Release Date: January 8, 2022

Series of Articles: Turkey Debates Making Amends #3

In the first one of a series of articles published by DEMOS on "Turkey Debates Helalleşme", Güneş Daşlı, in her article titled "How Can We Discuss Helalleşme in the Context of Reconciliation and Transitional Justice?" positions helalleşme as only one of the steps of reconciliation, as opposed to addressing it as a process in competition with truth and justice, the touchstones of transitional justice. She focuses on reconciliation as a process that needs to be in harmony with several official/unofficial mechanisms of transitional justice as it moves forward. In the second article of the series titled "What Kind of Transitional Justice Do We Imagine?", Nisan Alıcı joins in the discussion initiated by Daşlı from the angle of transitional justice, stating that transitional justice varies depending on the context, hence highlighting the importance of building a bottom-up transitional justice process where the demands of victims/survivors are determinant factors instead of imposed cliché formulas. Nisan stresses that the work of civil society provides a basis for possible mechanisms of transitional justice in the future, particularly in cases where an official will for peace/democratisation is lacking; adding that the vast experience of civil society organisations in Turkey in confronting the past is not sufficiently channelled into the debate on helalleşme. In this article, I intend to contribute to the debate from the standpoint of civil society[1] engagement in transitional justice processes and develop a framework which could help us ponder together the role civil society can play in Turkey in the context of helalleşme.

In countries undergoing a transition from conflicts to peace, from dictatorship to democracy, it is usually the state who is the direct perpetrator or the instigator of systematic and widespread severe human rights violations, or it simply may shut its eye to these violations. In such countries, civil society takes on essential roles, including documenting rights violations during conflicts/dictatorship, providing legal and psychosocial support to victims/survivors and developing memorialisation practices. This experience, which Alıcı defines as the basis of transitional justice mechanisms, points to the critical role civil society can play in confronting the past. In transitional processes, governments usually inherit economic, social and bureaucratic structures that are in a state of ruin and face challenges in strengthening or rebuilding democratic institutions. Especially in a country with a poor experience of officially dealing with the past such as Turkey, engagement of civil

society in the process of confronting the past as one of the critical actors alongside victims/survivors and all otherised groups means providing expertise and knowledge which the state does not possess in establishing and designing possible official mechanisms of transitional justice. This avoids the imposition of western-based, top-bottom mechanisms on the process and may pave the way for taking the necessary steps that would determine the effectiveness of the process, such as in particular the inclusion of gender perspective to transitional justice and the prioritisation of the demands of victims/survivors. For instance in Rwanda, crimes of sexual violence were included in the jurisdiction of Gacaca courts, a traditional dispute resolution method, which, based on a controversial decision, started to try genocide cases in addition to international and national courts. Crimes were divided into categories based on their severity, with crimes of sexual assault and property crimes classified under category four. On account of a demonstration held in the capital Kigali by victim/survivor groups in particular, as well as women's organisations, the crime of sexual assault was included in category one, which covers genocide-related crimes.

The engagement of civil society has another significant impact in that it enhances the reliability and legitimacy of the official process of dealing with the past in the eyes of the main subjects, the victims/survivors. It is usual for victims/survivors to harbour suspicion toward the state's statements regarding assuming responsibility, issuing an apology, revealing the truth and providing reparations when the state has perpetrated decades-long violations against them. On the other hand, civil society has more credibility in the opinion of the victims/survivors and the society at large due to its work with victims/survivors and its past efforts against rights violations. If the attempt to deal with the past is constructed with civil society from the outset, adding the knowledge and experience of civil society to the process, and transparency and accountability can be ensured so that civil society can fully monitor and report on the mechanisms, the state can convince victims/survivors to participate in these processes. Designing a reparation programme which no victim/survivor would apply to or establishing a truth commission which receives no statements would not even have a symbolic value. The transitional justice process can proceed to the extent that victims/survivors believe in it and find it legitimate enough to participate in it; the role of civil society is essential in forming such an opinion. For example, the Tunisia Truth and Dignity Commission, set up in 2014, received 3.000 applications in the first four months of its establishment, out of which merely 5% were filed by women. A reason for this low percentage was the fact that women did not find the

commission trustworthy. A network set up by 11 women's organisations worked for two years to boost women's participation in the transitional justice process. By 2016, applications filed by women went up to %23, no doubt also due to the network's efforts.

Given the importance of civil society engagement in transitional justice processes, where do we stand on the helalleşme debate? Based on the discussions we have had at DEMOS and with other civil society organisations, my observation is that civil society mostly approaches the call to helalleşme with caution, but it does not dismiss it entirely. In a period of economic crisis and deep poverty, it is perhaps not a priority to respond to a call about whose sincerity we have some doubts, even if it makes sense to respond to it. I certainly do not suggest that civil society convince others, particularly the victims/survivors, into believing a call that itself does not believe in. I am also not sure whether it can be argued that a transitional justice process has ever been undertaken without an underlying political interest in any context. Nevertheless, I would argue that while "gauging the sincerity" of the political will to deal with the past, civil society should consider its possible role in generating and maintaining such political will.

Keeping in mind that the call to helalleşme might as well be a tactical move for elections in a (near?) future after which those who make this call and those who welcome it might come to political power, the driving force that will coerce them into honouring this promise is civil society. It does not have to claim the ownership of the concept of helalleşme to achieve this. However, by utilising the social dialogue space created by the call to helalleşme, civil society has great potential to massify the demands to confront the past to the extent that future political leaders cannot ignore it. If the political power encourages civil society engagement in the process, civil society can demonstrate its knowledge and experience in confronting the past and play a main role in defining the method and the principles of the process. In the case of a political power which denies civil society engagement and instead imposes its understanding and mechanisms, civil society can define, on its own, dealing with the past, justice and truth, just like it has done so far; it can fill these concepts with alternative and unofficial mechanisms for dealing with the past.

Transitional justice includes promises for the future as much as it does for confronting the past; it is an important tool for the struggle for democracy. A confrontation process that acknowledges the inequalities at the root of violations can lay the ground for developing a

pluralistic and democratic constitution and transforming state institutions in this direction, which Daşlı refers to in her article. Therefore, all components of the civil society that struggle for democracy, human rights and equality have a role and a say in a possible transitional justice period. The debate sparked off by the call to helalleşme needs to be shaped by the knowledge and experience of civil society. Considering that this debate is taking place on the eve of a possible change of political power, how can we participate in and manoeuvre the debate while remaining mindful of our collective power and without throwing caution to the wind? This is precisely the right time to ask this question.

---

[1] My definition of civil society in this context refers to a wide range of groups and institutions, including associations, foundations, movements by victims/survivors, social movements, the media, the academy, student communities, and professional chambers.