



# Transitional Justice in Cyprus

Challenges and Opportunities

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## Abstract

Transitional justice has become an important part of building peace after signing a peace agreement for many reasons, but primarily because it seeks to build trust between citizens and their institutions after conflict or legacies of authoritarianism, and to create new relationships between citizens to overcome fears and mistrust based on the past. It is best understood as a complex social process aimed at addressing legacies of large-scale victimisation, hatred, and violence.

This is going to be particularly important in Cyprus, where the two communities are generally mistrustful of each other, and where each side remembers injuries sustained at the hands of the other community or military over the course of the conflict. While it is a multigenerational project, such approaches will be especially valuable in the first five years after implementation of any agreement, when some displaced persons will be returning, the lines of the communities will be redrawn, and people will be feeling vulnerable and insecure. Transitional justice may provide a means of mediating those encounters so that they are less paralyzing.

This paper aims to equip policymakers with the information needed to create a strategy for moving towards the goals of building a more trustful, engaged, and cohesive island. It is divided into four sections. Part one explains the origins and approaches of transitional justice, and presents the field's assumptions and alternative views. Part two outlines the relevance of transitional justice to Cyprus. Part three sets out key lessons from best practice in the field. Finally, part four outlines how transitional justice can be used to build a more secure Cyprus.

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# 1 Background<sup>1</sup>

## **What is transitional justice?**

Transitional justice is a field of practice and research that has become a key part of negotiated peace agreements and post-violence transitions. It includes a collection of initiatives that states and societies undertake to address large-scale past violations of human rights and international humanitarian law. Usually, this is done through efforts to meet victim-survivor expectations of justice; to document, bring to light and understand alternative, suppressed, or unrecognized knowledge about the past and its influence on the present; to reform institutions involved in human rights abuses or economic abuses such as embezzlement and corruption; to attempt to provide some kind of repair for those harms; and to strengthen the overall legal, social, and political contexts such that the past could not easily be repeated. That said, it is important to note that transitional justice is not just a court, a truth commission, or any other official institution. Rather, ‘it is a complex social process in which both the state and civil society (including victims of human rights abuse) participate’ (Arthur and Yakinthou, forthcoming, 2017).

It has been identified as an important part of building peace after signing a peace agreement for many reasons. First, **transitional justice focuses on building trust between citizens and their institutions, which may have been damaged during conflict. Second, it works to create new relationships between citizens and overcome fears and mistrust based on the past. Finally, it also aims to create a more engaged civil society, which often helps implement and support peace agreements.** All of this together has been identified as helping to strengthen the connecting tissue between a peace agreement and a society.

**In Cyprus especially, where the two communities are generally mistrustful of each other, and where each side remembers injuries sustained at the hands of the other community or military over the course of the conflict, addressing the legacies of the past will be important. This is going to be especially valuable in the first five years after implementation of the agreement, when some displaced persons will be returning, the lines of the communities will be redrawn, and people will be feeling vulnerable and insecure.** Spikes of mistrust, such as the recent Greek Cypriot move in parliament to commemorate the 1950 enosis referendum, will continue. Transitional justice may provide a means of mediating those encounters so that they are less paralyzing.

This paper aims to equip policymakers with the information needed to create a strategy for moving towards the goals of building a more trustful, engaged, and cohesive island. Part one of the paper begins with the methods used, and background of the author. It then explains the origins and approaches of transitional justice, and presents the field’s assumptions and alternative views. Part two outlines the relevance of transitional justice to Cyprus. Part three sets out four key lessons from best practice in the field – a general guidance to keep in mind when designing a process. Part four outlines how transitional justice can be used to build a more secure Cyprus.

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## Research methods and researcher positioning

This discussion paper seeks to provide a guiding set of questions that will help formulate a more coherent transitional justice policy in the event that a peace plan is agreed upon and accepted at referendum. It is based on desk research. In addition to the literature on the field and on Cyprus, it draws on both the author's experience as a transitional justice practitioner in Cyprus and elsewhere, and her reflections as a scholar of transitional justice. It is mindful of the decades of research and practice conducted by peacebuilders working in Cyprus.

The author has direct experience as a transitional justice practitioner in Cyprus as well as Lebanon. She has also observed the transitional justice processes in Tunisia and in Bosnia and Herzegovina, and advised in other contexts including Kenya, Syria, and Libya. Over the course of nearly a decade, she has been the insider (and outsider) implementing according to a pre-set mandate, the outsider advising processes, and the academic reflecting on what has worked and what has not, and why. The author is situated within the pragmatic social sciences approach and believes it is important to integrate practitioner and academic knowledge.

The author's experience has led her to make five assumptions that are core to her understanding of how transitional justice can most usefully be implemented. These assumptions are listed here for transparency:

1. Transitional justice should not be formula-led, and therefore no strategy should be devised until there is
2. a deep understanding of the spectrum of needs, grievances, and fears of those affected by the violence and its legacy. Society/ies weaknesses in regard to social trust and trust in institutions needs also to be carefully understood, first. This should be led by people who understand the society;
3. that transitional justice programmes must be co-constructed with those directly affected by the violence. They must not only be consulted, but they must be partners in implementation, outreach, and reflection on the process;
4. that programming 'from above' should be subject to regular review and restructure as conditions evolve; and
5. that **transitional justice is fundamentally a creative approach to building more integrated and trustful societies, and therefore what is *appropriate* should be defined by what is *needed*.**

It is important to note that the paper is written at a point during which a peace agreement is being negotiated by the Cypriot leaders and their teams. As a result, certain pressing practical questions are given precedence in a way that might not be the case if no peace agreement were on the table. Finally, it is the firm position of the author that a transitional justice strategy is best built around an open series of consultations with stakeholders and especially with violence-affected communities. This could be done in a number of ways, and there is room for creativity, particularly in small societies like Cyprus. In the recent past, it has most often been done through government-to-victim/survivor dialogues (for example in Colombia), and country-wide fixed-term consultation processes (as in Tunisia). Any programming must come out of these consultations, and must be guided by the needs of affected communities and the experiences of civil society actors who have been doing the work of peacebuilding for many decades.

The paper also draws on examples from recent contexts that are considered innovative or illustrative of ways other societies have approached particular issues, as well as examples where there has been much reflection on mistakes made. They are purposefully selected by the author because of their timeliness or the relevance of their learning for Cypriot experiences.

## Origins and approaches

Transitional justice is a field of study that has evolved from practice, and specifically from human rights movements in the context of Latin American experiences of authoritarianism in the 1970s, 1980s, and 1990s and post-communism in Eastern Europe at the end of the Cold War. Its roots thus lie in specific strategies of activists, families of those disappeared and human rights lawyers, who were responding to the particular needs of their countries, while they were dismantling legacies of authoritarianism (whatever the ideology).

In unravelling regime lies about minorities, marginalized communities, and ideological opponents, a framework of sorts developed around particular rights: first, those to know the truth, and to justice, and later, what emerged as the right to reparation and the guarantee of non-recurrence. The Inter-American Court of Human Rights was an early battleground for their development into human rights norms, and helped expand the concept of both individuals and their communities as rights-holders in the face of mass atrocity. The field has moved both through time and geography, and some thirty years on, it is a fully globalized project, and largely accepted as a core part of a healthy transition towards democracy (Arthur, 2009; Teitel, 2000).

Transitional justice initiatives have thus been embedded in international legal frameworks, and are an established part of best practice in peace agreements, and peacebuilding processes. These initiatives focus around the four fundamental rights outlined above, which have evolved into legal norms over time. They are:

- ≡ *The right to know the truth*; truth is not just the collection of data for factual truth, but instead can be understood as the combination of truth, knowledge, and acknowledgement (Lambourne, 2009). This right belongs to victims, their families, and to society as a whole. It includes all work to uncover suppressed narratives about conflict-related violence such as truth commissions or panels of inquiry, efforts to find missing persons, all work with government archives or efforts to document or reveal human rights violations, and platforms that give victim-survivors a space to share their experiences and engage as citizens.
- ≡ *The right to justice*; this right belongs to victims and survivors, to their families, to communities that have been harmed, and finally to society as a whole, which has an interest in seeing justice delivered. This typically centres on prosecuting those most responsible for human rights abuses, but should also be more broadly understood as equal access to effective justice. It is important to note that justice does not mean the same thing to all victims and survivors, and it can go far beyond criminal prosecution mandates.
- ≡ *The right to reparation*; belonging to those directly harmed and their descendants. This is an effort to repair harm to victim-survivors, and their families and includes both material and symbolic efforts, often in combination: it can be in the form of cash payments, restitution of property, provision of education and healthcare, psychosocial support, official apologies, memorials and other efforts. Reparations should be driven by the need of victims and survivors.
- ≡ *The guarantee of non-repetition*; and the accompanying responsibility of the state to undertake a collection of measures that ensure violations of the past do not happen again. This includes efforts to reform institutions that perpetrated harm or corruption, strengthening human rights protections, vetting institutions for human rights abusers, and other approaches.

Transitional justice is typical of many efforts to achieve social change, in that it is a long and often non-linear process, and should be viewed as a multigenerational effort – one that takes time and patience. **It is important that the expectations of communities be managed throughout the process, but especially at the beginning. This is because suspicion in an over-committed or under-delivering**

**process undermines its legitimacy, and legitimacy, once lost, is difficult to re-gain.** Correspondingly, once priorities are understood, the methods can (and should) be set and sequenced carefully. This means that particular initiatives that require more stability or trust can be planned for later stages, and those that are less fraught or fragile can begin earlier. However, these initiatives must be determined after understanding the needs of those harmed.

Successful programming is often about finding moments of opportunity, sometimes driven by political openings, and sometimes by society's reactions to particular events. Often it is compromise-based decision-making, and finding what will pass without triggering a return to war. There is a growing habit of heavily institutionalising transitional justice. Priority should be placed on creating flexible and adaptive programming, especially as contexts change.

The main stakeholders in these processes are typically: governments and official actors at all levels; civil society – especially victim and survivor groups; educators; the human rights community; perpetrators of atrocities (though we often do not think of them as stakeholders); the media; affected communities; and donors. Each of these actors plays an important role, and their positions should be understood prior to developing a transitional justice strategy.

Without a clear understanding of the needs of victim and survivor groups as expressed by them, and an integration of domestically-resonant and internationally-recognised approaches, any transitional justice process is unlikely to meet its goal. Therefore, one of the guiding principles that helps ensure a more careful sequencing of priorities is public and stakeholder inclusion, and careful needs analysis both at the beginning of the process and throughout. This will include an understanding of what role perpetrators play/ed: For example, in tight-knit communities where perpetrators may have re-emerged in different areas of public life or office, they will be particularly relevant to the question of how to prevent a system that undermines people's perceptions of justice, and their trust in political institutions.

Finally, there is much debate about the relationship between dealing with the past and reconciliation, and in many contexts (such as Cyprus), the idea of reconciliation has sometimes been used to silence narratives that may rock the political boat. What is important to note is that there are a number of different perspectives on what reconciliation is, what it is for, and whether it is a goal, a process, or both. This paper does not seek to provide answers around reconciliation, but rather to flag some questions that will be important as Cyprus moves forward.

## **Assumptions of the field, and alternative views**

Transitional justice has a number of foundational assumptions, which underpin its approaches but which have also received criticism from both academics and practitioners. The most important of these assumptions is that confronting and attempting to repair human rights violations will help build trust between harmed communities and the broader society, as well as trust in the state. It assumes that its approaches empower civil society and especially victim and survivor communities, and helps reintegrate them into society. By acknowledging the experiences of harmed communities and individuals, giving those experiences legitimacy, and attempting to repair the harm done to the greatest extent possible, transitional justice proponents argue that victims and survivors become active citizens, and often become human rights guardians. Most broadly, it assumes that particular efforts to overcome the enduring legacies of violence lead to a more stable and, in the long-term, peaceful, society.

The challenges to the field's operating assumptions are important and accurate indicators of its weaknesses. Key criticisms include: that transitional justice programmes are often out of touch with the needs of victims and survivors, and the needs of society generally, because they are implemented by

domestic elites under a prescriptive formula that does not connect to real needs within a particular society (Nesiah, 2016; Robins, 2012; Madlingozi, 2010); that they are implemented as ‘tick box’ exercises under inflexible mandates from international donors (Arthur and Yakinthou, 2017; Shaw and Waldorf, 2010); that the proportion of energy and resources used on punitive transitional justice measures far outweigh actual support to victim-survivors and their families, and initiatives that involve society as a whole (McLaughlin, n.d.); and that the vision of transitional justice is too narrow and too legalistic (Bell, 2009; McEvoy, 2007).

There are alternative conceptualisations of how to do the work of dealing with the legacy of the past, and on terminology. Some scholars are developing the idea of ‘transformative justice’ (Gready and Robins, 2014; Hansen, 2014, Lambourne, 2009), which seeks to move beyond what they see as the restrictive (and usually highly prescriptive) boundaries of transitional justice. In addition, some bilateral donors such as the Swiss prefer to work under the banner of ‘dealing with the past’. However, this document uses the term ‘transitional justice’, because it is the most familiar, and asks the reader to understand it in its broadest meaning: a collection of creative approaches to overcoming legacies of conflict and authoritarianism and rebuilding trust between communities, harmed populations, and the state. The document incorporates best practice from supporters, critics, practitioners, and scholars in the field.

## 2 Relevance of Transitional Justice to Cyprus

There are a number of excellent works explaining in detail the Cyprus conflict and its history (Papadakis and Bryant, 2012; Bryant, 2010; Sozen, 2008/7; Papadakis, 2005; Hannay, 2005). Our goal here is instead to understand how the legacy of this conflict has impacted on trust, inclusion, and peace, and what can be done about this. This synopsis is therefore purposefully selective. Thus, the operating historical assumption of this paper is that what is known as ‘the Cyprus conflict’ includes a tangle of different conflicts over time and space. In the broadest brushstrokes, a key thread can be taken up with the evolution of ethno-religious identities within Cyprus in the early twentieth century in a way that coalesced and fed off nationalist movements in Greece and Turkey. For various reasons, this galvanised, over time, the development of two dominant ethnic identities beyond the historical religious associations of the island as Christian and Muslim. Thus, over the course of the early and mid-twentieth century, the main organising principle of the country became Greek Cypriot and Turkish Cypriot. The voices of minority communities such as the Maronite, Latin, Armenian, and Roma, were subsumed within the growing conflict and insecurity between the majority Greek Cypriot community and the comparative minority Turkish Cypriot community.

### **Colonial conflicts and guerrilla groups**

Layered into this was a colonial conflict with the United Kingdom that became violent in 1955 with the establishment of the Greek Cypriot guerrilla group EOKA (French, 2015; Varnava, 2001) and the Turkish Cypriot counter-guerrilla group TMT (Nevzat, 2005; Sadrazam, 1999), a Left-Right conflict that mapped onto broader Cold War politics, and regional power interests supporting or opposing particular voices. The struggle against the British between 1955 and 1959 is generally remembered by the Greek Cypriot community as an anti-colonial uprising, spearheaded by EOKA and to which the English responded brutally and cynically (Vanezis, 2000). It is generally remembered by the Turkish Cypriot community as an armed effort of Greek Cypriots to unite Cyprus with Greece by force, which threatened its safety but for the protection of TMT and Turkey (Hatay and Papadakis, 2012). By 1960 Cyprus had become an

independent republic, but governance depended on levels of inter-communal trust that did not exist. This effort at governmental collaboration largely broke down in 1963, and resulted in a long decade of violence between 1963 and 1974, with some breaks in between, where the violence – actual or threatened – was predominantly directed towards Turkish Cypriots by Greek Cypriot paramilitaries, politicians, and sometimes neighbours, though it was not only one-way. There was also some Left-Right political violence on both sides, particularly against communists. During this period, governance of the Republic of Cyprus was continued exclusively by Greek Cypriots, and Turkish Cypriots self-organised to govern their own community under oppressive conditions.

## **Independence, mistrust, and dual national narratives**

The period between 1963 and 1974 is one of the contestations of Cypriot history; while many Turkish Cypriots refer to and remember the period (particularly 1964-7) as a siege (Hatay and Bryant, 2008), Greek Cypriots tend to refer to it colloquially as ‘i fasaries’, or something roughly on par with ‘the troubles’. The level of violence and its impact during this period is told differently in each side’s national narrative. While for Turkish Cypriot history this is a key and complex period of ‘remembering’ (Bryant and Hatay, 2011), for Greek Cypriot history, this period has historically been surrounded by silence, or has been remembered as a story of Turkey preparing to invade the island if given the right opportunity, and (depending on the political leanings of the narrator), with Turkish Cypriot active complicity (Hatay and Papadakis, 2012). It is worth noting that the Turkish Cypriot voice and Turkish Cypriot agency is largely erased in Greek Cypriot national remembering, while in the Turkish Cypriot national remembering, Greek Cypriot actions were directly linked to a desire to co-opt the state in order to unify the country with Greece. Both sides assumed that the other was operating in bad faith.

In contrast to the Turkish Cypriot collective memory of the pre-1974 period, there is no coherent Greek Cypriot collective remembering of this period as violent or particularly unstable. Instead, it is July and August 1974 that is remembered in the Greek Cypriot national narrative as a period of destruction, invasion, opportunistic violence, and brutal displacement. This memory centres on the 20 July and 14 August Turkish military interventions, which ultimately de facto redefined the country’s internal boundaries, and forced the displacement of one third of the Greek Cypriot population and approximately one half of the Turkish Cypriot population. A number of people from all communities were killed or went missing, and as a result of a 1975 population exchange, the south of Cyprus became predominantly Greek Cypriot, and the north of Cyprus became predominantly Turkish Cypriot. The country's de facto partition has left a number of open questions, and has especially created insecurities for Greek Cypriots. With six different militaries stationed on the island for the last at least four decades, Cyprus is one of the world's most militarised spaces per capita. **While some UNFICYP peacekeepers jokingly refer to Cyprus as 'beach-keeping', there is a culture of insecurity, resentment, and dependence around this half-century long militarisation that will need slow and careful unpicking.**

In the Greek Cypriot narrative, 1974 has a specific political legacy: it is, and has clearly been positioned by political leaders as, a point of destruction, humiliation, and theft against which the community must struggle to regain that which was lost/stolen (Theophanous and Christou, 2014; EDEK, ongoing; DIKO, ongoing; ELAM, ongoing). While the pain of the displaced, the enclaved, and families of the missing particularly has been perpetuated by the lack of a remedy for the harm suffered, they, and their losses have also become symbols of Greek Cypriot struggle against injustice, and a tool for political gain (Yakinthou, 2008). Maximalist politicians have been elected over the last decades on a platform of being the best person/party to 'deliver' justice for Greek Cypriots, protect the national interest, and seize what has been stolen back from Turkey.

This has real implications for the suffering and understanding of victimhood of these groups of victims and survivors, who have been left in a state of limbo since 1974, and whose identity as displaced or as a family member of the missing or enclaved, has been politically exploited and intertwined with the national interest. This complexity will need to be taken into account when planning transitional justice interventions. At the same time, there is a quiet resentment between those labelled 'refugees' (this term is used interchangeably in Cyprus for internally displaced), and non-refugees, and this resentment should not be underestimated. There is also a historical tension between the Greek Cypriot Left and Right that has since evolved into deep political and civil distrust. This is related to the fact that the July 15 coup attempt in 1974, which brought about the Turkish intervention, was an alliance of far-right and Greek nationalist Greek Cypriots and the Greek military dictatorship in Athens. Many of those killed in the week between the coup and the Turkish intervention were Greek Cypriot communists or left-leaning citizens.

However, the majority of people who were killed, threatened, or suffered other forms of violence during the week between the coup and the military intervention were Turkish Cypriot, and that week, together with the preceding decade, are remembered in the Turkish Cypriot hegemonic narrative as the sacrifices that justified the military intervention. In the north of the island, the Turkish Cypriot displaced, the families of the missing, and the killed have been remembered as those on whose suffering Turkish Cypriot independence was built. Thus the 1974 war is remembered in the national narrative as a victory, and as the sacrifice required for the community's freedom. The northern third of the island was declared a breakaway state in 1983, and while only Turkey has recognised this independence, the space created by the 1974 intervention has been both important and traumatic for Turkish Cypriots. It has represented safety from the fear of Greek Cypriot domination and a space for autonomy, but it has also become a space of dependence on Turkey and of enforced isolation from the international community. This isolation, Greek Cypriots maintain, is perfectly appropriate and legally just, until such time as militarily-appropriated lands and assets are returned. But whatever the justification, Turkish Cypriots, and particularly the youth, speak of feeling 'choked', 'restrained', and cut off from the world (Hatay, 2007; Broome, 2004). Both Greek and Turkish Cypriots speak of high and increasing levels of youth leaving the island.

## **Implications**

There is a very real resentment between the communities related to the past, which is sometimes submerged beneath accurate, but strategic, emphases on commonalities between all Cypriots. In very general terms, the Greek Cypriot resentment may be characterised as centring on Turkish Cypriot enjoyment of Greek Cypriot land and property. Turkish Cypriot resentment may be characterised at the spectrum of ways that Greek Cypriots have silenced Turkish Cypriot experiences of pre-1974, and of living in Cyprus post-1974.

There are several ways that history education, as well as attention to these divergent underlying resentments will be both highly controversial and important. If we talk in transitional justice terms about legacies of violence, there is a question around how far back to begin the conversation, and about what different periods or struggles mean to different groups – including those minority communities that have been made invisible by the conflict. Second, the post-war battles between the Turkish Cypriot need for respect and the Greek Cypriot need for justice have added a layer of complexity around the term 'justice' in Cyprus. There are many reasons for this, including the reality that justice has been understood in the context of the Cyprus conflict to mean legal justice, and legal justice has become a tool to score political points by one or the other side. This includes responses to cases such as *Loizidou v. Turkey*, *Cyprus v. Turkey*, *Orams v. Cyprus*, and *Emin and others v. Cyprus*.

The show of solidarity by Greek Cypriot leader Nicos Anastasiades and Turkish Cypriot leader Mustafa Akinci, and their shared statements about the past, together with the steady work of civil society and journalists over the past decades, has generally helped undermine the zero-sum understanding of the past in each community. This has also been assisted by the work of trade unions, and especially in the north, during the pre-Annan period of Mehmet Ali Talat and the Cumhuriyetçi Türk Partisi's leadership and efforts, particularly until 2009, around education reform. Much of the track-two and track-three work being done in Cypriot civil society, as well as the leadership of political parties, unions, the business communities, and media can contribute to dismantling the legacy of mistrust between the communities. Some of these interactions can help build bridging social capital – that is, bonds between groups.

However, **what remains in place is the infrastructure that perpetuates a culture of mistrust. These will need to be factored into transitional justice planning. This includes impunity of police forces especially around prosecution of racially-motivated crimes, systemic discrimination at administrative offices on both sides of all minority communities, under-resourced ombudsperson offices on both sides, and struggles around perceptions of victimhood and perpetration in history education. These will not be automatically fixed by a power-sharing peace agreement, but must be dealt with separately.** The following suggests how some of this might be done.

### 3 Best Practice in Transitional Justice: Four Key Lessons

This section will outline four main lessons that should be kept in mind when designing transitional justice processes. They are relevant to all stages, but are especially important at the planning stage. They should precede and inform the design of any transitional justice strategy or work.

#### **1) The equal importance of the process and the product: early and continuous consultation**

**The first principle of good transitional justice work is inclusion. For our purposes, there are two aspects to this. The first is the inclusion of victims, survivors, and those directly harmed from the planning stages, with a careful lens on how the conflict has affected different gender groups. The second is focusing on the process as well as the product.**

Families of the missing, the killed and martyrs, the displaced, the enclaved communities, and people whose families suffered direct violence are important stakeholders in building a trustful post-agreement Cyprus.

**Often, transitional justice programmes get caught in funding cycles and unduly tight commitments to deliver particular products (be that a truth commission report or a transitional justice roadmap). When this happens, shortcuts are almost always taken on inclusion, stakeholder-building and buy-in, and integration of new ideas into the process. This leads to resentment, marginalisation, and cynicism about both the process and the product, as well as about the broader goals of the work. It also leads to justifiable accusations that transitional justice is unduly elite-driven and top-down.**

As complicated as it is, transitional justice processes that have included victims and survivors in the design and implementation of programming have been able to point to higher levels of perceived success in healing legacies of violence and building more stable and secure societies. This means early survey, focus groups, and/or dialogues with each group separately to identify their fears and their needs, inclusion of their representatives on planning or technical committees as advisors to the process, and implementing programmes with these groups, in cooperation. These are also the moral stakeholders in the project of building the new state.

In contexts like Guatemala, Argentina, and Morocco, different groups of moral stakeholders have helped keep a peace process on track, hold politicians to account for their actions, and push a transitional justice process forward when it has wavered. Such groups with legitimacy that transcends political divisions also exist in Cyprus: an example is the bi-communal Relatives of Missing Persons and Victims of War, which is a powerful platform of victims, survivors, and allies working across the country to build dialogue and through that, a safer future. In addition, understanding the challenges they have faced is also a fast-track to understanding the challenges the country will face when seeking to overcome the legacy of violence.

Creating a transitional justice policy in close cooperation with victims and survivors, as well as groups focused on the gendered impact of the conflict, will help protect the peace agreement from spoilers, and will reinforce the legitimacy of the process. Practical steps here include:

- ≡ Have those who are designing the transitional justice policy develop relationships with victims and survivors. Meet with them, ask them what they need, and develop a dialogue as the process develops. This should not be restricted to outreach, but must be a collaborative relationship. Victim-survivors of the violence and their families should help design the provisions and remain involved through the whole process.
- ≡ Invest in research (or seek external funding for this) to understand where the overlaps of needs and fears are from victims and directly affected communities. Establish a baseline of needs. This must be done together with the above recommendation on consultation – research without involvement of stakeholders in designing transitional justice programmes only achieves half the goal.

### **LEARNING FROM COLOMBIA TO INVOLVE VICTIMS AND SURVIVORS FROM THE OUTSET**

Recent Colombian experiences have applicability to Cyprus at the obvious level. It is a peace process that has also been ongoing for multiple decades. It has grappled with the problem of impunity and deep divisions within society. It has to reconcile the needs of IDPs and refugees who have been displaced multiple times with the broader call for peace and stability. Its peace process was sent to referendum, and failed to be adopted by a very narrow margin. And yet, its approach to victims, survivors, and civil society has been very different.

From 2012, the Colombian peace process has incorporated the views of approximately 60 victims of FARC and the government, who were brought to Havana by victim associations. They became consultants to the process, and had specific input into the transitional justice aspects of the peace plan. Delegates were chosen under principles of inclusion and included indigenous communities, Afro-Colombians, LGBT groups, military, police, business and trade unions. This has not been an easy process or without its tensions, but it has ensured that their primary needs and concerns have been heard and met. It has also bridged the vast gap between victims and political elites, and given victims access to networks that will help them work to keep the process on track. The support of these victim groups, and their inclusion in the process, were important factors in very high levels of victim support for the peace plan, and their lobbying in favour of it during the 2016 referendum process. Though the referendum was narrowly defeated, these groups continue to work in support of its further development (Yakinthou et al., 2016).

## 2) Civil society and capacity building

Transitional justice is not simply a court, a truth commission, or other official institution. Instead, it is a complex social process in which both the state and civil society (including victims of human rights abuse) participate. In reality, it is doubtful that any formal transitional justice institution has ever been successful without engaging with civil society actors, who play a wide variety of roles in TJ processes. Practical steps here include:

- ≡ Consider establishing a national consultation process, or a series of direct dialogues, to create a frame of priorities. Use these priorities as part of your transitional justice programme planning. Actively include civil society in this process, and take it around the country.
- ≡ **Include a mix of government and civil society representatives on all planning and outreach teams. This will increase the opportunity for civil society to build relationships with the broader public beyond the small circles already engaged in the peace process, and to build relationships with government.** This will be vital in the implementation stage. It will also increase public engagement in the state – people across the country will feel heard and respected, and are more likely to feel like part of the new Cypriot state.

Civil society organisations are key actors ensuring the stability of a peace agreement after signing, and are often behind key institutional reforms. They are also important peacebuilding actors. Civil society actors often play important roles mobilizing public opinion, and informing the public and reaching out to victims, survivors, and anxious citizens about post-conflict processes. They also develop and enhance transitional justice or peacebuilding mandates and support the structures, and make sure that the mechanisms have credibility and legitimacy both domestically and internationally.

Often this is done by sharing information with the state or with citizens, functioning as a watchdog, enhancing legislation in partnership with state actors, linking victim-survivors to particular processes, delivering services, and helping the overall transition. They often sit on advisory bodies, or committees within or alongside government. Equally important is their key role in managing public and stakeholder expectations about transitional justice processes, and about the normal bumps in the road as things proceed. All of these roles become critical in transitional justice processes. At the same time, civil society groups may be in tension with state actors (or each other), may not be truly representative of moral stakeholders, or may find themselves powerless to affect change. This will vary from context to context, but what is certain is that civil society is understood to be a key vector of building social trust, and therefore, to a successful transitional justice process (de Greiff, 2010).

### LEARNING FROM CIVIL SOCIETY INVOLVEMENT IN TUNISIAN DEMOCRATISATION

Tunisia, as the most current global transitional justice project, represents both best practice and learning, as well as important mistakes that are threatening to undermine the whole process. In both regards, it is a useful reference point for Cyprus.

In 2012, the Tunisian government created a Technical Committee for Transitional Justice. Its job was to initiate country-wide consultations and to deliver a draft law on TJ to the National Constituent Assembly. While it was chaired by an advisor to the Minister of Human Rights and Transitional Justice (globally the first office of its type), it was largely made up of civil society leaders. Sub-commissions were established, each covering parts of Tunisia's regional governorates. In addition to other actions, they held public dialogues in every region, and through these, gathered victim and other stakeholder thoughts on their transitional justice needs. This was followed by sessions to share experiences about transitional justice and public needs. This fed into the transitional justice law, which was passed in December 2013, and led to the establishment of the Truth and Dignity Commission (TDC), which began

its work in 2014. Civil society actors are represented in the TDC, and a civil society alliance was also key to keeping the democratisation process on track – something which earned them the Nobel Peace Prize in 2015.

However, Tunisian civil society leaders are already talking about lessons learned from their own experiences: the national consultation aimed to be inclusive, but it excluded those citizens who were not literate, and did not have the confidence, or financial means to join the town hall discussions. Institutionalising it in a Ministry of Transitional Justice has also severely curtailed flexibility and innovation once the mechanisms were established, and responsiveness to concerns from civil society and the public that transitional justice was ‘no longer for the people’ (Boujnef, 2017). Women were largely excluded. This limited deeper community representation and ownership of the transition. The town hall meetings gathered survey material from just over one thousand people, and it is not clear that even this limited feedback was integrated into the transitional justice strategy, as organisers were under significant time-pressure to turn something around.

The process has been criticised by citizens and some civil society actors in Tunisia for being too elite, too top-heavy, too male, and too focused on the capital, Tunis. While the transitional justice structures and products have been innovative and important, the process – and the Truth and Dignity Commission as the face of this process – runs a serious risk of losing legitimacy as it continues to exclude marginalised voices. Tension, and constructive dissent are enabling some marginalised groups to reclaim a role in the process, but the outcome of this is uncertain.

### 3) Embracing disagreement

**Disagreement is something we are used to as a normal part of the political process. Yet when it comes to peacebuilding and transitional justice, dissent and serious disagreements on strategies, on activities, on methodology, or on principles tends to frighten policymakers and donors.**

**However, it is often at these points of tension that the greatest gains and course corrections can be made, if policymakers, planners, and donors hear the dissent as constructive feedback, rather than as criticism.** Often, disagreement or apparent spoilers are expressing a concern or anxiety that the process is not including particular groups, that they will be detrimentally affected, or that the reality of a transitional justice mechanism looks too different to their initial ideas of or hopes for it. These are very often underlying signals of a need to reach out, consult, re-strategise, or course-correct and should not be dismissed without careful understanding of the dissenting voices.

#### **LEARNING FROM DISSENT IN THE COLOMBIAN PEACE PROCESS**

In 2003, the Colombian government proposed a transitional justice bill entitled Draft Law 85. There was very little public debate while the law was being drafted, but it was immediately condemned, after it was made public by human rights groups, for promoting impunity and neglecting victims’ rights. The criticism forced the government to move the debate to Congress, where hearings were held over the course of almost two years to discuss the law. Although these resulted in major changes to the law, many still considered the mechanisms unsatisfactory. Activists and human rights organizations filed an appeal against the law with Colombia’s Constitutional Court. In 2006, the Court struck down some of its provisions and reinterpreted others so as to strengthen victims’ rights to truth, justice and reparation. This resulted in further processes and legislation strengthening victims’ rights. These developments took place while the conflict was ongoing (Yakinthou et al., 2016).

#### 4) Guidance for potential donors

Globally, 69 percent of funding for transitional justice activities now comes from foreign affairs agencies (Arthur and Yakinthou, 2017) and yet there is very little stable knowledge within either headquarters or diplomatic offices in-country about what transitional justice is, its goals, and the best ways to achieve them. Transitional justice usually does not figure into donor governments' policies, and there is generally no internal guidance. Together with development agencies, which fund another 27 percent, this means that almost all support for transitional justice activities today comes from international agencies. There is therefore value in thinking – from the policymaker perspective – how to best use donors as a resource for a more meaningful and coherent transitional justice strategy, and – from the donor perspective – how to best use the available resources.

There are some important initial steps that should be put in place by donors. These include:

- ≡ Support actions that include civil society from the beginning;
- ≡ Focus on gender perspectives, especially in the planning stages;
- ≡ Plan for a long-term engagement; and
- ≡ Invest in data for evidence and indicators.

Donors have both symbolic and financial levers when it comes to shaping policy. As a result, clear and well-thought out funding strategies can significantly improve the quality of programming. This includes:

- ≡ Support a transitional justice strategy, not a single project;
- ≡ Put victims and vulnerable groups at the centre, not in the margins;
- ≡ Think about collating funding between donors to increase coherence and minimise project overlap;
- ≡ Encourage cooperation among diverse civil society groups that might not otherwise interact; and
- ≡ Remember that donor solidarity is as important as funding.

More information on this can be found here: <http://fundingtj.org/>

#### **UN WOMEN USING BASELINE INDICATORS TO IMPROVE DELIVERY OF REPARATIONS**

The way the Cyprus conflict has been gendered requires increased visibility: not just at the analysis, but also at the solution stage. The Cypriot Gender Advisory Team is a powerful resource to draw on for ensuring that any transitional justice programme is seeking to craft appropriate measures. UN Women's work may also be helpful in this regard.

UN Women began developing two transitional justice indicators in 2013, in response to the implementation of UNSC Resolution 1325. One of these indicators aimed to understand the extent to which reparations programmes were meeting the needs of women victims of conflict – something that will be relevant in Cyprus also. UN Women developed a basket of indicators to assess to what extent reparations were being designed to address specific harms to women and to capture the challenges faced when accessing reparations. The indicator was specifically designed to measure the 'percentage of benefits from reparations programmes received by women and girls' (Public Action Research, 2015).

#### **UNBALANCED FUNDING DAMAGING OUTREACH**

In both the Former Yugoslavia and Cambodia, a lack of forethought among international donors about a need to develop or support outreach strategies between the Courts and the public was fatal to the long-term success of the projects. One of the goals of the International Criminal Tribunal for the Former

Yugoslavia (ICTY) was to promote the truth of human rights atrocities committed during the wars, and to enhance reconciliation. While the ICTY has cost the international community some 2.3 billion USD (McLaughlin, n.d.) there was no dedicated funding for outreach, and indeed no outreach programme until after the delivery of the first judgement, some eight years after the ICTY's establishment. The lack of meaningful outreach, and the significant cutting of the office's budget very soon after it was finally established, contributed to the creation of a vacuum where media affiliated with nationalist politicians were able to manipulate the Tribunal's image. It also contributed to a lack of basic public awareness about the facts of crimes, and played into an anti-reconciliation rhetoric (Yakinthou, 2017).

A similar story can be told about Cambodia. Here the funding mechanism for the Extraordinary Chambers in the Courts of Cambodia (ECCC) made it much harder for donors to mobilise funds for outreach, and for civil society support for the ECCC. In the words of one donor: 'this made it harder and resulted in less rigorous coverage of information around the country' (McGrew, 2017). In Cambodia, in response to large-scale exclusion from the ECCC, women also created a series of 'Women's Hearings' – sideline sessions to the court that aimed to expose how the violence had specifically affected women.

## 4 Using Transitional Justice to Build a More Secure Cyprus

If transitional justice is to be used as a tool in Cyprus, it will have to be creative, and astute. There are (at least) two levels at which it will need to operate: societal, where the main need may be building trust between distrustful groups that have lived largely apart for half a century; and those who are still affected by the conflict, including families of the missing, those who will be displaced as a result of the peace agreement, and the displaced who will consider returning to vacated property. It will be important to address both levels of needs, but it may be that different methods are used to address the needs of society and direct victims – that is to say, we should not assume that, for example, a truth commission will necessarily both fracture the 'us'-victim, 'them'-perpetrator mentality that exists in Cyprus, and be able to heal victims of their pain.

The Cyprus peace agreement, in part, aims to rectify grievances between the communities in order for them to perceive that the new state of affairs will be fair and viable. Some measures transitional justice practitioners will usually recommend are already being addressed in the peace plan. These include restitution and compensation for property loss and stronger institutional protection against inter-communal violence. In addition, truth-seeking initiatives like the Committee on Missing Persons and education initiatives continue regardless of the peace process. Transitional justice is therefore not a far cry from what is already being done.

**Required now is a much closer analysis of what is needed by those directly affected by the conflict, as well as the tools to create space for multiple perspectives about the past, and debates about visions of the future. This will help to construct an overarching strategy, and ensure policy and issue coherence.**

This section will outline the core transitional justice principles as they are relevant to the Cyprus context. It does not seek to provide answers, but rather to prompt thinking about appropriate

approaches to building a more trustful, engaged, and cohesive society after signing of a peace agreement.

## **Transitional justice and addressing grievances as well as traumas**

Transitional justice is often spoken of in terms of trauma and suffering. An additional perspective is to consider the role of grievance, and the importance of addressing identified and underlying grievances. The two should function together.

It is useful to think about transitional justice as filling in the gaps of both grievances and traumas that the negotiations would otherwise not focus on, but without which citizens may not trust the state, or trust each other.

For example, the Turkish Cypriot grievance that the community was not considered an equal partner in the Republic of Cyprus' decision-making process in the early 1960s is being addressed by various aspects of the power-sharing agreement being negotiated by the two leaders. The Greek Cypriot grievance that, as a majority community, its legitimacy is being diminished is also being addressed by the agreement. These are two important grievances that have paralysed the negotiating process in the past. **It is useful to identify what other grievances exist, which the peace agreement is unlikely to be able to address, and which may destabilise society if not remedied.**

The Greek Cypriot fear that the Turkish military may again intervene in Cyprus will be addressed to some extent (but not entirely) by the peace agreement's proposed security architecture. But the Turkish Cypriot fear that Greek Cypriots may again seek union with Greece is one that is not being dealt with in the peace plan: this fear was triggered in February 2017 when members of ELAM, a far-right wing ethno-nationalist political party with links to neo-Nazi group Chrysi Avgi in Greece, proposed a motion in the Republic of Cyprus parliament that the 1950 Enosis plebiscite be commemorated in public schools. With the major Greek Cypriot political parties divided in response, the motion passed (though it was subsequently nullified), and the issue caused a breakdown in the peace negotiations, as well as a spike in mistrust between the communities. This is the space in which transitional justice should work.

Some key questions to help establish what grievances and fears exist within and between the communities include:

1. Is there a clear understanding, based on psychologically-informed population evaluations, of what grievance is held by each affected sub-group, and an expressed preference for particular options for remedy?
  - a. If there is not, an evaluation should be conducted that thinks beyond Greek Cypriot and Turkish Cypriot, but takes into consideration the multiple internal divisions relevant to the conflict. This includes a gender lens, and the perspectives of national minorities including the Roma, Armenians, and Maronite communities, as well as new national minorities including Turkish nationals who have settled in Cyprus in the north, and migrants from other communities that have made both sides of the divide their home.
2. Has the different way the conflict has been experienced by different genders been considered?
  - a. Are the ways in which female victims and sexual minorities were harmed understood (including refugees and family members of the missing)?
  - b. Does the Gender Advisory Team and relevant groups such as Hands Across the Divide have a meaningful seat at the planning table?

Grievances and fears can and should also be identified and refined as part of a country-wide consultation process, outlined above.

## **Issues of pride, shame, and history:**

### **Truth-telling, multiperspectivity, memory and forgetting**

“Truth” can be understood as the combination of truth, knowledge, and acknowledgement, rather than limited to the collection of data for factual truth. Usually, truth-telling and truth-seeking approaches will be recommended in order to break hegemonic narratives about the past, and to give space to submerged and suppressed experiences of violence and insecurity. This is part of a conscious effort to expand official narratives about a particular period in a society's past, and to bring unheard or marginalised stories to official recognition and acknowledgement.

Traditionally, truth-seeking has been important for two main reasons: the idea that speaking out about atrocities will help heal victims and survivors, and will also create an associated shift in public awareness and consciousness about the past; and the idea that documenting crimes, having public sessions where suppressed narratives are told, and investigating what happened will culminate in the creation of a new and shared official narrative about the past, which is endorsed by the state. These are ambitious claims, and gaining state endorsement has often been the hardest part of this journey. There will always be contested views and differences of opinion, but the goal of truth-seeking should be to, at a minimum, clarify certain basic facts, and then try to create a space where there can be healthy debate and critical reflection and discussion about the past.

**Making sense of the past helps explain the need for particular provisions in the peace agreement, and helps think about how to create a more trustful and secure present. Truth-seeking may help this process, but it is important to remember how contested and subject to political derailing these processes are, and that victories will be important, but they will take time.** A limited one-off truth commission format is usually unable to provide this framework for healing. This is because most of the evidence about the healing potential of speaking out about abuse underlines the importance of survivors being able to speak freely and on terms defined by them, not by commissions, and to the importance of ongoing psychosocial support after the event, as well as acknowledgement of the harm they suffered.

#### **What does truth-seeking usually look like?**

Truth-seeking is usually conducted in a number of different ways, including (but not only) by the state under a truth commission, by NGOs and academics documenting narratives or atrocities, by forensic groups such as the Committee on Missing Persons, by the arts community through film, theatre, literature, and visual art, and by journalists publishing stories. The South African Truth and Reconciliation Commission usefully distinguished between four kinds of truth: truth as factual or forensic; truth as individual or narrative; truth as dialogue or communal; and truth as healing or restorative. ‘All four of these dimensions of truth are important for understanding what different people need from a transitional justice process, and these needs may vary at different times and in different circumstances’ (Lambourne, 2009: 12).

Some key areas for using truth-seeking approaches in Cyprus include the following. Many of these are already well underway, and may just need further or expanded support:

- ≡ Panels/commissions of inquiry particularly related to uncovering the fates of people who were killed or went missing during the conflict;
- ≡ Television, radio, print, and online media to raise awareness of alternative narratives;
- ≡ Voluntary story-telling and oral history initiatives;
- ≡ Film, literature, theatre, and visual arts;

- ≡ Using memorials of pain or struggle as points of reflection and opportunities to cultivate critical thinking and multiperspectivity;
- ≡ Education reforms that focus on historical empathy, multiperspectivity, and critical thinking.

It is also important to note that there is space for creativity and innovation in confronting the past. Encouraging community-driven thinking on these topics has tremendous value.

In regards to factual truth, it will be important to include a definition of victims into the peace agreement. This should nominally enumerate some of them, such as the displaced, families of the missing, families of the killed, and so on.

### **Truth, identity, and fear of exclusion**

Best practice and evolving academic debates around how groups function under threats to their identity suggest that we should shift our thinking about how truth-seeking can best work. **Group identity during times of perceived threat (and this includes transitions to peace) can be fragile. At times when political transitions are taking place, different groups are asking themselves “where is the space for me, in this new creation?”**

Fear is a strong trigger for rejection of narratives that challenge the status quo: fear that a group's identity or perspective is no longer valid, that their struggles or actions during a contested period are seen to have no value. For example, setting out to marginalise the perspectives of EOKA and TMT fighters may result in their further entrenchment, and deeper divisions within society. In such situations, particular group identities are perceived by their members as being under threat, and any effort to create “new” narratives will run the real risk of being seen by such groups as creating new exclusions. For example, in the Balkans, one of the goals of the International Tribunal for the Former Yugoslavia was to create a new narrative about what happened, and in so doing, to contribute to reconciliation especially between Bosnian Serbs, Bosniaks, and Bosnian Croats. However, while the ICTY did create an unquestionable record of crimes committed during the wars in the Balkans, and has left a tremendous legal footprint, its efforts to establish a new understanding of the past was not viewed by the communities as something that brought them closer together. Instead, for many reasons, the legal cases were received as challenges to the legitimacy of each side, and failures to convict were celebrated as ethnic victories by one or the other side. Despite the work done, Bosnian society remains as divided today, two decades after the war's end, as it was in the immediate aftermath.

Events such as these have been explained by conflict-focused psychoanalysts Vamik Volkan and John Alderdice as events which threaten group identity and therefore are rejected as a counter-narrative by the group (Volkan, 2013, Alderdice, 2009). This runs the risk of creating new tensions between groups, or furthering divides. **Thus, there is not always a clear relationship between truth-seeking and reconciliation. Often, issues of pride, shame, fear, and denial intervene.**

### **Embracing tension and multiple narratives**

As a result, truth-seeking processes should be multi-faceted, and nowhere is it more important to be able to embrace tension than in truth-seeking initiatives. Sometimes, people will not want to talk, and silence should also be seen as legitimate, just as the choice to speak out is. Both are ‘related to power and agency; whether it makes sense to speak or remain silent depends on what the social stakes are’ (Monroy-Santander, forthcoming). In addition, it is important to understand that ‘speaking out about past atrocities, for example, will not automatically lead to trauma recovery, healing or reconciliation within communities and entire nations’ (Theissen, 2004: 16).

Cyprus may face the additional complexity common to some conflicts, where it is difficult to distinguish victims and perpetrators. The ‘way the discourse of victimhood gets deployed’ can have an impact on whether societies become further entrenched against one another’s perspective. Victimhood is complex and layered, and it is ‘important to ensure that the process of determining the guilt and innocence in the proximate conflict will not be experienced as another round of victimization that exacerbates the conflict and deepens marginalization’ (Nesiah, 2016: 26).

In light of such thinking, a more valuable approach may be critical multiperspectivity – something which has already been considered in Cyprus. Leading thinking in education, group conflict, and transitional justice is coming together to suggest that truth-seeking initiatives can be led by the idea of making space for multiple viewpoints in addition to the ongoing value of establishing factual or forensic truths.

### **Truth commissions as a form of uncovering the past**

In Cyprus, a great deal of work is already being done related to understanding and talking about the past. It is worth making a note about truth and reconciliation commissions, given their topicality in Cyprus.

A truth commission’s goal has historically been to look specifically at patterns of past violations of human rights, rather than broader causes of violence, though this shows some signs of change. It predominantly uses a human rights and legal lens, and does its work by collecting testimonies of victim-survivors of these violations and compiling them into a condensed narrative. In some commissions, witnesses give public testimony, and in others, private. In some, both perpetrators and victim-survivors speak, and in others, only victim-survivors speak.

Virginie Ladisch and Rachel Goodman note that if such a commission is to succeed, it should rethink its purpose and methods. In order to meet its potential, ‘a truth commission should seek to expose the conditions that allowed violations to take place and provide a platform for local actors, including survivors, to actualize their agency’ (Ladisch and Goodman, forthcoming). It is, in fact, a radical project that should be focused on creating space for the exposure of human rights violations, and on giving victim-survivors a platform to “find their political voice”. It is a process that at best can help facilitate social and political transformation. However, for a number of reasons (many of them political), there are few commissions that have achieved this goal. Many commissions struggle to get off the ground, to maintain their legitimacy, or to receive support for their findings beyond those already convinced. In addition, commissions looking at a conflict whose crimes are at least forty years old, and where the work centres on the need to bring up truths of violence perpetrated between groups that still see one another as the ‘enemy-other’, are especially fraught with risk (Hayner, 2000).

Displacement and suffering in Cyprus was experienced in different ways across time between the communities. Recent calls for a truth commission have largely come from the Greek Cypriot community, which has experienced the post-conflict trauma as an ongoing lived experience. It is not clear whether there is consistent support across communities for a truth commission or similar body. This is something that needs careful analysis and consultation with survivors across the island.

In addition, it is important to think about the goals of such a commission or body. Would it be focused on the fate of the missing only? On the missing and killed? On this as well as displacement? Would its purpose be reconciliation (as in the Annan Plan)? Presenting of marginalised truths? Undermining hegemonic narratives? All of these?

Some key points of reflection around truth commissions are as follows:

- ≡ **Truth commissions are least effective in contexts where conditions remain polarised;**
- ≡ Truth commissions aim to provide a general truth as part of a new nation-building project. They may or may not have a positive impact on people's beliefs about the past, and they cannot build social trust;
- ≡ Truth-telling during a truth commission does not necessarily heal a victim of atrocity. Many victims suffer after giving testimony, and accountability will not address the many forms of suffering that victims will feel;
- ≡ Truth commissions usually give a set of recommendations and provide an official accounting of the past on their conclusion. Both their recommendations and their reports are often ignored by governments, and they also frequently fail to live up to victim expectations. Perpetrators of violence often continue to live among their communities and are not charged;
- ≡ That said, truth commission recommendations and findings are also sometimes used strategically by civil society groups and activists to hold governments to account, and so they can become a useful tool in some contexts. Morocco was one case where a truth commission's recommendations were used later to pressure the King to begin reforms.

What is clear is that officially-led truth seeking, if incorporated into transitional justice work, will need to be done carefully and creatively in order to constructively approach the layers of the Cyprus conflict without causing further harm, and without pitting the communities against each other. This is a high-risk task to undertake without a history of co-operation and trust between the communities more generally, and between people who might run such a commission more specifically. Key questions for negotiators/proponents of such commissions include:

- ≡ What truths need to be known?
- ≡ Would it focus on factual/forensic truth, on interpretations of the past (narratives), or on healing or restorative truths?
- ≡ Is there a sufficient environment for a truth commission to be the beginning of a discussion, rather than the only discussion about the violations of the past?
- ≡ Would a historical clarification-type commission or panel, or a history dialogue project, offer a more nuanced way of addressing the needs for Cyprus?

## **Justice, and its multiple meanings**

Transitional justice seeks to use various measures to overcome legacies of violence and mistrust between communities. Justice, in transitional justice and in Cyprus, has long meant retributive or criminal justice. The argument for retributive justice as a core transitional justice measure is that this type of justice:

- ≡ Individualises crimes, so that entire groups are not blamed for the acts of a relative few and thus halts the cycle of retributive violence;
- ≡ Provides a deterrent effect for future perpetrators;
- ≡ Gives voice to victims who were harmed;
- ≡ Sometimes, retributive justice is also linked to reconciliation.

However, the way we understand the measures transitional justice uses, and the relationship between them, has changed over time. Over the past two decades, and particularly since the establishment of the South African Truth and Reconciliation Commission, the Rwandan Gacaca process, and the East

Timorese Commission for Reception, Truth, and Reconciliation, the idea of restorative justice has also received a great deal of support. **Restorative justice focuses on meeting the needs of victims and perpetrators, and re-establishing social peace through the repair of relationships. It is largely centred on repairing harm to the extent this is possible, often through a variety of means, including apologies, community service, trauma healing, and truth-seeking/telling** (Monroy-Santander, 2016). Retributive and restorative justice should not be seen as dichotomous, but instead as complimentary approaches to justice.

It may be the case in Cyprus that there is limited appetite, particularly at the political level, for retributive justice approaches to the past. If this is the case, achieving justice in Cyprus may need a broader lens. This could include the development of:

- ≡ A robust judicial system at the federal and state level that will deal impartially with human rights abuses – this will be particularly important for addressing the Turkish Cypriot grievance that the criminal justice system in the Republic of Cyprus does not take crimes against Turkish Cypriots seriously, and the Greek Cypriot fear that their own cases will not be dealt with fairly if they live outside of their communal boundaries. It will also signal that the federal state takes protecting its citizen's rights seriously;
- ≡ If the peace agreement does not nullify applications before the European Court of Human Rights, a shared and transparent approach by federal-level political leaders to welcome and support just resolution of pending cases, together with genuine efforts to support a domestic remedy (particularly around Right to Truth cases);
- ≡ A focus on restorative justice approaches, particularly public apologies by significant community and religious spokespeople, followed up with genuine support for reparations efforts and engagement with victims, their families, and affected communities. Apologies should not be standalone events;
- ≡ A swift and comprehensive effort to understand what justice means for affected individuals and communities. Often “justice” will mean different things to different victims and survivors.

### **THE MEANING OF JUSTICE TO FAMILIES OF THE MISSING IN LEBANON**

When asked what justice meant to them, women married to men who had been forcibly disappeared during the wars in Lebanon gave a variety of answers. For some, justice meant knowing the full truth about what happened. One woman told us: ‘I just want to know the truth. I don’t even want to know who did it. I just want to know if my husband is alive.’ Another woman said: ‘Justice will be achieved... when the state comes and enquires about the needs of the families, mothers, wives of the disappeared and helps them, and gives them all of the support they need, like social security for those who don’t have it, like education for our children’. A third said that justice, for her, was seeing her husband’s killer behind bars (Yakinthou, 2015). In these comments, we see that justice can mean access to truth, it can mean material and symbolic reparation, and it can mean criminal justice.

### **Repairing harm, building inclusion**

In South Africa, the Truth and Reconciliation Commission's efforts to create a springboard for a new South African identity fell flat for a number of reasons, including the lack of follow-through to meaningfully repair harm done by apartheid to black and coloured communities. This failure tainted both the TRC's legacy, and efforts to create a more equitable society in South Africa. Reparations were one of the cornerstones of addressing the tremendous harm of apartheid, and yet they were caught in

post-apartheid politics, and resultantly sidelined (Khulumani, ongoing). It is fair to say that an absence of meaningful efforts to address the economic and social inequality caused by the apartheid regime has negatively affected the country's stability today.

Efforts to repair harm done to individuals and communities affected by a conflict or political violence are important for many reasons, but especially because they provide a meaningful effort to turn a victim of violence into an active and full citizen again, with the same rights and potentials as people not affected by the conflict. Reparations policies usually follow from truth-seeking initiatives (especially state-led initiatives), which sought to understand how people were harmed during a conflict. They are therefore important because they support and provide meaning to other transitional justice initiatives. They are also an important acknowledgement on the part of a state that it breached the rights of its own, or another society's, citizens. Reparations payments therefore usually, but do not always, come from the state that caused the harm.

Different contexts have had different approaches to reparations. In Morocco, for example, communal reparations were provided for groups affected by the Years of Lead. This policy of shared reparations that sought to repair harm in a community was the favoured approach, because entire communities were targeted and victimised. Similarly, in Tunisia, it is likely that a communal reparations policy will be developed to begin repairing the harm visited upon areas purposefully marginalised under the Ben Ali regime. In other places such as Guatemala, a comprehensive and far-reaching individual reparations policy was put in place, where education, healthcare, and agricultural reform as well as material payments were outlined for affected individuals and families (though this has not been fully implemented).

In Cyprus, it should be acknowledged that on both sides of the dividing line, the displaced, and some families of the missing (and in the north, families of the martyred) and the displaced have received a certain amount of official support from their own state that has been continuous, and both material and non-material. This is an unusual situation when it comes to reparations. In addition, a form of reparations is already a core part of the peace agreement, in that the forcibly displaced from both communities will either be compensated or have some version of the right to return to their pre-1974 homes. In that sense, Cyprus is already halfway down the road towards a form of repair because the property issue is so central to resolution of the broader conflict.

However, there are harmed communities, especially the families of the missing, the enclaved, and the families of those killed over the course of the conflicts in Cyprus, who will not be included in the peace agreement. Here, truth-seeking processes such as the Committee on Missing Persons must be clearly supported, and survivors and affected communities must be brought into dialogue about what justice means to them, and what repair means to them.

**One of the goals of transitional justice is to build social cohesion and trust in the state. To this end, the idea of reparations can be broadened to include ideas such as building endogenous resilience among citizens, and the creation of initiatives that focus on building social cohesion.** This is particularly important, because moving beyond generalised identification with victimhood within the Cypriot communities and towards conceptions of citizenship and trust should be a core understanding of the relationship between transitional justice, reparations, and a shared future in Cyprus for all communities.

## **Guarantees of non-repetition**

In many ways, the guarantee of non-repetition of violence is the thread that holds together all other transitional justice initiatives. It is the aspect most closely aimed at ensuring public institutions such as

the police, the military, the judiciary, and the administrative arm of government will not repeat human rights abuses they may have committed.

Looking forward, **efforts to guarantee non-repetition are the state's signal that it can be trusted to provide robust human rights protections for all of its citizens. It is also one of the areas that can and should be addressed very early in the transition, both because it signals to citizens that rights abuses will no longer be accepted, and because it is more likely to help build or rebuild trust in the state.**

Guarantee of non-repetition traditionally includes reform of public institutions, often by increasing transparency and oversight of those institutions. It also focuses on providing human rights training and gender sensitivity training to (especially) the police and armed services, and on establishing institutional protections against abuse of power. Part of this process includes the careful and judicially-defensible assessment and vetting of public servants who were involved in significant human rights abuses, abuses of trust, or corruption and embezzlement. It also encompasses the development of human rights protections that may not have been in place or were ignored during the conflict/violence.

All of these aspects are important and should be undertaken with care and transparency. However, efforts should also be made to think beyond the traditional boundaries of such guarantees. For example, the establishment of a federal ombudsperson and federal commission of human rights and gender equality with meaningful powers could also be an important guarantee of non-recurrence.

**More robust mechanisms to deal with hate speech and hate crimes between communities and within each state should also be developed – this will go some way to also repairing inter-communal trust in the state.** Such provisions will be especially important, given the evidence indicating that younger people are less likely to interact or to trust one another (or the new state), and that nationalism is highest among Greek Cypriots between 18 and 34, and rising among Turkish Cypriot youth. Given all of this, it is valuable to think of efforts to build integration, cohesion, and engaged citizens as the most powerful guarantees of non-recurrence of violence.

## 5 Conclusion and Recommendations

Transitional justice aims to help advance political and societal transformation by building a society based on consent and shared norms, building respect for the rule of law, enhancing justice, and creating institutions that help achieve development and security goals. It does this by directly addressing the various legacies of violence, intimidation, and fear related to conflict and to the past.

In this regard, several points are important when starting to craft Cypriot approaches to transitional justice. These include:

### **1. Talk to people affected, and avoid formulaic transitional justice**

Transitional justice must be developed in consultation with those affected by the conflict directly and must resonate with the grievances, fears, needs, and goals of the society/ies. Relationships need to be built immediately with groups such as:

- The displaced likely to return to their homes, and those who are unlikely to return;
- Families of the missing;

- People who will be displaced as a result of the peace agreement;
- People who will share new boundaries or towns with returnees;

A structure will also need to be put in place to feed back to these groups, and to bring their feedback to those developing and implementing transitional justice. This should be a continuous conversation.

## **2. Sequencing at this point means first understanding the gaps**

What are the fears and grievances of the above groups? Has a gender lens been applied to the harms created by the conflict that exist in Cyprus today? Which of these fears and grievances will be addressed by the peace process, and which will not be? Which run the risk of corroding social trust if left unaddressed? Meaningful approaches to transforming the legacy of violence should seek to fill these gaps. The tools can be found once the needs are understood.

Sequencing of approaches will be important once these needs are identified. The next step will be to identify the financial, human, and strategic resources that are available to meet these needs.

## **3. Understand the goals**

**Redressing harm to individuals, and creating a more trustful, engaged, and democratic society are ideally complementary goals. However, they do not always require the same tools. Understand what the goals are, and then decide on the appropriate tools.**

## **4. Be instructive to donors**

In the event that a peace agreement is signed, there may be international willingness to support transitional justice approaches. If this is the case, both donors and domestic policymakers will want to think about how best to use the resources at hand, and how to avoid duplication of resources. Specific guidance has been developed by Public Action Research and by the Institute for Integrated Transitions.

## **5. Be aware that transitional justice has important dangers**

Transitional justice initiatives fail as often as they succeed, and often failure or success turns on factors such as the marginalisation of civil society or of victim-survivor groups, a lack of funds, a lack of or insufficient outreach to the public, not thinking sufficiently through how particular mechanisms will affect victim-survivors, and frustration with the process by policymakers, donors, and communities, usually because expectations are set too high and/or there is too little support.

Transitional justice is not a particular event or a single mechanism. It is a complex social process, and it is multigenerational. This is to be expected; just as violence takes time to build, and leaves its impressions throughout society, so too will creating more integrated and trustful societies. It is a layered process and it will go both backwards and forwards simultaneously. It can trigger both positive and negative responses within society, and often at the same time. Awareness of and a degree of preparations for this will help increase chances of achieving positive change.

## **Recommendations**

It is important to note that transitional justice mechanisms should be developed in consultation with those affected by the conflict directly and those who will be implementing or carrying forward its

recommendations or processes, particularly with the younger people who will do this work over a longer period. Thus, these policy recommendations are designed for inclusion in the peace agreement, but should be further developed with the advice outlined by the report.

### **Core recommendation:**

Creation of an article in the agreement focused on ‘dealing with the past’ or ‘transitional justice’, which establishes a commitment to the four key principles of transitional justice. This article should emphasise the genuine participation and inclusion of affected communities, civil society, vulnerable groups, and women. It should build on existing official and non-official efforts to deal with the past, and expand on them.

In terms of the four principles of transitional justice, the following points are recommended:

#### *Truth-seeking processes*

1. Establish truth-seeking mechanisms or measures that would ensure space for the multiple perspectives on the violence of the past.
2. Include a clause that reaffirms commitment to the work of the CMP.
3. Commit to building on past or ongoing truth-seeking efforts including those led by civil society such as those of AHDR and the Home for Cooperation, PRIO’s historical narrative collection, the work of Turkish and Greek Cypriot educators, artists, researchers, and journalists.
4. From the beginning link this process to education in the country and use it as a basis for future reform, or at least for material that can be used in class. Teachers must be involved in this process.

#### *Reparative processes*

1. Include a definition of victims. This should nominally enumerate some of them, such as the displaced, families of the missing, families of the killed, and so on.
2. Commit to consult regularly (at a minimum, annually) with each of these groups, to ensure smooth transition. This will also help make these groups allies of the peace agreement.
3. Include an education provision that focuses on cohesion and respect.

#### *Institutional reform commitments*

1. Building into existing EU requirements, establish federal human rights ombudsperson, with multi-communal representation and commit to properly resource it. Work with existing ombudspersons offices in both communities to establish this office, using it as an opportunity to evaluate existing institutional weaknesses and strengths on both sides.
2. Build on existing measures, institutions, and efforts for institutional reform.

#### *Justice processes*

It is difficult to recommend justice processes for Cyprus without understanding first where the agreement will fall on the issue of unofficial immunity issued to perpetrators of violence in 2000 by the attorney-generals of each community. Nevertheless:

1. Commit to a process of understanding what justice means to affected individuals and communities.
2. Signal that the federal state takes protecting its citizens' rights seriously by developing a robust judicial system at the federal and state level that will deal impartially with human rights abuses.
3. Welcome decisions made by the ECtHR on individual human rights cases.

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