, the Kurdish Question is a significant example for the literature as it is inherently a political problem, yet socioeconomic issues are critical for its solution. This shows the importance of addressing ESCR abuses, structural violence and root causes of the conflict, even for political problems. Finally, this research makes a significant contribution to the comparative literature on ESCR and transitional justice.

4. Limitations of the study and future research

This study is based on secondary data analysis rather than a field research, and it should be acknowledged that there are likely to be gaps in the data and analysis. The study aims to highlight important considerations in pursuing transitional justice in Turkey. Yet, it does not draw a roadmap for a future transitional process. In addition to the limited scope of this study,

such a roadmap must be drawn through a consultation with relevant agents including victims, locals, civil society, political parties and transitional justice experts. Likewise, it does not identify the needs and expectations of the Kurdish people. This should be done so through large-scale surveys and measures by the government and other relevant actors. Another limitation has been the ongoing conflict in Turkey. When this study was commenced, there was an ongoing peace process, yet, the ceasefire was broken, and the peace process collapsed in 2015. Woefully, the conflict continues, and new human rights violations are being committed. Since they are continuous, this study has not much focused on the ongoing developments. Lastly, identifying the perceptions of relevant actors (victims, affected communities, civil society organisations, politicians and policy makers) was not possible due to not conducting a field research. Yet, it is quite important that this study lays the foundation for the application of transitional justice in the Kurdish Question.

This study focused on socioeconomic issues and ESCR violations, but some implications are also realised for CPR violations and broader issues. Future research can be conducted on CPR violations and political issues. Although the nexus between transitional justice and development is explained briefly in the second chapter, further research can be undertaken to make an in-depth analysis of this nexus in the Kurdish Question. Lastly, this study did not explore the local and traditional reconciliation and dispute mechanisms in Turkey's context. For instance, as stated in the third chapter, Islam has been a unifying element between the Kurds and the Turks, exploring Islamic traditions which promote reconciliation can be examined in future studies and develops this study. So, future studies can look at these mechanisms and make an in-depth analysis of them to see how these mechanisms can contribute to the solution of the Kurdish Question.

Abbreviations

Amnesty International	: AI
Civil and Political Rights	: CPR
Economic, Social and Cultural Rights	: ESCR
Human Rights Watch	: HRW
Internal Displacement Monitoring Centre	: IDMC
International Center for Transitional Justice	: ICTJ
Partiya Welatparezen Demokrat	: PWD
Security Sector Reform	: SSR
The Armed Forces for the National Liberation of Timor Leste	: FALINTIL
The Commission for Reception, Truth, and Reconciliation Timor-Leste	: CAVR
The Commission of Truth and Friendship	: CTF
The Committee on Economic, Social and Cultural Rights	: CESCR
The Community Reconciliation Program	: CRP
The Comprehensive Reparations Plan	: PIR
The Democratic Party	: DP
The Department for International Development	: DFID
The European Union	: EU
The Grand National Assembly of Turkey	: TBMM
The Guatemalan Commission for Historical Clarification	: CEH
The High Level Multisectoral Commission	: CMAN
The Indonesian Human Rights Court	: IHRC
The International Covenant on Civil and Political Rights	: ICCPR
The International Covenant on Economic, Social and Cultural Rights	: ICESCR
The Justice and Development Party	: JDP
The Kurdistan Workers' Party	: PKK
The National Recovery Strategy	: NRS
The North Atlantic Treaty Organization	: NATO

The Office of the United Nations High Commissioner for Human Rights	: OHCHR
The Optional Protocol to the ICESCR	: OP-ICESCR
The Organisation for Economic Co-operation and Development	: OECD
The Peruvian Truth and Reconciliation Commission	: CVR
The Program for the Support of Resettlement	: PAR
The Return to Villages and Rehabilitation Project	: RVRP
The Revolutionary Armed Forces of Colombia	: FARC
The Revolutionary Front for an Independent East Timor	: FRETILIN
The Serious Crimes Investigations Team	: SCIT
The Serious Crimes Process	: SCP
The Serious Crimes Unit	: SCU
The Shining Path (the Communist Party of Peru)	: PCP-SL
The Social Aid and Solidarity Foundation	: SYDV
The Southeast Anatolia Project	: GAP
The Special Panels for Serious Crimes	: SPSC
The State of Emergency	: OHAL
The Swedish International Development Cooperation Agency	: SIDA
The Term of Reference	: TOR
The Timorese Democratic Union	: UDT
The Truth and Reconciliation Commission	: TRC
The United Nations	: UN
The United Nations Children's Fund	: UNICEF
The Universal Declaration of Human Rights	: UDHR
The United Nations Development Programme	: UNDP
The United Nations Transitional Administration in East Timor	: UNTAET
The World Bank	: WB
Transitional Justice	: TJ
Tupac Amaru Revolutionary Movement	: MRTA

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