

The title 'NORTHERN CYPRUS' is rendered in large, bold, white capital letters. Each letter is filled with a different close-up photograph of a person's face, creating a mosaic effect. The background of the entire page is a solid dark blue.

# NORTHERN CYPRUS

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## REFORM OF DISCRIMINATORY SEXUAL OFFENCES LAWS IN THE COMMONWEALTH AND OTHER JURISDICTIONS

The subtitle 'Case Study of Northern Cyprus' is written in a white, italicized serif font. It is located at the bottom of the dark blue box, to the right of the main title.

*Case Study of Northern Cyprus*





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# THE HUMAN DIGNITY TRUST

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The Human Dignity Trust is an organisation of international lawyers supporting local partners to uphold international and constitutional human rights law in countries where private, consensual sexual conduct between adults of the same-sex is criminalised. Over 70 jurisdictions globally criminalise consensual same-sex intimacy, putting lesbian, gay, bisexual and transgender ('LGBT') people beyond the protection of the law and fostering a climate of fear, stigma, discrimination and violence.

The Human Dignity Trust provides technical legal assistance upon request to local human rights defenders, lawyers and governments seeking to eradicate these discriminatory laws.

With generous funding from Global Affairs Canada, the Human Dignity Trust has developed a series of case studies on the ways in which Commonwealth governments around the world have achieved reform of these laws and other sexual offences laws that discriminate against women, children, LGBT people and other groups, and initiated the establishment of a Commonwealth Group of Experts on legislative reform comprised of legal, political, academic and other experts with experience in reform of discriminatory sexual offences laws.

The research for this series of case studies has been possible thanks to the insight and assistance of members of the Commonwealth Group of Experts and many others in the relevant countries who helped initiate, steer, inform and implement sexual offences law reform to bring sexual offences laws into compliance with international and domestic human rights standards.



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<sup>1</sup> Sonali Sullivan-Mackenna, Barrett Schitka, Gerard Rhodes, Cem Islikci, Kerenza Kerslake, Emilia Demetriades, Lisa Borthwick, Eleanor Pike, Catherine Adams and Arjun Vaghela.

<sup>2</sup> Lord Cashman became a Lord on 23 September 2014. Throughout this report, he will be referred to according to his current title.



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# INTRODUCTION



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# INTRODUCTION

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Discriminatory sexual offences laws continue to impact the lives of many Commonwealth citizens, particularly affecting women, children and LGBT people. These laws are at odds with international and regional human rights norms and domestic constitutional law. They undermine human rights and perpetuate violence, hate crimes and discrimination, and threaten the health and prosperity of entire societies.

Discriminatory laws are apparent in the sexual offences provisions in many Commonwealth criminal codes as well as in the absence of protective legislation. For example, many Commonwealth countries have different ages of consent for sexual relations and marriage for males and females. Rape provisions are often gender-specific and do not cover all forms of rape including rape with objects. Marital rape remains lawful in half of all Commonwealth countries. Laws protecting against sexual harassment and child sexual grooming are uneven across the Commonwealth. In two-thirds of Commonwealth member states, consensual same-sex sexual intimacy in private between adults is criminalised. Many countries have laws that are used to discriminate against transgender people including cross-dressing, impersonation and vagrancy laws. Very few Commonwealth countries have legislation to recognise, prevent and punish hate crimes, including those committed on the basis of sexual orientation or gender identity.

Several countries have, however, made real progress in reforming their laws through either (i) wholesale updating of criminal codes, (ii) allowing multiple issues to be tackled together, or (iii) targeted reforms. Some of the most recent examples are as follows:

- **Palau** in 2012 and 2014 respectively, with the assistance of model laws, modernised its sexual offences laws and completed the wholesale updating of its penal code;
- **Northern Cyprus** in 2014 repealed a law that criminalised consensual same-sex sexual conduct, prompted by litigation before the European Court of Human Rights, as part of a package of reforms to the sexual offences chapter of its colonial-era criminal code;

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- **Belize** in 2014 enacted major reforms to its colonial-era sexual offences laws including making rape laws gender neutral, and it achieved decriminalisation of consensual same-sex sexual acts in 2016 through the courts;
  - **Mozambique** in 2015 completed a wholesale updating of its penal code, including the modernisation of its sexual offences laws, using the Portuguese penal code for inspiration;
  - **Seychelles** in 2016 repealed a law criminalising consensual same-sex sexual intimacy between adults; and
  - **Nauru** in 2016, with international assistance, completed a wholesale updating of its criminal code, including the modernisation of its sexual offences laws.

Law reform can play a key role in advancing human rights in relation to sexual and physical integrity and health and is an important part of a comprehensive strategy to reduce crimes, particularly sexual crimes, as well as address the persecutory and discriminatory dimensions of laws that exist on many statute books, ensuring a criminal justice regime that meets international human rights obligations and is fit for the 21st century.

The above examples demonstrate that different countries have taken diverse approaches to reforming sexual offences laws. The Human Dignity Trust has compiled a series of case studies to document the ways and means that each of these countries has achieved reform.

By showcasing these examples, it is hoped that other countries can be inspired and assisted to undertake similar reforms.





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Coca-Cola

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# EXECUTIVE SUMMARY

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# EXECUTIVE SUMMARY

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In February 2014, the Turkish Republic of Northern Cyprus ('TRNC') took a very important step in repealing its colonial-era penal code provisions that criminalised private consensual same-sex sexual conduct between adults, sections 171 to 173 of the Criminal Code of 1959 ('1959 Criminal Code') – being the last jurisdiction in Europe to do so – and this was undertaken as part of a package of reform that addressed the TRNC's sexual offences laws more broadly.

This report examines how this legislative reform was successfully achieved.

The TRNC is a self-declared state, which is presently only recognised as an independent state by Turkey. The previous actions and interventions of Turkey in northern Cyprus as well as the purported creation of an independent state in the territory were condemned in a series of United Nations ('UN') General Assembly and Security Council resolutions, as well as decisions by international courts.<sup>3</sup> The UN and the international community continue to recognise the sovereignty of the Republic of Cyprus over the entire island of Cyprus in accordance with international law.

In light of this, where this report refers to the 'TRNC,' its democratic procedures, multi-party structures, ministries, government officials and organs of government, it is for ease of reference only. References to the TRNC in this report should not be interpreted as a recognition of the TRNC as an independent state.

## History of Sexual Offences Laws

The TRNC's substantive criminal law largely reflected the approach taken by Britain, before the former colonial power undertook to instigate its own reforms to its domestic laws in the latter half of the 20th century. Cyprus became a colony of the British Crown in 1925 and in 1928, a new criminal code ('1928 Criminal Code') officially replaced a previous code that had existed under the Ottoman period.<sup>4</sup> The 1928 Criminal Code was inspired by the Griffith Penal Code,<sup>5</sup> which was applied in other colonial states.<sup>6</sup>

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<sup>3</sup> Such as UN Security Council Resolutions 541 of 18 November 1983 and 550 of 11 May 1984; Council of Europe: ECtHR, *Loizidou v Turkey*, 40/1993/435/514, 28 November 1996 (available at: <https://www.refworld.org/cases/ECHR,43de104d4.html>).

<sup>4</sup> Andreas Neocleous & Co, *Introduction to Cyprus Law*, 2000, p. 11 (available at: <http://www.iracm.com/wp-content/uploads/2013/01/introduction-%C3%A0-la-loi-chyprienne-anglais-2059.pdf>).

<sup>5</sup> The 1928 Criminal Code was originally prepared by Sir Samuel Griffith, Chief Justice of Queensland, in 1901 and is known as the Griffith Code – it was also applied in other colonial states, such as Kenya, Uganda and the Gambia.

<sup>6</sup> R.S. O'Regan Q.C., *Sir Samuel Griffith's Criminal Code*, *Royal Historical Society of Queensland Journal*, Volume XIV, No.8, p. 313 (available at: <https://www.textqueensland.com.au/item/article/264491320cd5e3facd3a6c604131d73d>).

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The 1928 Criminal Code introduced various sexual offences under the title of *Offences Against Morality*, which included the criminalisation of private consensual same-sex sexual acts between males for the first time by introducing the concept of “carnal knowledge against the order of nature,” which carried a prison term of five years. The 1928 Criminal Code was replaced in 1959 as part of the codification of numerous colonial laws in anticipation of Cyprus gaining its independence from the British (‘1959 Criminal Code’). The substance of the provisions on sexual offences remained unchanged. Following Cyprus’ independence from the British on 16 August 1960 and the establishment of the Republic of Cyprus, the provisions of the 1959 Criminal Code stayed in force, as per Article 188 of the Constitution of the Republic of Cyprus.<sup>7</sup>

In 1983, when the Turkish Cypriots unilaterally declared their independence from the Republic of Cyprus, the 1959 Criminal Code remained in force.<sup>8</sup> Whilst piecemeal amendments to the 1959 Criminal Code have since been made,<sup>9</sup> the provisions in sections 144 to 177 (*Offences against Morality*) were relatively untouched until 2014.<sup>10</sup>

## Impact of the Law

Sexual offences under the 1959 Criminal Code suffered from a number of deficiencies. Amongst others, there was: a lack of gender neutrality and inadequate protection of females and males (especially boys); women were excluded as perpetrators of sexual offences; there was an insufficient particularisation of offences and definitions that did not address the full range of sexual crimes; and penalties were inconsistent and inadequate.

Limited public information and readily available studies on the situation and prevalence of sexual offences in the TRNC and enforcement under the 1959 Criminal Code make it difficult to gauge how the deficiencies in the 1959 Criminal Code impacted the lives of the Turkish Cypriot community. However, there have been reports of there being particular barriers in accessing the criminal justice system,

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<sup>7</sup> Constitution of the Republic of Cyprus 1960, Appendix D: Part 13 – Transitional Provisions, Article 188 (available at: [http://www.law.gov.cy/law/lawoffice.nsf/all/2C728033C2E52985C225742B003229FC/\\$file/Constitution%20of%20the%20Republic%20of%20Cyprus.doc](http://www.law.gov.cy/law/lawoffice.nsf/all/2C728033C2E52985C225742B003229FC/$file/Constitution%20of%20the%20Republic%20of%20Cyprus.doc) ). Article 188 states: “Subject to the provisions of this Constitution and to the following provisions of this Article, all laws in force on the date of the coming into operation of this Constitution shall, until amended, whether by way of variation, addition or repeal, by any law or communal law, as the case may be, made under this Constitution, continue in force on or after that date, and shall, as from that date be construed and applied with such modification as may be necessary to bring them into conformity with this Constitution.”

<sup>8</sup> Prof. Dr. Turgut Turhan, *The Turkish Cypriot Legal System from a Historical Perspective*, Ankara Bar Review, 2010/2011, (available at: <http://www.ankarabarasu.org.tr/siteLER/AnkaraBarReview/tekmakale/2010-1/12.pdf>).

<sup>9</sup> See, for example, amendments made in 1962 to Chapter Five of the Criminal Code, concerning Offences Against the Person (see the Amendment Law, available at 1.c. of the Annex).

<sup>10</sup> Three sections were amended in 1989: Section 169 on the Legitimate Termination of Pregnancy, Section 176 on Behaviours Against Decency and Ethics and Section 177 on Inappropriate Sexual Exposures (see the Amendment Law, available at 1.c. of the Annex).



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## EXECUTIVE SUMMARY

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especially for women, including: a fear of societal stigma by reporting a sexual assault, a lack of knowledge and awareness within society of rights, and an absence of sensitivity on the part of the judiciary and police in respect of issues relating to violence and discrimination against women.

As for the impact of sections 171-173 of the 1959 Criminal Code specifically, men who engaged in consensual same-sex sexual acts were particularly affected by the law. Although it appears that the provisions were seldom enforced against those engaging in private consensual sexual acts, it was still enforced and there was a particular spate of arrests between 2011 and 2012.

Moreover, the mere existence of sections 171-173 nurtured an environment embedded with discrimination against the LGBT community.<sup>11</sup> In a 2012 survey carried out by the Initiative Against Homophobia ('IAH'), it was found that 63 per cent of LGBT people in the TRNC were subjected to violence, abuse or discrimination due to their sexual orientation.<sup>12</sup> This pervasive discrimination present in the TRNC inevitably created an overarching stigma towards the LGBT community. The media may have also fostered such an environment and contributed to the creation of harmful stereotypes about LGBT people through some of their reporting and, particularly, the tone used by some media houses.

### Early Attempt at Reform

In 2011, a proposal to amend the 1959 Criminal Code, which had it succeeded would have repealed sections 171-173 and addressed some of the other deficiencies in the sexual offences provisions, was introduced to the Assembly. This had previously been spearheaded by the IAH and supported by left-wing parties, such as the Republican Turkish Party ('CTP'), and was accompanied by pledges of support and public commitments to reform the law. Unfortunately, this early attempt at reform failed. It was not until March 2013 that the reform effort was reignited when a revised bill was introduced to the Assembly.

### Drivers of Reform

The journey to the significant reforms of 2014 was influenced and guided by a variety of factors, some seemingly more vital and significant than others. The TRNC's historical and political context created an environment conducive and receptive to reform, but what drove the reforms and placed them firmly and constantly on the legislative agenda were the efforts and strategies of domestic civil society (LGBT activists and organisations, human rights organisations, and their supporters). The political will and climate at the time were also very influential factors in realising the changes in 2014. Other important elements included: the engagement from

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<sup>11</sup> Homolciji, Fema – Homophobia, not Homosexuality should be a crime!, 19 October 2011 (available at: <https://www.homolciji.com/2011/10/fema-escinsellik-degil-homofobi-suc.html>) (translated).

<sup>12</sup> Accept Bi-communal international conference, Towards Inclusion: Healthcare, Education and the LGBT Community, October 2012 (available at: [http://www.acceptcy.org/sites/all/files/program-toward\\_inclusion\\_conference.pdf](http://www.acceptcy.org/sites/all/files/program-toward_inclusion_conference.pdf)).

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and with the European and international community; litigation before the European Court of Human Rights ('ECtHR') challenging the laws as a violation of the European Convention on Human Rights ('ECHR'); executing the changes as part of a package of reform; and the absence of organised opposition from faith groups.

## **The Reform Process**

The passage of reform between 2013 and 2014 is best described as discontinuous, with changes in government both suspending and resurrecting the Criminal Code (Amendment) Bill 20/2014 ('Amendment Bill'). Ultimately, it appears that the re-emergence of the CTP and their deputies in the July 2013 general election proved decisive in reigniting the reform effort in December 2013 and swiftly enacting and ratifying the Criminal Code Amendment Law, 20/2014 ('Amendment Law') by February 2014. Three CTP deputies in particular (Ms. Derya, Ms. Özdenefe and Mr. Erhürman) championed efforts to reform the 1959 Criminal Code. They played a significant role in reintroducing the Amendment Bill to the Assembly, developing the proposed changes at the committee stage in consultation with civil society groups and advocating for its approval in the Assembly. On all accounts, the parliamentary committee comprehensively examined and deliberated the Amendment Bill and did so in a consultative manner.

Debates in the Assembly provided an opportunity for champions of the reform to set out powerful arguments in favour of amending the 1959 Criminal Code. Whilst the majority of deputies were in favour of the reforms and the proposed reforms therefore faced little resistance, there was some opposition. This opposition was due predominantly to concerns over how the TRNC community would receive the 1959 Criminal Code reforms. There were also some suggestions that the Amendment Bill was being referred to in a derogatory manner.

Following a further debate before the Assembly on 27 January 2014, the Amendment Bill was passed on the same day with 28 votes in favour, one vote against and 21 abstentions. The Amendment Law received presidential assent at the beginning of February and finally became law on 7 February 2014.

## **Key Changes to the Sexual Offences Laws**

The Amendment Law made changes to 44 sections of the 1959 Criminal Code. Key changes included: creating gender neutral offences (in particular boys and men were recognised as victims as well as perpetrators of sexual offences); the incorporation of a consent provision; the removal of derogatory and inappropriate language; and the creation of greater protection for children against sexual abuse and exploitation.

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## EXECUTIVE SUMMARY

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### Post-Reform Environment

Although the reform of the 1959 Criminal Code was hailed as a success in the effort to decriminalise private consensual same-sex sexual acts between adults and improve the protection of women and children against sexual offences, the general consensus is that further reform is necessary to both address the continuing deficiencies in the sexual offences provisions and tackle a number of other shortcomings in the 1959 Criminal Code that were not part of the 2014 changes. A further amendment bill to the 1959 Criminal Code was introduced to the Assembly in 2017 and 2018 by the CTP, which sought to address, in part, some of these issues. However, political changes in 2019, which resulted in a new coalition government that does not include the CTP, have for now obviated the adoption of this further amendment.

Following the enactment of the Amendment Law, there is no evidence or information to suggest that a comprehensive programme of implementation was developed and rolled out. In fact, there appears to be a general absence of state implementation programmes, training and awareness-raising with respect to legal and policy changes, which is particularly acute amongst administrative authorities. Equally, a major challenge in the TRNC is the monitoring and evaluation of legislation. The gap in state implementation programmes has to some extent been filled by civil society groups who have and continue to undertake awareness-raising campaigns on gender, equality and women's human rights.<sup>13</sup> This work, however, is no substitute for a comprehensive state-led programme of implementation that would ensure that the legal changes are effective and that the laws benefit constituents in the way originally intended by lawmakers.

Despite the lack of implementation, the reforms appear to have had a positive impact on the LGBT community, with more LGBT people feeling comfortable to be more open and visible after, the strengthening of LGBT civil society groups. In addition, there have also been some notable changes in the approach to reporting LGBT issues in some of the media outlets, with greater visibility of the LGBT community and an improvement in language and tone.

Since the Amendment Law, the TRNC has also sought to continue to progress and develop its legal framework to provide further legal protection for women, children and LGBT people. However, in practice, effectively implementing legal changes remains a challenge.

### Lessons Learned

A number of valuable lessons can be gleaned from the 1959 Criminal Code reform process, which may be useful and insightful to other jurisdictions that are considering similar reforms.

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<sup>13</sup> Secretariat of the Cyprus Dialogue Forum, Gender Equality and Anti-Discrimination against Women – List of Issues, p.46 (available at: [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CYP/INT\\_CEDAW\\_NGO\\_CYP\\_29431\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CYP/INT_CEDAW_NGO_CYP_29431_E.pdf)).



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### ■ **The Importance of Civil Society**

The TRNC experience demonstrates vividly the important role of civil society both in legal and policy changes, but also in social transformation. Through intersectional collaboration and a multi-pronged strategy, these groups, particularly the IAH (and later, the Queer Cyprus Association ('QCA'), following its renaming in March 2012) applied significant political pressure in favour of reform. Following the enactment of the Amendment Law, it is again civil society that has filled the gap left by the state, rolling out crucial education and awareness-raising projects. Local civil society, with international civil society support, was also central in using strategic litigation to force the issue of reform of the laws that criminalised consensual same-sex intimacy.

### ■ **A Package of Reforms**

The Amendment Bill proposed changes to 44 sections of the 1959 Criminal Code and effectively sought to overhaul the TRNC's sexual offences laws. The Assembly could and did coalesce behind and support this suite of reforms and, in doing so, the reforms, particularly the decriminalisation of private consensual same-sex sexual acts between adults, were made more credible and probable.

### ■ **Political Champions**

Without dedicated political champions, it is unlikely that the Amendment Bill would have been prioritised nor certain challenges overcome. Having influential and committed parliamentarians was crucial in having the 1959 Criminal Code amendments placed on the political agenda and ultimately enacted within six months of a coalition government having been formed.

### ■ **Limited Resources and Technical Expertise**

The limited resources and lack of technical legal expertise (particularly skilled legislative drafters) within the TRNC administration and Assembly were highlighted as key issues during the reform process. Consequently, the legislative gaps that have emerged post-reform may be symptomatic of this lack of capacity. It is important that drafted amendments fit in seamlessly within existing legal frameworks to ensure that laws are not only operable but benefit constituents in the way originally intended by lawmakers. The ongoing legislative shortcomings in the 1959 Criminal Code may have been avoided if greater resources and specialised lawyers/legal drafters were available to assist with the drafting process.

### ■ **Legal Change needs to be accompanied by Implementation**

The legislative process does not stop when a bill is passed by a legislature. Laws require implementation, and going forward, they need to be monitored to ensure that the aims and objectives of the legislation are fully realised and longer-term societal change and progress is achieved.





# COUNTRY OVERVIEW



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# COUNTRY OVERVIEW

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## Location and Population

The island of Cyprus lies at the crossroads between East and West. The TRNC is located in the northeast of Cyprus and its closest neighbouring countries are Turkey to the north, and Lebanon and Syria to the west. The TRNC has a total area of 3,242 square kilometres, which accounts for 36 per cent of the island of Cyprus.<sup>14</sup>

The TRNC extends from the tip of the Karpas Peninsula in the northeast to Morphou Bay, Cape Kormakitis and its westernmost point, the Kokkina exclave. Its southernmost point is the village of Louroujina (Akincilar).

A buffer zone under the control of the UN stretches between the TRNC and the rest of the island and divides Nicosia, or Lefkoşa, as it is referred to by the Turkish Cypriot population, the island's largest city and capital of both the TRNC and the Republic of Cyprus.<sup>15</sup>

The last official population census of the TRNC was carried out in 2011 under the auspices of a team of monitors from the UN.<sup>16</sup> It was estimated that the total *de jure*<sup>17</sup> population of the TRNC was 286,257.<sup>18</sup> However, the results from the 2011 census were disputed by some political parties, labour unions and local newspapers due to allegations of “under-counting.”<sup>19</sup> It was acknowledged that the census failed to reach certain dwellings in remote areas or near the buffer zone.<sup>20</sup> By 2017, a projection by the State Planning Organisation of the TRNC estimated that the population had increased significantly to 351,965<sup>21</sup> although there is some speculation that it may be higher.

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<sup>14</sup> Turkish Republic of Northern Cyprus, *Prime Ministry State Planning Organization: Guide for Foreign Investors*, June 2018, p. 1 (available at: <http://www.devplan.org/Mevzuat/Eng/Guide%20for%20Foreign%20Investors.pdf>).

<sup>15</sup> Derya Oktay, *An Analysis and Review of the Divided City of Nicosia, Cyprus, and New Perspectives*, *Geography*, Volume 92(3), p. 231, 234 (available at: [https://www.researchgate.net/publication/235641155\\_Analysis\\_and\\_Review\\_of\\_the\\_Divided\\_City\\_of\\_Nicosia\\_Cyprus\\_and\\_New\\_Perspectives](https://www.researchgate.net/publication/235641155_Analysis_and_Review_of_the_Divided_City_of_Nicosia_Cyprus_and_New_Perspectives)).

<sup>16</sup> Mete Hatay, *Population and Politics in north Cyprus: An overview of the ethno-demography of north Cyprus in the light of the 2011 census*, *PRIO Cyprus Centre*, February 2017, p. 27 (available at: <https://www.prio.org/utility/DownloadFile.ashx?id=1566&type=publicationfile>).

<sup>17</sup> *Population and Politics in north Cyprus: An overview of the ethno-demography of north Cyprus in the light of the 2011 census*, *PRIO Cyprus Centre*, February 2017, p.28, *Ibid.*, n.16. Note that the *de jure* population counts only those individuals who are considered permanent residents. This is distinct from the *de facto* population of 294,906, which represents all individuals that were present in the TRNC on the day of the census.

<sup>18</sup> Turkish Republic of Northern Cyprus, *Prime Ministry State Planning Organization: Statistics and Research Department, Statistical Yearbook 2017*, December 2018, p.12 (available at: [http://www.devplan.org/ist\\_yillik/IST-YILLIK-2017.pdf](http://www.devplan.org/ist_yillik/IST-YILLIK-2017.pdf)).

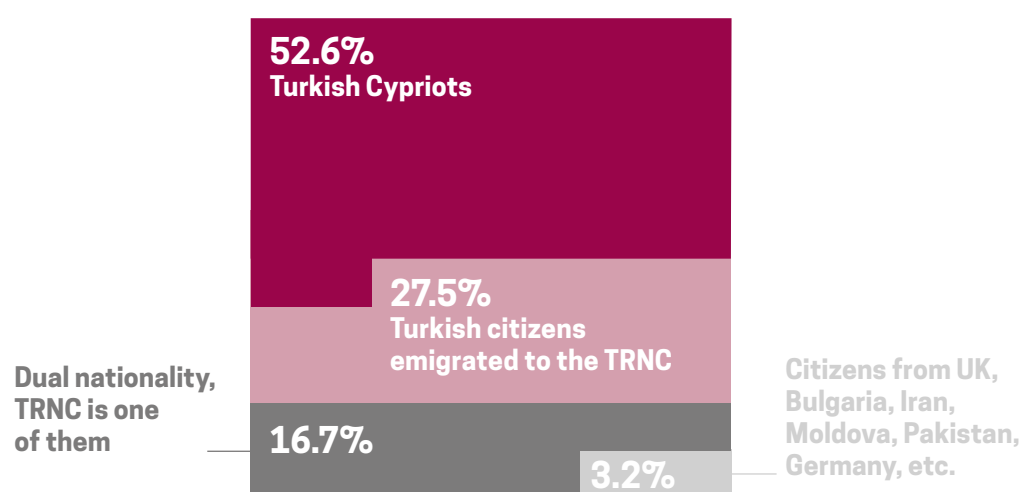
<sup>19</sup> *Population and Politics in north Cyprus: An overview of the ethno-demography of north Cyprus in the light of the 2011 census*, *PRIO Cyprus Centre*, *Ibid.*, n.16.

<sup>20</sup> *Population and Politics in north Cyprus: An overview of the ethno-demography of north Cyprus in the light of the 2011 census*, *PRIO Cyprus Centre*, *Ibid.*, n.16.

<sup>21</sup> *Prime Ministry State Planning Organization: Guide for Foreign Investors*, *Ibid.*, n.14.

50 per cent of the population lives in the cities and 50 per cent in the countryside. 99 per cent of the adult population is literate.<sup>22</sup> The TRNC is culturally and ethnically diverse (see figure below).

### TRNC Population<sup>23</sup>



The official language in the TRNC is Turkish<sup>24</sup> but English is spoken widely.<sup>25</sup>

### Economy

The TRNC is a free market economy and the currency is the Turkish lira. The TRNC has a gross domestic product ('GDP') per capita of USD 31,568;<sup>26</sup> in 2016, it was ranked at "emerging level" by the World Bank.<sup>27</sup> Its economy is dominated by the services sector including trade, tourism and education.<sup>28</sup> Employment is concentrated in the services sector accounting for 80 per cent of the workforce,

<sup>22</sup> North Cyprus Online, *General Information: Population* (available at: <http://www.northcyprusonline.com/North-Cyprus-Online-General-Information.php>).

<sup>23</sup> TRNC General Population and Housing Unit Census, 2006 (available at: <http://nufussayimi.devplan.org/Census%202006.pdf>).

<sup>24</sup> Article 2(2) of the Constitution of the TRNC (can be found at 1.a of the Annex).

<sup>25</sup> North Cyprus Online, *General Information: Language in North Cyprus* (available at: <http://www.northcyprusonline.com/North-Cyprus-Online-General-Information.php>).

<sup>26</sup> UN, *Human Development Indices and Indicators: 2018 Statistical Update – Cyprus, 2018* (available at: [http://hdr.undp.org/sites/all/themes/hdr\\_theme/country-notes/CYP.pdf](http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/CYP.pdf)).

<sup>27</sup> The World Bank, *SABER Report: Workforce Development - Turkish Cypriot Community, 2016* (available at: <http://documents.worldbank.org/curated/en/159091492508210544/pdf/114294-WP-PUBLIC-SABER-Cyprus-Turkish-Cypriot-Community.pdf>).

<sup>28</sup> SABER Report: *Workforce Development - Turkish Cypriot Community*, *Ibid.*, n.27.

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## COUNTRY OVERVIEW

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and public administration made up 18.9 per cent as of 2014.<sup>29</sup> Other industries include agriculture and industry-based sectors.<sup>30</sup>

The TRNC is heavily reliant on Turkey financially since Turkey is currently the only country that officially recognises the TRNC as an independent state. The economy of the TRNC is affected by, and is to an extent dependent upon, the Turkish economy, which has made the TRNC vulnerable to movements in the Turkish market and currency fluctuations.<sup>31</sup> The TRNC depends upon Turkey for international trade<sup>32</sup> and on the Turkish Government for aid, which accounted for nearly one third of the TRNC's budget in 2010.<sup>33</sup>

### Political History

Due to its strategic location, Cyprus was ruled by many civilisations throughout history, namely, the Assyrians, Egyptians, Persians, Romans, Arabs, Knights Templars, Lusignans, Venetians, Ottomans, and the British. The legal systems of all of these empires/sovereign states have influenced the legal systems of the Republic of Cyprus, and subsequently the TRNC.<sup>34</sup>

Cyprus was under the management of Britain from 1878 until 1914.<sup>35</sup> In 1914, Britain unilaterally annexed Cyprus and the country was declared a Crown Colony in 1925. During the period 1914 – 1960, the British administration introduced a number of laws including the 1928 Criminal Code, which criminalised same-sex sexual acts between males by introducing an offence of “carnal knowledge against the order of nature,” amongst other sexual offences.

With rising tensions on the island between 1931 and 1959 caused by disagreements over the future of Cyprus and, in particular, the issue of whether there would be a union with Greece, there was a deterioration of relations between Greek Cypriots and Turkish Cypriots. During the campaigns for independence from the British, there were incidents of violence between the two communities.<sup>36</sup>

In 1959, Turkey, Greece and Britain reached a compromise on the Cyprus question and the Republic of Cyprus was founded in 1960 as a Greek Cypriot and Turkish

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<sup>29</sup> SABER Report: Workforce Development - Turkish Cypriot Community, *Ibid.*, n.27.

<sup>30</sup> Study in North Cyprus, *Economy* (available at: [http://www.studyinnorthcyprus.org/?page\\_id=3454](http://www.studyinnorthcyprus.org/?page_id=3454)).

<sup>31</sup> Mehmet Emre Gorgulu, *The Effects of Isolation on the Turkish Republic of Northern Cyprus*, Munich Personal RePEc Archive, 25 April 2014, p.4 (available at: <https://mpra.ub.uni-muenchen.de/62077/1/>).

<sup>32</sup> *The Effects of Isolation on the Turkish Republic of Northern Cyprus*, Munich Personal RePEc Archive, *Ibid.*, n. 31.

<sup>33</sup> TRNC Department of Finance, *TRNC Budget 2010: General Income – Expense Statement*, 2010 (available at: <http://www.butce.gov.ct.tr/i/mozka/hazine/raporlar/01201012.pdf>).

<sup>34</sup> *The Turkish Cypriot Legal System from a Historical Perspective*, *Ibid.*, n.8

<sup>35</sup> *The Turkish Cypriot Legal System from a Historical Perspective*, *Ibid.*, n.8.

<sup>36</sup> TRNC Deputy Prime Ministry and Ministry of Foreign Affairs, *Historical Background Website of the Deputy Prime Minister and Ministry of Foreign Affairs: Turkish Republic of Northern Cyprus*, (available at <https://mfa.gov.ct.tr/cyprus-negotiation-process/historical-background/>).



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Cypriot bi-communal state. The laws that were in force up to 1960 (such as the 1928 Criminal Code introduced by the British) remained in force within the legal system of the Republic of Cyprus (and later the TRNC). However, following inter-communal disputes and the 1974 war, the island became administratively and territorially divided into two zones: the Greek-Cypriot-controlled Republic of Cyprus in the south and the Turkish Cypriots in the north, self-declared as an independent state (the TRNC) in 1983.

The TRNC's self-declaration was recognised by Turkey but condemned by the wider international community. The UN Security Council adopted Resolution 541 on 18 November 1983 and Resolution 550 on 11 May 1984, proclaiming the TRNC's self-declaration as invalid and calling upon all states not to recognise any Cypriot state other than the Republic of Cyprus.<sup>37</sup> This position has been acknowledged and adopted by both the Committee of Ministers of the Council of Europe<sup>38</sup> and the Commonwealth Heads of Government<sup>39</sup> in separate statements, and also by the ECtHR in *Loizidou v Turkey*<sup>40</sup> and *Cyprus v Turkey*.<sup>41</sup>

Since 1974, there have been numerous attempts to reunify the Republic of Cyprus and settle the divisions between the Turkish-Cypriot community in the North and the Greek-Cypriot community in the South - all have so far failed to achieve a resolution to the Cyprus question. Some of these attempts have been sponsored by the UN and others have been instigated by the leaders of the two sides. For example, in 2002, the then Secretary-General of the UN, Mr. Kofi Annan, presented a plan which called for a "common state" government with a single international legal personality, while allowing for two equal political component states ('UN Plan'). The UN Plan was to be put to separate and simultaneous referendums in both the TRNC and the Republic of Cyprus in 2004.<sup>42</sup> On 24 April 2004, the TRNC electorate approved the UN Plan by a margin of two to one whilst the Greek Cypriot electorate, by a margin of three to one, rejected it. The UN Plan was therefore not implemented.<sup>43</sup>

Following the failure of the UN Plan, the then leaders of the TRNC (Mr. Mehmet Ali Talat) and the Republic of Cyprus (Mr. Demetris Christofias) re-launched full-

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<sup>37</sup> The Security Council, *Resolution 541 (1983) of 18 November 1983* (available at: <http://unscr.com/en/resolutions/doc/541>); The Security Council, *Resolution 550 (1984) of 11 May 1984* (available at <http://unscr.com/en/resolutions/doc/550>).

<sup>38</sup> Committee of Ministers, *Resolution (83) 13 on Cyprus* (available at: [http://www.hri.org/Cyprus/Cyprus\\_Problem/eudocs/B1.html](http://www.hri.org/Cyprus/Cyprus_Problem/eudocs/B1.html))

<sup>39</sup> Ministry of Foreign Affairs, Republic of Cyprus, *The Commonwealth and the Cyprus Question*, May 2011 (available at: <http://www.mfa.gov.cy/mfa/mfa2016.nsf/All/84B0D52B469C940DC2257F9C00371222?OpenDocument&print>).

<sup>40</sup> Council of Europe: ECtHR, *Loizidou v Turkey*, 40/1993/435/514, 28 November 1996 (available at: <https://www.refworld.org/cases/ECHR,43de104d4.html>).

<sup>41</sup> Council of Europe: ECtHR, *Cyprus v Turkey*, Application no. 25781/94, 10 May 2001 (available at: <https://www.asylumlawdatabase.eu/en/content/ecthr-cyprus-v-turkey-application-no-2578194-10-may-2001>).

<sup>42</sup> United Nations Security Council, *Progress towards a settlement in Cyprus*, 14 June 2018 (available at: <http://www.uncyprustalks.org/wp-content/uploads/2018/07/2018-06-14-SG-GO-Report-S-2018-610.pdf>).

<sup>43</sup> *Progress towards a settlement in Cyprus*, *Ibid.*, n.42.

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fledged negotiations in 2008.<sup>44</sup> By 2010, progress in the negotiations stalled once more.<sup>45</sup> In July 2017, further reunification talks that had formally begun in February 2014 collapsed.<sup>46</sup> As of May 2019, we are not aware of any fresh reunification talks being scheduled.<sup>47</sup> Despite the political stalemate and lack of a solution regarding the divisions between the TRNC and the Republic of Cyprus, recent reports have suggested that, notwithstanding low expectations and an ever-diminishing hope for effective agreement, a clear majority in the TRNC and the Republic of Cyprus desire settlement of the issue.<sup>48</sup>

Today, the TRNC remains relatively isolated. The international community (other than Turkey) has continued to follow UN Security Council Resolutions 541 and 550 in rejecting the TRNC's status as an independent state, which continues to bring uncertainty about its future status.<sup>49</sup> As a consequence of international non-recognition, there is limited ability for the TRNC to participate in international affairs and the Turkish Cypriots continue to struggle to overcome the problems caused by their isolation.<sup>50</sup>

### Political System

According to the TRNC Constitution, the TRNC is a “democratic and secular State with a plural party system.”<sup>51</sup>

The TRNC has an executive and legislature. The duties and powers of the executive are set out in Article 5 of the Constitution. The executive sets policies and is responsible for governing the TRNC. It is composed of (i) the President who is elected every five years by an absolute majority; (ii) the Prime Minister, who is appointed by the President; and (iii) the Council of Ministers, which is composed of the Prime Minister and Ministers appointed by the President.

The legislature is the Assembly of the TRNC and has 50 members ('deputies'), elected for a five-year term by proportional representation. A party must achieve at least 5 per cent of the total vote to hold representative seats in the Assembly. The Assembly decides and votes on the laws of the TRNC.

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<sup>44</sup> Congressional Research Service, *Cyprus: Reunification Proving Elusive*, updated 15 April 2019 (available at: <https://fas.org/sgp/crs/row/R41136.pdf>).

<sup>45</sup> *Cyprus: Reunification Proving Elusive*, *Ibid.*, n.44.

<sup>46</sup> *Cyprus: Reunification Proving Elusive*, *Ibid.*, n.44.

<sup>47</sup> UN News, *Security Council unanimously agrees to extend UN Cyprus Mission amid political impasse*, 30 January 2019 (available at: <https://news.un.org/en/story/2019/01/1031642>).

<sup>48</sup> *Security Council unanimously agrees to extend UN Cyprus Mission amid political impasse*, *Ibid.*, n.47.

<sup>49</sup> United Nations Security Council, *United Nations operation in Cyprus: Report of the Secretary-General*, 11 January 2019 (available at: [https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2019\\_37.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2019_37.pdf)).

<sup>50</sup> Arslan and Güven, *International Law In Cyprus Problem, 2007*, p.5 (available at: <http://cpc.emu.edu.tr/articles/Cyprus%20Problem%20in%20International%20Law%20-%20ICANAS38%20final%20Kaya%20Arslan%20and%20Halil%20Güven.pdf>).

<sup>51</sup> Preamble of the Constitution of the TRNC (available at 1.a of the Annex).

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## Political parties in the TRNC

There are six political parties that are currently represented in the Assembly of the TRNC:

1. CTP: a party on the left of the Turkish Cypriot political spectrum, which operates “in line with the goals of socialism and under the guidance of socialist principles.”<sup>52</sup> The CTP has been considered the oldest political party in the TRNC, and was founded in 1970 by Mr. Ahmet Mithat Berberglu.<sup>53</sup> A number of deputies from the CTP (e.g. Mr. Tufan Erhürman, Ms. Derya and Ms. Özdenefe) played a key role in the reforms of 2014.
2. National Unity Party (‘UBP’): a party on the right of the Turkish Cypriot political spectrum which has historically adopted nationalistic policy stances, such as insistence on the Turkish Cypriots’ right of self-determination and the independence of the TRNC.<sup>54</sup> The UBPP has always supported strong ties and integration with Turkey.<sup>55</sup> It is the only party that has previously been able to form single-party governments and has been in power longer than any other Turkish Cypriot political party.<sup>56</sup>
3. Communal (Social) Democracy Party (‘TDP’): a party on the centre-left of the Turkish Cypriot political spectrum, which identifies ideologically as a modern leftist party “based on the principals of social-democracy.”<sup>57</sup> The TDP was established in 2007 when the Communal Liberation Party and the peace and democracy movement merged.
4. Democratic Party (‘DP’): a party on the centre-right of the Turkish Cypriot political spectrum that identifies ideologically as a “social liberal party.”<sup>58</sup> The DP was founded in 1992 predominantly by a number of politicians who defected from the UBPP. It has been described as a pragmatic nationalist party that has established coalition governments both with the CTP and the UBPP.
5. People’s Party (‘HP’): a party in the centre of the Turkish Cypriot political spectrum, working to achieve good governance and social justice by addressing a number of

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<sup>52</sup> Burak Karabay, *Mainstream Turkish-Cypriot Political Parties’ Attitudes Towards Cyprus Problem*, The Republic of Turkey, University of Bahçeşehir, İstanbul, p. 45, 2017 (available at: [https://www.academia.edu/34384567/MAINSTREAM\\_TURKISH-CYPRIOT\\_POLITICAL\\_PARTIES\\_ATTITUDES\\_TOWARDS\\_CYPRUS\\_PROBLEM](https://www.academia.edu/34384567/MAINSTREAM_TURKISH-CYPRIOT_POLITICAL_PARTIES_ATTITUDES_TOWARDS_CYPRUS_PROBLEM)).

<sup>53</sup> *Mainstream Turkish-Cypriot Political Parties’ Attitudes Towards Cyprus Problem*, *Ibid.*, n.52.

<sup>54</sup> *Mainstream Turkish-Cypriot Political Parties’ Attitudes Towards Cyprus Problem*, *Ibid.*, n.52.

<sup>55</sup> Ulusal Birlik Partisi, *Kurumsal Kimlik ve Amaçlarımız*, 30 December 2014 (available at: [http://ubpkuzeykibris.com/haber\\_detay.asp?haberID=322#KurumsalKimlik\\_ve\\_Amaclarimiz](http://ubpkuzeykibris.com/haber_detay.asp?haberID=322#KurumsalKimlik_ve_Amaclarimiz)).

<sup>56</sup> *Mainstream Turkish-Cypriot Political Parties’ Attitudes Towards Cyprus Problem*, *Ibid.*, n.52.

<sup>57</sup> TDPKibris.org, *TDP Tüzüğü, Birinci Kısım – Genel Esaslar*, 10 September 2015 (available at: <http://www.tdpkibris.org/tdp-tuzugu/>).

<sup>58</sup> *Mainstream Turkish-Cypriot Political Parties’ Attitudes Towards Cyprus Problem*, *Ibid.*, n.52.



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socio-political issues, such as corruption, injustice, inequality and discrimination.<sup>59</sup> The HP was established in 2016.

6. Rebirth Party ('YDP'): a party on the right of the Turkish Cypriot political spectrum, which roots its ideology upon an allegiance to Turkey, nationalism and ensuring the survival of the TRNC. The YDP was established in 2016.

The TRNC has held 38 elections in the last 40 years.<sup>60</sup> Moreover, during a 29 year period, only one majority government was formed by a sole party when the UBP governed (between 2009 to 2013) with 26 seats in the Assembly.<sup>61</sup> The absence of a single-party majority has resulted in the formation of numerous coalition governments and consequential political instability and fluctuation, which has undoubtedly slowed legislative and policy efforts.

The TRNC was governed by a four-way centre-left coalition government between February 2018 and 8 March 2019. This coalition government was headed by the CTP with 12 deputies in government and the leader of the CTP, Mr. Erhürman, was the Prime Minister. The TDP, DP and HP also contributed to make up a two-seat, governing majority in the Assembly.<sup>62</sup> On 8 March 2019, however, the coalition collapsed due to the withdrawal of the HP from the government.<sup>63</sup> As of 22 May 2019, the UBP and the HP have formed a new coalition government.

### The Legal System

The TRNC has a mixed legal system, which reflects the nation's history and colonial past, with elements of English and Islamic-inspired law.<sup>64</sup> With legal influences from Islamic, British and Turkish law,<sup>65</sup> the TRNC legal system can best be characterised as a "law mosaic." It is based on common law, but has been adapted to the conditions and requirements of the state.



*"[T]he Turkish Cypriot legal system in the Federative State did not completely depart from the legal system of the Republic of Cyprus and therefore Anglo-Saxon law. Although some laws from the British period were slowly being repealed or tried to be made compatible with the needs of the Turkish community, the positive law was still based heavily on the British laws in force since the Republic period... [T]he shift from Anglo-Saxon law to Turkish law has been in the field of substantive law, not the procedural law."*

**Prof. Dr. Turgut Turhan,**  
The Turkish Cypriot  
Legal System from a  
Historical Perspective

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<sup>59</sup> HalkinPartisi.biz, *Hakkımızda* (available at: <https://www.halkinpartisi.biz/hakkimizda/>).

<sup>60</sup> TRT World, *Five points to know about the elections in Northern Cyprus*, 9 January 2018 (available at: <https://www.trtworld.com/europe/five-points-to-know-about-the-elections-in-northern-cyprus-14059>).

<sup>61</sup> DW, *Hardliners win Turkish Cypriot election*, 20 April 2009 (available at: <https://www.dw.com/en/hardliners-win-turkish-cypriot-election/a-4191043>).

<sup>62</sup> T-Vine, *New four-way centre-left coalition government for North Cyprus*, 2 February 2018 (available at: <http://www.t-vine.com/new-four-way-centre-left-coalition-government-for-north-cyprus/>).

<sup>63</sup> Daily Sabah, *Northern Cyprus coalition government collapses*, 8 May 2019 (available at: <https://www.dailysabah.com/politics/2019/05/08/northern-cypriot-finance-minister-denktas-resigns>).

<sup>64</sup> The Ottoman Empire (1571 – 1878); the Early British Era (1878 – 1914); the Late British Era (1914 – 1960); the Republic of Cyprus era (1960 – 1967); the Era of the Turkish Cypriot's Establishment of a State (1967 – 1983); and the present TRNC Era (1983 – present day). *The Turkish Cypriot Legal System from a Historical Perspective*, *Ibid.*, n.8.

<sup>65</sup> *The Turkish Cypriot Legal System from a Historical Perspective*, *Ibid.*, n.8.

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The legal framework of the TRNC is codified in the Constitution that was enacted on 15 November 1983. The judiciary interprets the laws of the TRNC and judicial independence is safeguarded by Article 6 of the Constitution.<sup>66</sup>

Depending on the nature of the cases, the Assize Courts, District Courts and Family Courts exercise judicial power other than that exercised by the Supreme Court.<sup>67</sup> The Supreme Court is composed of eight judges and is headed by a president of the Supreme Court. The President of the TRNC approves the nominations of the president and eight judges of the Supreme Court.<sup>68</sup> The Supreme Court acts as (i) the Constitutional Court and holds exclusive jurisdiction to adjudicate on all matters under the Constitution; and (ii) the Court of Appeal which is the highest appellate court in the TRNC.

## Legal Framework for Human Rights

### The Constitution

The Constitution is the supreme law of the TRNC. To the extent that any other law is inconsistent with the Constitution, that law is void.<sup>69</sup>

Part I of the Constitution sets out general provisions such as the Form and Characteristics of the State, and confirms that the TRNC is a secular republic based on the principles of supremacy of democracy, social justice and law (Article 1).

Part II protects the fundamental rights of every person by virtue of their existence as an individual.<sup>70</sup> This article incorporates all 18 rights enshrined under the ECHR and its protocols.<sup>71</sup> These cover both individual and social rights such as the prohibition of torture or inhuman or degrading treatment or punishment, the right to liberty and security of person, the right to privacy, the right of equality before the law and non-discrimination, and other rights such as the right to work.

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<sup>66</sup> Article 6 of the Constitution of TRNC (available at 1.a of the Annex).

<sup>67</sup> CypNET.co.uk, *North Cyprus: Political Structure* (available at: <http://www.cypnet.co.uk/ncyprus/main/polsyst/judicial.html>).

<sup>68</sup> *North Cyprus: Political Structure*, *Ibid.*, n.67.

<sup>69</sup> Article 150(2).

<sup>70</sup> Article 10 of the Constitution of the TRNC (available at 1.a of the Annex).

<sup>71</sup> European Commission For Democracy Through Law, *Information Note on the legal regime of the Territories not under the effective control of the government of Cyprus*, Myron Nicolatos, 2009 (available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2009\)056rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2009)056rev-e)).

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### The Ombudsperson

The Office of the Ombudsperson was established on 16 July 1996.<sup>72</sup> The President of the TRNC appoints the Ombudsperson with the approval of the Assembly.<sup>73</sup> The Ombudsperson acts as an administrative check on the powers and duties of the state.<sup>74</sup>

The mission of the Ombudsperson is to:

- Control whether any service or act of the administration has been carried out in accordance with the legislation in force and court decisions;
- Control any service or act done by or on behalf of any executive or administrative unit or officer; and
- Carry out enquiries and submit reports on services and acts to the authorities.<sup>75</sup>

The Ombudsperson can conduct enquiries on the basis of individual complaints or on his/her own initiative.<sup>76</sup> Any individual who claims that he/she was treated unjustly may apply to the Ombudsperson.<sup>77</sup> The Ombudsperson prepares a detailed report about his/her work to the Speaker of the Assembly every six months. The Ombudsperson also sends this report to the President and the Prime Minister and the report is open to the press.<sup>78</sup>

Since the office of the Ombudsperson was established, the Ombudsperson has only received two complaints concerning LGBT issues.

### International Commitments

The Constitution of the TRNC establishes the state's capacity to ratify international agreements.<sup>79</sup> In light of the TRNC's international status, international treaties and legal frameworks ratified by the Assembly are done so unilaterally and are therefore not recognised by the relevant international actors.<sup>80</sup> As such, international agreements ratified by the authorities in the TRNC cannot be monitored by international stakeholders.

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<sup>72</sup> Turkish Republic of Northern Cyprus (Ombudsman), *Brochure* (available at: <http://ombudsman.gov.ct.tr/Portals/1128/TRNC%20Ombudsman%20Brochure-ENG.pdf>).

<sup>73</sup> Article 114 of the Constitution of TRNC (available at 1.a of the Annex).

<sup>74</sup> Article 114 of the Constitution of TRNC, (available at 1.a of the Annex).

<sup>75</sup> *Brochure, Ibid.*, n.72.

<sup>76</sup> *Brochure, Ibid.*, n.72.

<sup>77</sup> *Brochure, Ibid.*, n.72.

<sup>78</sup> *Brochure, Ibid.*, n.72.

<sup>79</sup> Article 90 of the Constitution of TRNC (available at 1.a of the Annex).

<sup>80</sup> *Gender Equality and Anti-Discrimination against Women – List of Issues Ibid.*, n.13.

The relevant international human rights treaties that Turkey has signed and ratified, and which are applied in all Turkish territories including the TRNC, are set out below:<sup>81</sup>

### Relevant International Human Rights Commitments of Turkey

TREATY	DATE RATIFIED/ACCEDED TO BY TURKEY
▪ ECHR <sup>82</sup>	18 May <b>1954</b>
▪ Convention on the Elimination of All Forms of Discrimination against Women	20 December <b>1985</b>
▪ Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment	2 August <b>1988</b>
▪ Convention on the Rights of the Child	4 April <b>1995</b>
▪ International Convention on the Elimination of All Forms of Racial Discrimination	16 September <b>2002</b>
▪ International Covenant on Civil and Political Rights	23 September <b>2003</b>
▪ International Covenant on Economic, Social and Cultural Rights	23 September <b>2003</b>

<sup>81</sup> United Nations Human Rights Office of the High Commissioner, *Ratification Status for Turkey* (available at: [https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=179&Lang=EN](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=179&Lang=EN)).

<sup>82</sup> Note that Turkey signed Protocols 4, 9, 12 and 16 but did not ratify them – Council of Europe, *Search on Treaties* (available at: <https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/chartSignature/3>).



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▪ Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty	2 March <b>2006</b>
▪ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	19 August <b>2009</b>
▪ Convention on the Rights of Persons with Disabilities	28 September <b>2009</b>
▪ Optional Protocol of the Convention against Torture	27 September <b>2011</b>

The TRNC has made efforts to comply and conform to international laws and standards. This is evidenced by the fact that the TRNC has sought to unilaterally ratify treaties and adopt legislation to domesticate those commitments.<sup>83</sup>

TREATY	DATE RATIFIED UNILATERALLY BY THE TRNC
▪ Convention on the Rights of the Child	<b>1996</b> <sup>84</sup>
▪ International Covenant on Civil and Political Rights	<b>2004</b> <sup>85</sup>
▪ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	<b>2004</b> <sup>86</sup>

<sup>83</sup> Gender Equality and Anti-Discrimination against Women – List of Issues, *Ibid.*, n.13.

<sup>84</sup> Gender Equality and Anti-Discrimination against Women – List of Issues *Ibid.*, n.13, p.46.

<sup>85</sup> Gender Equality and Anti-Discrimination against Women – List of Issues *Ibid.*, n.13, p.46.

- International Covenant on Economic, Social and Cultural Rights

**2004**<sup>87</sup>

- Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention)

**2011**<sup>88</sup>

According to Article 90 of the Constitution, international conventions that have been duly ratified by the Assembly have the same status as the Constitution and have supremacy over ordinary domestic law.<sup>89</sup>

## Religion

The TRNC Constitution explains that the TRNC is a secular state<sup>90</sup> and every individual has freedom of conscience, religious faith and opinion.<sup>91</sup> The Constitution prohibits forced participation in worship and religious services, and religious education is supervised by the state.<sup>92</sup>

There is a general desire in the TRNC to maintain a clear demarcation between religion and the workings of the state. The Turkish Cypriot community is a very secular society in general, although faith and religion does play an important role in some Turkish Cypriots lives.

The religious population of the TRNC is overwhelmingly Sunni Muslim and is estimated to be between 90.6 per cent<sup>93</sup> and 97 per cent<sup>94</sup> of the population. Religious groups estimate there are 10,000 migrant workers of Turkish, Arab, and Kurdish origin



*“The government has stated that it ‘does not prevent freedom of religion and belief, but tries to prevent religion from being used in politics.’”*

**Foreign Minister  
Tahsin Ertuğruloğlu,  
14 April 2017**

<sup>86</sup> Gender Equality and Anti-Discrimination against Women – List of Issues *Ibid.*, n.13, p.46.

<sup>87</sup> Gender Equality and Anti-Discrimination against Women – List of Issues *Ibid.*, n.13, p.46.

<sup>88</sup> Gender Equality and Anti-Discrimination against Women – List of Issues *Ibid.*, n.13, p.46.

<sup>89</sup> Article 90 of the TRNC Constitution (available at 1.a of the Annex); Constitutional Court, 3/2006, National Unity Party v TRNC Parliament, 21/06/2006.

<sup>90</sup> Preamble TRNC Constitution; Articles 23 (1) and (2) of the TRNC Constitution (available at 1.a of the Annex); United States Department of State, Bureau of Democracy, Human Rights, and Labor, *Cyprus 2016 International Religious Freedom Report*, 18 September 2017, p.8 (available at: <https://www.state.gov/wp-content/uploads/2019/01/Cyprus-4.pdf>).

<sup>91</sup> Article 23(1) of the TRNC Constitution (available at 1.a of the Annex).

<sup>92</sup> Articles 23(3) and (4) of the TRNC Constitution (available at 1.a of the Annex); *Cyprus 2016 International Religious Freedom Report* 18 September 2017, *Ibid.*, n.90.

<sup>93</sup> The Association of Religion Data Archives, *Religious Freedom (2015): Northern Cyprus* (available at: [http://www.thearda.com/internationalData/countries/Country\\_247\\_3.asp](http://www.thearda.com/internationalData/countries/Country_247_3.asp)).

<sup>94</sup> Population figures based on the 2011 census. The statistics of religious affiliation are estimations of sociologists – *Cyprus 2016 International Religious Freedom Report*, p.9, *Ibid.*, n.92.

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who are Alevi Muslims.<sup>95</sup> Many of the Muslim Turkish Cypriots lead secular lives.<sup>96</sup> The small number of minorities are non-Sunni Muslims, Christians, including Russian Orthodox Christians, Catholics, Anglicans and Maronites, and Jews and Bahais,<sup>97</sup> as well as Greek Orthodox Cypriots.

With changing demographics in the TRNC and an increased population of Turkish citizens in the jurisdiction, some observers have suggested that the role of religion within politics and policies may change and there may be a blurring of the lines between church and state. The UN has reported that the proportion of the population with origins from Turkey observe a more traditional Islamic practice.<sup>98</sup>

### Media

Freedom of the press is guaranteed by the TRNC Constitution (although it is not an absolute right)<sup>99</sup> and some media outlets are openly critical of the government.<sup>100</sup>

There are eight daily newspapers and three weeklies published in Turkish in the TRNC.<sup>101</sup> Publications tend to have differing views on issues according to their political affiliations.

Social media is widely used in the TRNC,<sup>102</sup> especially in the larger cities like Nicosia where Facebook is an important means of communication between citizens. Much political discussion takes place on social media platforms; newspapers often include screenshots in their articles of Facebook comments that have been posted by politicians.<sup>103</sup>

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<sup>95</sup> United States Department of State, Bureau of Democracy, Human Rights, and Labor, *Cyprus 2018 International Religious Freedom Report*, 2018, p.10 (available at: <https://www.state.gov/wp-content/uploads/2019/05/CYPRUS-2018-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>).

<sup>96</sup> The Guardian, 'We're not Muslim enough' fear Turkish Cypriots as poll looms, 6 January 2018 (available at: <https://www.theguardian.com/world/2018/jan/06/were-not-muslim-enough-fear-turkish-cypriots-as-poll-looms>); Politico, *Turkish Cypriots fear being part of Erdoğan's 'pious generation'*, 10 February 2018 (available at <https://www.politico.eu/article/turkish-cypriots-fear-recep-tayyip-erdogan-pious-generation-islam-mosque/>).

<sup>97</sup> United Nations General Assembly, *Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt*, 24 December 2012 p.7 (available at: <https://www.ohchr.org/Documents/Issues/Religion/A.HRC.22.51.Add.1.pdf>).

<sup>98</sup> *Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, Ibid.*, n.97.

<sup>99</sup> Article 26(3) of the Constitution of the TRNC (available at 1.a of the Annex).

<sup>100</sup> Article 26(1) of the Constitution of the TRNC (available at 1.a of the Annex).

<sup>101</sup> North Cyprus Online, *North Cyprus Mass Media, Newspapers* (available at: <http://www.northcyprusonline.com/North-Cyprus-Online-Mass-Media.php>).

<sup>102</sup> Nuran Oze, *Cultural Reflections of Internet, Social Media and New Media Usage in Everyday Life: The Case of Northern Cyprus, Near East University*, June 2016, p.964 (available at: [https://www.researchgate.net/profile/Nuran\\_Oeze/publication/304539077\\_Cultural\\_Reflections\\_of\\_Social\\_Media\\_Usage\\_in\\_Everyday\\_Life\\_The\\_case\\_of\\_Northern\\_Cyprus/links/57729f6a08ae07e45db24091/Cultural-Reflections-of-Social-Media-Usage-in-Everyday-Life-The-case-of-Northern-Cyprus.pdf?origin=publication\\_detail](https://www.researchgate.net/profile/Nuran_Oeze/publication/304539077_Cultural_Reflections_of_Social_Media_Usage_in_Everyday_Life_The_case_of_Northern_Cyprus/links/57729f6a08ae07e45db24091/Cultural-Reflections-of-Social-Media-Usage-in-Everyday-Life-The-case-of-Northern-Cyprus.pdf?origin=publication_detail)).

<sup>103</sup> Lefkosh, *Lefkosa Municipality shuts down 4 nightclubs because of sex workers*, 2018 (available at: <https://lefkosh.com/index.php/2018/02/23/lefkosa-municipality-shuts-4-nightclubs-sex-workers/>).

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Individuals who were interviewed as part of this case study have said that in more rural areas, social media is not used as widely; and instead, television is a much more popular form of media.<sup>104</sup> BRT is the state television network and broadcasts daily in Turkish, English and Greek.<sup>105</sup> Turkish television is also broadcast in the TRNC, and the content of Turkish television is generally conservative and controlled by the Turkish authorities.<sup>106</sup>

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**104** Ms. Yolge, Cyprus Community Media Centre – Interview with HDT, 2 March 2019.

**105** North Cyprus Online, *North Cyprus Mass Media, Radio and Television* (available at: <http://www.northcyprusonline.com/North-Cyprus-Online-Mass-Media.php>).

**106** Ms. Derya, Deputy of the Assembly of the TRNC – Interview with HDT, 5 April 2019.





# **THE OFFENCES UNDER REFORM**

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This case study primarily concentrates on the legal reform to the criminalisation of private consensual same-sex sexual acts between adults, sections 171 to 173 of the 1959 Criminal Code. However, since the repeal of these provisions was part of a much broader “package” of reform to the TRNC’s sexual offences laws, this chapter also reflects upon a number of other sexual offences that were updated in 2014.

## Colonial History

As mentioned above, the impact of different sovereign powers over the centuries formed a “mosaic” of laws reflecting the historical influence of both Islamic law and the English common law.<sup>107</sup> The TRNC’s substantive criminal law reflected the approach taken by Britain prior to the former colonial power’s own reforms to its domestic laws in the latter half of the 20th century.

The first Cypriot criminal code was introduced under the Ottoman rule in 1858.<sup>108</sup> The Ottoman Imperial criminal code was implemented across the entire empire and was largely modelled upon the French Criminal Code of 1810 (‘Ottoman Code’).<sup>109</sup> It did not contain any provisions that criminalised private consensual same-sex sexual conduct between adults; sodomy was only criminalised when committed by force or with a minor.<sup>110</sup>

From 1878, Cyprus was governed by Britain on lease from the Ottoman Empire, and the Ottoman Code remained in force until the annexation of Cyprus in 1914.<sup>111</sup> Cyprus became a colony of the British Crown in 1925 and, in 1928, a new edition of the criminal code, the 1928 Criminal Code, officially replaced the Ottoman Code.<sup>112</sup> The 1928 Criminal Code was originally drafted by Sir Samuel Griffith, Chief Justice of Queensland, in 1901, and is known as the Griffith Code – it was also applied in other colonial states, such as Kenya, Uganda and the Gambia.<sup>113</sup>

The 1928 Criminal Code criminalised private consensual same-sex sexual acts between males in Cyprus for the first time by introducing the concept of “carnal knowledge against the order of nature,” which carried a prison term of five years.

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<sup>107</sup> *The Turkish Cypriot Legal System from a Historical Perspective*, p. 118, *Ibid.*, n.8.

<sup>108</sup> *Introduction to Cyprus Law*, *Ibid.*, n.4.

<sup>109</sup> *Introduction to Cyprus Law*, *Ibid.*, n.4.

<sup>110</sup> John A. Strachey Bucknill and Haig Apisoghom S. Utidjian, *The Imperial Ottoman Criminal Code: A Translation from the Turkish Text*, 1913, p. 151 (available at: <https://archive.org/stream/TheImperialOttomanPenalCode/OttomanPenalCode.djvu.txt>).

<sup>111</sup> *The Turkish Cypriot Legal System from a Historical Perspective*, *Ibid.*, n.8.

<sup>112</sup> *Introduction to Cyprus Law*, *Ibid.*, n.4.

<sup>113</sup> *Sir Samuel Griffith’s Criminal Code*, *Ibid.*, n.6.

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The 1928 Criminal Code was replaced in 1959 by the 1959 Criminal Code as part of the codification of numerous colonial laws in anticipation of Cyprus gaining its independence from the British. Following Cyprus' independence from the British on 16 August 1960 and the establishment of the Republic of Cyprus, the provisions of the 1959 Criminal Code stayed in force, as per Article 188 of the Constitution of the Republic of Cyprus.<sup>114</sup>

In 1983, when the Turkish Cypriots unilaterally declared their independence from the Republic of Cyprus, the 1959 Criminal Code remained in force.<sup>115</sup> Whilst piecemeal amendments to the 1959 Criminal Code have since been made,<sup>116</sup> the provisions in sections 144 to 177 (*Offences against Morality*) endured relatively untouched until 2014.<sup>117</sup>

## Sexual offences

Prior to the 2014 reform, the sexual offences provisions were primarily found in sections 144 to 177 of the 1959 Criminal Code and the key provisions are summarised below as a means to demonstrate the shortcomings in the TRNC's sexual offences laws.

### The TRNC's sexual offences laws suffered from the following deficiencies:

- There was a lack of gender neutrality which resulted in inadequate protection for both females and males, particularly boys. For example, the 1959 Criminal Code only penalised rape against females.<sup>118</sup> Further, sexual assault by way of threats, false pretence, or the administration of drugs could also only be committed against a female<sup>119</sup> and only sexual relations with underage girls could be penalised.<sup>120</sup>
- Women were excluded as perpetrators of sexual offences.<sup>121</sup>

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<sup>114</sup> Appendix D: Part 13 – Transitional Provisions, Article 188 *Ibid.*, n. 7.

<sup>115</sup> *The Turkish Cypriot Legal System from a Historical Perspective*, *Ibid.*, n.8.

<sup>116</sup> See, for example, amendments made in 1962 to Chapter Five of the Criminal Code, concerning Offences Against the Person (see the Amendment Law, available at 1.c. of the Annex).

<sup>117</sup> Three sections were amended in 1989: Section 169 on the Legitimate Termination of Pregnancy, Section 176 on Behaviours Against Decency and Ethics and Section 177 on Inappropriate Sexual Exposures (see the Amendment Law, available at 1.c. of the Annex).

<sup>118</sup> Section 144 of the 1959 Criminal Code (available at 1.b of the Annex).

<sup>119</sup> Section 159 of the 1959 Criminal Code (available at 1.b of the Annex).

<sup>120</sup> Cyprus 2013 Human Rights Report, US Department of State, p.45 and 46 (available at: <https://2009-2017.state.gov/j/drl/rls/hrrpt/2013humanrightsreport/index.htm?year=2013&dliid=220267#wrapper>).

<sup>121</sup> Section 147 of the 1959 Criminal Code (available at 1.b of the Annex).



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- Married women were discriminated against; for example, the 1959 Criminal Code did not recognise the rape of a wife by her husband as an offence under section 144 of the 1959 Criminal Code (discussed further below).
- There was insufficient particularisation of offences and definitions, especially with respect to rape and penetrative offences, which meant that the full range of sexual crimes were not addressed.<sup>122</sup>
- There was no detailed statutory definition of consent, which was previously conceptualised as lack of proof of resistance.<sup>123</sup>
- Penalties were inconsistent, inadequate and in a number of respects archaic. For example, the following offences were considered as misdemeanours: the indecent assault of females (section 151), the indecent assault on males (section 152), the defilement or attempted defilement of idiots or imbeciles (section 155). Conversely, the law did not provide a minimum sentence for individuals convicted of rape. The maximum sentence was life imprisonment.
- There were unequal ages of consent. The age of consent for girls was 16 but there was no specification of the age of consent for boys.<sup>124</sup>
- Some provisions, such as the “defilement of idiots and imbeciles”, contained archaic language that was derogatory and discriminatory.<sup>125</sup>
- There was a lack of a comprehensive protection of children (the provisions on incest are a prime example).<sup>126</sup>
- The 1959 Criminal Code did not adequately include contextual or aggravating factors in its sexual offences provisions. A lack of provisions designed to address varying degrees of harm and culpability, found in contemporary sexual offences legislation, illustrates how the 1959 Criminal Code failed to adequately protect victims and appropriately sanction perpetrators.

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**122** Sections 144 and 145 of the 1959 Criminal Code (available at 1.b of the Annex).

**123** *Gender Equality and Anti-discrimination against Women – List of Issues Ibid.*, n.13.

**124** Section 154 of the 1959 Criminal Code (available at 1.b of the Annex).

**125** Section 155 of the 1959 Criminal Code (available at 1.b of the Annex).

**126** Sections 147, 149, 153(2), 154, 160, 161, 174 of the 1959 Criminal Code (available at 1.b of the Annex).

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## Rape

Before the 1959 Criminal Code was amended, sections 144-146 dealt with the crime of rape.

Section 144 defined rape as:

*“Any person who has unlawful carnal knowledge of a female, without her consent, or with her consent, if the consent is obtained by force or fear of bodily harm, or, in the case of a married woman, by personating her husband, is guilty of the felony termed rape.”*

The punishment for rape was life imprisonment, with or without flogging. Attempted rape was provided for in section 146 with a punishment of imprisonment of up to 10 years, with or without flogging.<sup>127</sup>

The formulation detailed above reflected the English common law definition of rape.<sup>128</sup> Under this definition, rape occurred when a man engaged in sexual intercourse with a woman who was not his wife, by force or fear, against her will and without her consent. Such formulation was problematic on several levels including, for example, because it excluded the possibility of males as victims.

The provision also failed to protect female spouses as victims of rape and excluded acts other than sexual intercourse. It reflected the historic conceptualisation of rape as “a theft of male property in female sexuality,” intended on the one hand to protect a father of the value of his transferable asset, his daughter,<sup>129</sup> and on the second hand, a husband from his loss of exclusive conjugal rights.<sup>130</sup> Married women were the property of their husbands and thus could not be raped by their husbands. This completely failed to recognise and protect the physical and sexual integrity of the victim.

Moreover, since “carnal knowledge” is generally understood to only capture penile-vaginal penetration (although this term is not defined in the 1959 Criminal Code), the 1959 Criminal Code failed to cover rape by penetration of other body parts or the insertion of objects. No minimum sentences were provided for.

In addition, in rape cases or other sexual offences against women, witness corroboration was required unless the Court exercised its discretion to take into account circumstantial evidence or an immediate complaint was made.<sup>131</sup>

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<sup>127</sup> Section 146 of the 1959 Criminal Code (available at 1.b of the Annex): “Any person who attempts to commit rape is guilty of a felony, and is liable to imprisonment for ten years with or without whipping or flogging.”

<sup>128</sup> DPP v Morgan [1976] A.C. 182 cites the common law definition of rape as ‘Rape consists in having unlawful sexual intercourse with a woman without her consent by force, fear or fraud’, citing as a source 1 East Pleas of the Crown 434.

<sup>129</sup> Patricia Easteal (ed), *Balancing the Scales – Rape, Law Reform and Australian Culture*, 1998 (available at: <http://www5.austlii.edu.au/au/journals/AltLawJl/1999/68.pdf>).

<sup>130</sup> Susan McCain, *Law and Sex Status: Implementing the Concept of Sexual Property*, 1998, 19 Women’s Rights Law Reporter (available at: [https://heinonline.org/HOL/Page?handle=hein.journals/worts19&div=26&g\\_sent=1&casa\\_token=&collection=journals&t=1562017134](https://heinonline.org/HOL/Page?handle=hein.journals/worts19&div=26&g_sent=1&casa_token=&collection=journals&t=1562017134)).

<sup>131</sup> Mr. Polili, Lawyer, Ledra Hukuk Bürosu – Interview with HDT, 28 February 2019.

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### Incest

Section 147 of the 1959 Criminal Code penalised incest, and previously only recognised incest offences by male perpetrators against a limited range of female family members, namely grand-daughters, daughters, sisters or mothers:

*“Any male person who has carnal knowledge of a female person, irrespective of whether with the consent or not of such female person, who is to his knowledge his granddaughter [sic], daughter, sister, mother, shall be guilty of the offence of incest and shall be liable to imprisonment for seven years.”*

This provision offered no protection for male victims of incest and failed to recognise offences by female perpetrators.

Again, “carnal knowledge” is not defined in this section, but it is likely not to have covered the range of forced and coerced sexual acts that victims of incest may have been subjected to. It also failed to contemplate other types of incest offences including persons causing a child family member to engage in sexual activities.

Incest was punishable by imprisonment for up to seven years; a sentence that would be characterised as lenient in circumstances where there is no consent for sexual activity between relatives.

### Indecent Assault

Sections 151 and 152 of the 1959 Criminal Code addressed the indecent assault of females and males and classified them as misdemeanours.<sup>132</sup>

Section 151 provided that “any person who unlawfully and indecently assaults any female is guilty of a misdemeanour.”

Section 152 provided that “any person who unlawfully and indecently assaults any male person is guilty of a misdemeanour.”

Section 35 of the 1959 Criminal Code states that where no punishment is specifically mentioned for a misdemeanour, as is the case under sections 151 and 152, the offence is punishable by way of imprisonment for a term not exceeding two years or with a fine not exceeding 100 pounds, or both. In many cases, serious penalties would not be imposed for serious (non-penile-penetrative) violations, which is unsatisfactory, especially when taken alongside the shortcomings of the rape provisions.

### Defilement

Sections 153 to 155 of the 1959 Criminal Code contained various defilement offences.

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<sup>132</sup> Sections 151 and 152 of the 1959 Criminal Code (available at 1.b of the Annex).

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Section 153 provided that:

*“(1) Any person who unlawfully and carnally knows a female under the age of thirteen years in guilty of a felony and is liable to imprisonment of life with or without flogging or whipping.*

*“(2) Any person who attempts to have unlawful carnal knowledge of a female under the age of thirteen years is guilty of a misdemeanour and is liable to imprisonment of three years.”*

Section 154 provided that a person was guilty of a misdemeanour if he knew or attempted unlawful carnal knowledge of a girl aged between 13 and 16 unless he reasonably believed the girl was aged 16 or over.<sup>133</sup>

The provisions on defilement were deficient in a number of ways. Namely, the offences excluded males as victims and the penalties for those offences also decreased in severity as the age of the female increased. Although a number of sexual offences frameworks across the world have retained distinctions between violations against children of different ages, typically coupled with the retention of a defence of mistaken belief of age in cases involving older children (as did the TRNC), contemporary models have uniformly introduced serious penalties for all child sexual offences once it is determined that sexual relations have occurred between a designated child and an adult.<sup>134</sup>

Under section 155, actual or attempted unlawful carnal knowledge of a female “idiot or imbecile” was also a misdemeanour. The language used in section 155 was derogatory and discriminatory. Contemporary frameworks today use much more appropriate descriptions, such as individuals having “a mental disorder impeding choice.”<sup>135</sup> Characterising this offence as a misdemeanour was also inappropriate.

The defilement provisions also contained no situational or aggravating factors. With child sexual assaults in particular, incorporating such factors such as a breach of trust, is crucial since the vast majority of child sexual assaults are perpetrated over a period of time by persons known and trusted by the child. The devastating impact of such breaches of trust in those circumstances should be recognised with more serious penalties.

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**133** Section 154 of the 1959 Criminal Code (available at 1.b of the Annex).

**134** Crown Prosecution Service, *Sexual Offences* (available at: <https://www.cps.gov.uk/sexual-offences>).

**135** Sexual Offences Act 2003 (available at: <https://www.legislation.gov.uk/ukpga/2003/42/contents>).



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### Unnatural Offences

Section 171 of the 1959 Criminal Code penalised “carnal knowledge against the order of nature” between males, and between males and females.

*“Any person who*

*(a) has carnal knowledge of any person against the order of nature; or*

*(b) permits a male to have carnal knowledge of him against the order of nature, is guilty of a felony and is liable to imprisonment for five years.”*

The 1959 Criminal Code did not define “carnal knowledge against the order of nature.” It has generally been interpreted, and effectively prohibited, two males (or a male and a female) from engaging in anal intercourse, regardless of the participants’ ages and whether or not the act was consensual and done in private.

Section 172 of the 1959 Criminal Code dealt with unnatural offences when committed with violence and section 173 addressed attempts to commit the offences in sections 171 and 172, penalising non-violent attempts by imprisonment for up to three years and violent attempts by imprisonment for up to seven years.

The law was on its face gender neutral in application, but it disproportionately impacted the lives of gay men.<sup>136</sup> The law was enforced against gay men engaging in private acts (this is addressed further below in the section headed Enforcement of Sexual Offences) and its existence reinforced stigma and discrimination against all LGBT people. The criminalisation of private consensual same-sex sexual acts was criticised by human rights groups,<sup>137</sup> government officials,<sup>138</sup> and international observers.<sup>139</sup>

### Enforcement of Sexual Offences

Due to limited public information on the prevalence of sexual offences in the TRNC and statistics on enforcement (reporting, charging and prosecution), it has been difficult to assess the extent of sexual crimes across the jurisdiction and how effective

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<sup>136</sup> Publicised instances of enforcement have generally concerned men. See for example, the three sets of arrests from 2010 to 2011 considered below.

<sup>137</sup> Since 2007 human rights groups, such as the IAH, have criticised the 1959 Criminal Code and attempted to bring about reform in order to align the laws of the TRNC with international human rights legislation (see homolcji, *Hoki’s Statement on Arrests in Cyprus*, 27 July 2011 (available at: <https://www.homoloji.com/2011/07/hokinin-kbrstaki-tutuklamalarla-ilgili.html>) translated).

<sup>138</sup> Prof. Dr.Çakıcı stated that “sexual orientation” is not a disease and that the legacy “outdated laws” needed to be removed (see TDP, *Society Democracy Party (TDP)*, 171 “Unscreening Sexual Relationships” known as the *Criminalisation Law 171 and the abolition of the four related articles*, 25 October 2011 (available at: <http://www.tdpkibris.org/toplumcu-demokrasi-partisi-tdp-dogaya-aykiri-cinseli-iliski-olarak-bilinen-ceza-yasasindaki-171-ve-buna-bagli-4-maddenin-kaldirilmasi-irza-gecmeyile-ilgili-olarak-4-madde/>) translated).

<sup>139</sup> Lord Cashman, a Member of the European Parliament at the time and co-president of the Intergroup on LGBT Rights in the European Parliament criticised the application of section 171 of Chapter 154 of the Criminal Code stating that “The criminalisation of homosexuality has no place in the 21st century (see LGBTI Intergroup, *3 men arrested for ‘acts against nature’: Members of the European Parliament call for their immediate release*, 19 October 2011 (available at: <https://lgbti-ep.eu/2011/10/19/3-men-arrested-meps-call-for-their-immediate-release/>)).

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enforcement was prior to the reforms in 2014. Nevertheless, there is some evidence of a general lack of protection for women and children, particularly where violence and abuse was domestic and involved an intimate partner relationship.<sup>140</sup> Moreover, women appear to face significant barriers in accessing the criminal justice system. For example, it has been suggested that women who discuss family matters in court are negatively viewed by society.<sup>141</sup> Other barriers include: women not knowing that their rights have been violated as there is a general lack of knowledge of what their rights are; the expense and duration of proceedings; lawyers, judges, and law enforcement are not sufficiently aware of issues of violence and discrimination against women; and psycho-social barriers as a result of fear of stigmatisation.<sup>142</sup>

### Sections 171 - 173

Men who engaged in private consensual same-sex sexual acts were particularly affected by section 171. Although it appears that the law was infrequently enforced against those engaging in private acts, it was still enforced and there was a particular spate of arrests between 2011 and 2012. We have identified four specific examples.

- In 2010, two men were taken into custody by the police and accused of carnal knowledge against the order of nature. The case was referred to the Constitutional Court but was subsequently postponed in February 2013 on the basis of the Attorney General's submissions that section 171 of the 1959 Criminal Code was due to be repealed.<sup>143</sup> Following the 2014 reforms, the Attorney General withdrew the case.
- In July 2011, two men were arrested and charged with having "unnatural intercourse" contrary to section 171 of the 1959 Criminal Code. The men were reported to have been arrested following complaints made by their neighbours and accusations that one of them "brought men home."<sup>144</sup> It has not been possible to ascertain whether the individuals were prosecuted and sentenced.

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<sup>140</sup> LGC News, *Women and Children still vulnerable to domestic violence in TRNC*, 6 February 2013 (available at: <https://www.lgcnews.com/pass-this-law-protect-women-and-children-against-domestic-violence/>).

<sup>141</sup> *Gender Equality and Anti-Discrimination against Women – List of Issues Ibid.*, n.13, p.49.

<sup>142</sup> *Gender Equality and Anti-Discrimination against Women – List of Issues Ibid.*, n.13, p.49.

<sup>143</sup> ILGA-Europe, *Cyprus – ILGA-Europe Annual Review 2013*, (available at: <https://www.refworld.org/pdfid/5195f1160.pdf>).

<sup>144</sup> Homolciji, *They were arrested for having an unlawful relationship*, 22 July 2011 (available at: <https://www.homoloji.com/2011/07/dogaya-aykr-cinsi-munasebette.html>) translated; and ILGA-Europe, *Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe*, 2011, p.58 (available at [https://www.ilga-europe.org/sites/default/files/Attachments/annual\\_review\\_inside.pdf](https://www.ilga-europe.org/sites/default/files/Attachments/annual_review_inside.pdf)).

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- In October 2011, three men including the former Cypriot Minister of Finance, Mr. Sarris, were arrested and detained on the basis of having committed “unnatural offences.” During the remand hearing, all the detainees apart from Mr. Sarris reported having been beaten by the police.<sup>145</sup> The men were detained for three days and, following the hearing, the police requested remand for a further eight days. Mr. Sarris posted bail of approximately 50,000 euros. The case was high-profile and the story was covered by domestic and international media, raising the issue of the continued existence and use of the law.

Commenting on the alleged offence and arrest of Mr. Sarris, the civil society group, FEMA, stated that:

*“The prejudices against the individuals during the investigation and prosecution of the alleged offense amounted to a violation of the presumption of innocence.”*  
FEMA, 19 October 2011

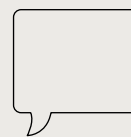
- In January 2012, it was reported domestically and internationally that two men who were incarcerated at the time for other offences were charged with having “sexual intercourse against the order of nature” and sentenced to one month in prison.<sup>146</sup>

There have also been reports that some individuals that were arrested under section 171 were subjected to physical violence by the police and in some cases to forced anal examinations in state hospitals in order to determine whether penetration had occurred.<sup>147</sup> The latter practice serves no meaningful scientific or forensic purpose and has been criticised across the world by internationally recognised medical and human rights experts.<sup>148</sup>

### *Discrimination and Stigma*

In addition to the enforcement of section 171, its existence, as in other countries where similar laws remain on the statute books, reportedly contributed to a climate of stigma and discrimination towards the LGBT community.

In a 2012 survey carried out by IAH, it was found that 63 per cent of LGBTI people in the TRNC were subjected to violence, abuse or discrimination due to their sexual



*“I’m puzzled and deeply saddened over the mysterious circumstances of my arrest, the over-zealous attempts to criminalize me and the presentation of malicious charges without any hesitation.”*

**Mr. Sarris,**  
21 October 2011

*“The existence of the aforementioned articles in the Penal Code provides the opportunity for the police to conduct inhumane practices and at the same time prevents the victim, gay men, the opportunity to submit complaints.”*

**Mr. Hüseyin Çavuşoğlu,**  
IAH, and **Mr. Polili,**  
Advocate, Interview with  
KAOS GL Association  
22 December 2008

<sup>145</sup> Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe, *Ibid.* n.144.

<sup>146</sup> Cyprus – ILGA-Europe Annual Review 2013, *Ibid.*, n. 143.

<sup>147</sup> Enver Ethemer, Turkish Cypriot Human Rights Foundation – Mapping of Human Rights in Northern Part of Cyprus, undated, pp. 37 and 46 (available at 2.a of the Annex).

<sup>148</sup> Independent Forensic Expert Group, *Statement on Anal Examinations in Cases of Alleged Homosexuality*, 2016 (available at: <https://irct.org/assets/uploads/Vol%2026%20No%202%20Statement%20on%20anal%20by%20Independent%20Forensic.pdf>); United Nations, *Ending violence and discrimination against lesbian, gay, bisexual, transgender and intersex people*, 29 Sep 2015. [Cited 27 January 2018] (available at: [http://www.ohchr.org/Documents/Issues/Discrimination/Joint\\_LGBTI\\_Statement\\_ENG.PDF](http://www.ohchr.org/Documents/Issues/Discrimination/Joint_LGBTI_Statement_ENG.PDF)).



*“Besides legal procedures, life with the identity of a homosexual as a lesbian or a gay exposes individuals to severe discrimination in all areas of society. The scientific studies carried out by our association prove that these people are exposed to discrimination in all areas of life such as school and other social institutions. Both legal and social aspects of human rights are being violated.”*

**Ms. Uluboy,**  
Clinical Psychologist  
and Former Member  
of IAH, Solidarity and  
Networking Conference  
Cyprus 2010

orientation.<sup>149</sup> It is also noteworthy that, in a study by IAH between 2009 and 2011, 23 per cent of LGBTI individuals who had experienced discriminatory behaviour said that they did not consider reporting the behaviour to the police, with a further 30 per cent saying that they were indecisive about reporting.<sup>150</sup> A further study from November 2013 identified worryingly high numbers of LGBTI people who were mocked and humiliated, threatened with violence or rape, and faced physical or property damage because of their sexual orientation.<sup>151</sup>

The pervasive discrimination present in the TRNC inevitably created an overarching stigma towards the LGBT community. Furthermore, women’s rights groups in the TRNC have described how there was an accepted conflation of homosexuality and paedophilia, which resulted in people of different sexual orientations being associated with suffering from a form of “disease.”<sup>152</sup> The presence of a law such as section 171 nurtured an environment embedded with discrimination and stigma towards the LGBT community.<sup>153</sup>

Before the 2014 reforms, the media may have also fostered this environment of stigma and discrimination and contributed to the creation of harmful stereotypes about LGBT people through some of their reporting and particularly the tone used by some media houses. In 2011, a prominent Member of the European Parliament (‘MEP’), Ms. Yannakoudakis, voiced her concerns over the “extremely derogatory tone” in which prominent media outlets in the TRNC reported on the arrests of Mr. Sarris and two other men.<sup>154</sup> Some examples of the types of articles that existed are below:

*“Not only the NGOs, but the political parties are trying to show homosexuality as cute and are advocating it...There is no end to rights. You can put any perversion under the umbrella of human rights.” (translated)*

**Kibrisli, I wonder if our perversions are surfacing? 26 October 2012**

*“The “fat” politician of the parliament drafted a new legislation to cancel the law that makes homosexuality illegal. The people are angry at such attempts and are saying “it is unacceptable to state that a man’s interest in another man’s ass is right.” (translated)*

**Kibrisli, Business against nature! 26 October 2012**

<sup>149</sup> Accept Bi-communal international conference, *Towards Inclusion: Healthcare, Education and the LGBT Community*, October 2012 (available at: <http://www.acceptcy.org/en/node/1430>).

<sup>150</sup> Unspoken, *Study on Homophobia and Transphobia in the Northern Part of Cyprus, Population Study*, 21 January 2019 (available at [http://www.queercyprus.org/wp-content/uploads/2019/01/survey\\_stage-1.pdf](http://www.queercyprus.org/wp-content/uploads/2019/01/survey_stage-1.pdf)).

<sup>151</sup> *Cyprus – ILGA-Europe Annual Review 2013*, *Ibid.*, n. 143.

<sup>152</sup> *Homophobia, not homosexuality must be a crime!*, *Ibid.*, n.11.

<sup>153</sup> *Homophobia, not homosexuality must be a crime!*, *Ibid.*, n.11.

<sup>154</sup> BBC News, *Alarm after arrests in north Cyprus under gay sex law*, 2 February 2012 (available at: <https://www.bbc.co.uk/news/world-europe-16840318>).

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## THE OFFENCES UNDER REFORM

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### Early Attempts at Repealing Sections 171-173

In 2011, a proposal to amend the 1959 Criminal Code, which, had it succeeded, would have repealed sections 171-173 and addressed some of the deficiencies in the sexual offences provisions, was introduced to the Assembly and this was accompanied by pledges of support and public commitments to reform the law. Unfortunately, this early attempt at reform failed.

Following the high profile arrest of former Cypriot Finance Minister, Mr. Sarris, in October 2011, and amid international and domestic attention, former President Eroğlu pledged that the 1959 Criminal Code would be amended and that private consensual same-sex sexual acts between adults would be decriminalised.<sup>155</sup> Further calls for reform came from other leading politicians, such as Prof. Dr. Çakıcı (of the TDP – a party in opposition at the time), who publicly criticised the laws stating that all legal regulations that restrict human rights should urgently be changed or removed.<sup>156</sup>

On 25 October 2011, Prof. Dr. Çakıcı, together with his fellow deputies of the TDP, Mr. Husein Hüseyin and Mr. Mustafa Emiroglulari, submitted a bill to amend the 1959 Criminal Code. The proposed amendments sought to address some of the deficiencies in the sexual offences provisions of the 1959 Criminal Code.<sup>157</sup> The bill provided for:

- The repeal of sections 171-173;
- Amendments to sexual offences against children;
- Changes to the age of consent; and
- The inclusion of provisions that would criminalise male rape and recognise male victims of sexual assault.<sup>158</sup>

These proposals had previously been spearheaded by the IAH and supported by the CTP. Prof. Dr. Çakıcı stated that despite the TRNC having accepted the obligations set out in the Convention on the Rights of the Child, no changes had been made to the 1959 Criminal Code in order to conform to those commitments. The provisions of the 1959 Criminal Code therefore inadequately protected children and were not fit for purpose.<sup>159</sup>

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<sup>155</sup> Cyprus – ILGA-Europe Annual Review 2013, *Ibid.*, n.143.

<sup>156</sup> TDP Kibris, Çakıcı: *Our party will bring up the agenda without waiting for the government*, 2011 (available at: <http://www.tdpkibris.org/toplumcu-demokrasi-partisi-tdp-dogaya-aykiri-cinseli-iliski-olarak-bilinen-ceza-yasasindaki-171-ve-buna-bagli-4-maddenin-kaldirilmesi-irza-gecmeyle-ilgili-olarak-4-madde/>).

<sup>157</sup> TDP Kibris, 'Our Draft Bill', 25 October 2011 (available at: <http://www.tdpkibris.org/toplumcu-demokrasi-partisi-tdp-dogaya-aykiri-cinseli-iliski-olarak-bilinen-ceza-yasasindaki-171-ve-buna-bagli-4-maddenin-kaldirilmesi-irza-gecmeyle-ilgili-olarak-4-madde/>); TDP, *Crime (Amendment) Law Proposal*, 25 October 2011 (available at: <http://www.tdpkibris.org/ceza-degisiklik-yasa-onerisi/>).

<sup>158</sup> Society Democracy Party (TDP), 171 "Unscreening Sexual Relationships" known as the Crimination Law 171 and the abolition of the four related articles, *Ibid.*, n. 138; *Crime (Amendment) Law Proposal*, *Ibid.*, n.157.

<sup>159</sup> 'Our Draft Bill', *Ibid.* n. 157; *Crime (Amendment) Law Proposal*, *Ibid.*, n.157.





*"We gave our considered opinion to the government that the draft proposal concerned should be adopted and section 171 should be abolished without delay."*

**Former President  
Eroğlu,**  
December 2011

Former President Eroğlu acknowledged the draft proposal in December 2011 and pledged his support for the bill and the repeal of section 171.<sup>160</sup>

The European Parliament's LGBT Intergroup expressed concern that former President Eroğlu's pledge to repeal section 171 and make additional changes to the TRNC's sexual offences laws would not translate into concrete action.<sup>161</sup> Unfortunately, the momentum generated in 2011 stalled. It was not until March 2013 that the reform effort was reignited when a revised bill was introduced to the Assembly – the Amendment Bill.

<sup>160</sup> Care2, *Northern Cyprus to Decriminalize Homosexuality*, 14 December 2011 (available at: <https://www.care2.com/causes/northern-cyprus-to-decriminalize-homosexuality.html>).

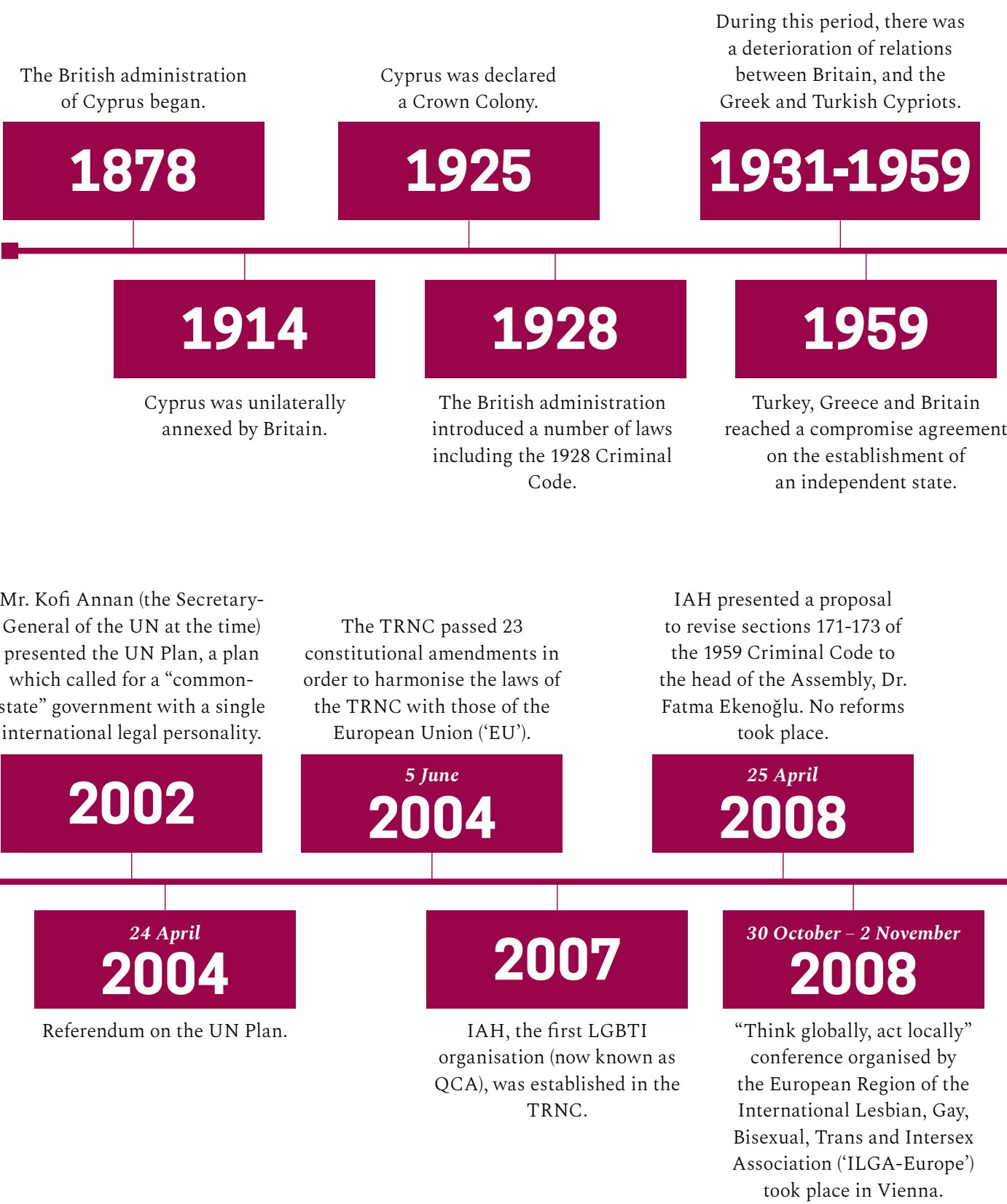
<sup>161</sup> Homoloji, *Two more arrests of gay sex in northern Cyprus*, 2 February 2012 (available at: <https://www.homoloji.com/2012/02/kbrsn-kuzeyinde-escinsel-iliskiden-iki.html>).



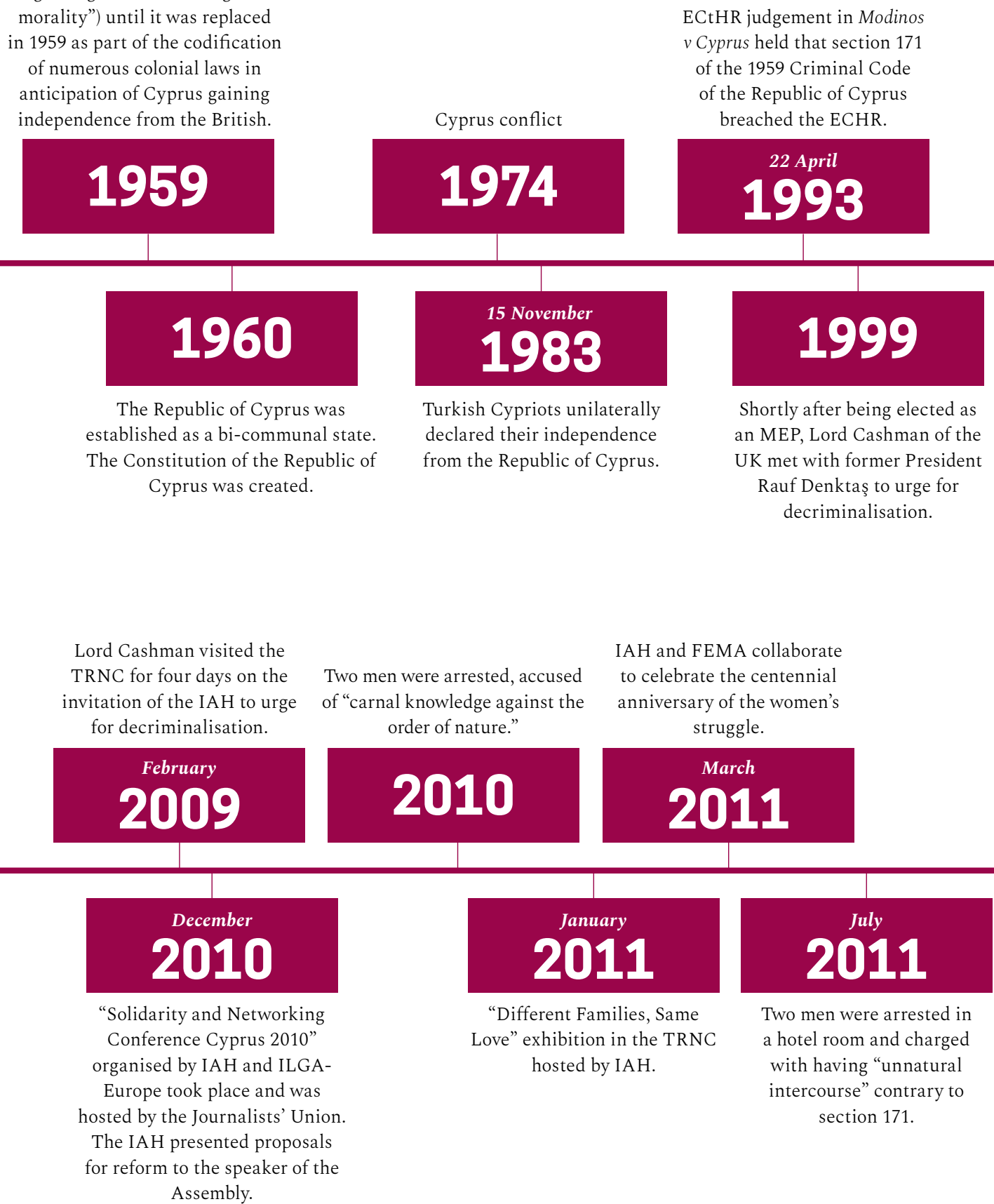
# **CHRONOLOGY OF LEGISLATIVE REFORM**

CHRONOLOGY OF LEGISLATIVE REFORM

The following provides a timeline of key events and activities relating to the enactment and eventual reform of the 1959 Criminal Code in 2014.



The 1928 Criminal Code remained in force (including provisions regarding the "offences against morality") until it was replaced in 1959 as part of the codification of numerous colonial laws in anticipation of Cyprus gaining independence from the British.





CHRONOLOGY OF LEGISLATIVE REFORM

Three men including the former Cypriot Minister of Finance, Mr. Sarris, were arrested and detained on the basis of having committed “unnatural offences.”

13 October  
2011

President Eroğlu pledged to decriminalise consensual same-sex sexual intimacy.

December  
2011

H. Ç v Turkey application was filed before the ECtHR by the Human Dignity Trust on behalf of an anonymous applicant, a citizen living in Nicosia, challenging section 171 as a violation of the ECHR.

January  
2012

The TDP submitted a bill to the Assembly to reform certain sexual offences provisions of the 1959 Criminal Code, including section 171. This bill was ultimately unsuccessful.

25 October  
2011

MEP Marina Yannakoudakis visited the TRNC for the purposes of advocating for legal reform. She met with President Derviş Eroğlu and secured an unofficial undertaking that the reform to section 171 would take place.

2011

Two men were convicted under the 1959 Criminal Code for offences “against the order of nature” and each sentenced to one month in prison.

February  
2012

The Amendment Bill is re-introduced to the Assembly following an intervening period and made publicly available.

6 December  
2013

Speech to the Assembly by Mr. Erhürman regarding the Amendment Bill.

16 January  
2014

The proposed Amendment Bill was passed by the Assembly with 28 votes in favour, one vote against and 21 abstentions.

27 January  
2014

The draft Amendment Bill was discussed before the Legal and Political Affairs Committee.

7-20 January  
2014

In a speech to the Assembly, Mr. Erhürman made the following comments concerning *H. Ç v Turkey*:<sup>162</sup>  
“...there is a case pending against the Republic of Turkey before the European Court of Human Rights because of the law in the Turkish Republic of Northern Cyprus[...] So we should wait two more weeks or so when the hearing against the Republic of Turkey is held on the 15th and Turkey is sentenced because of this law?[...] As a Parliament shall we bury our heads in the sand or are we going to change the law only after being sentenced?”

20 January  
2014

Lord Cashman MEP met local leaders and NGOs, advocating for the decriminalisation of consensual same-sex intimacy.

April  
2012

Ms. Yannakoudakis returned to the TRNC and met with a number of government deputies in a bid to revive the reform effort.

2013

The CTP formed a coalition with the DP following the general election that saw the re-emergence of the CTP and the reigniting of the reform effort.

28 July  
2013

QCA and Accept LGBT Cyprus organise “Towards Inclusion: Healthcare, Education and the LGBT Community” conference.

October  
2012

The Amendment Bill was put to the Assembly by the government and published in the Official Gazette.

March  
2013

QCA met representatives of various TRNC political parties to discuss the decriminalisation of private consensual same-sex sexual acts.

November  
2013

The Amendment Law was published in the Official Gazette and became law.

7 February  
2014

First Gay Pride Parade in the TRNC.

May  
2014

Turkish Cypriot authorities adopted a law to establish a Gender Equality Department, which was designed as the primary body where research, policies, and awareness-raising mechanisms for women could be drawn up.

November  
2014

The President assented to the Amendment Bill.

6 February  
2014

A letter by the Human Dignity Trust was submitted to the ECtHR seeking to discontinue *H. Ç v Turkey* given that the relief sought in the case had been achieved.

1 April  
2014

Based on the letter from the Human Dignity Trust, the ECtHR removed *H. Ç v Turkey* from its list, thereby formally ending the court proceedings.

3 June  
2014

162 Assembly of the TRNC, Minutes Journal, 36th Session, 20 January 2014 (available at 3.d. of the Annex).



## CHRONOLOGY OF LEGISLATIVE REFORM

The Family Law was passed, overruling the previous Turkish Family Law of 1998, providing for equality between sexes in relation to family roles and the prevention of violence against women.

**2015**

Cyprus Community Media Centre and QCA launch the billboard campaign as part of the Unspoken Project to prompt a public debate about LGBTI rights.

*November*  
**2016**

QCA launches the EU-funded “Diversity of Colours” project to improve the LGBTI community’s access to human rights and prevent discrimination.

*December*  
**2018**

**2015-2017**

Cyprus Community Media Centre, QCA and the Thomson Foundation launch and implement the European Union-funded “Unspoken Project.”

*31 May*  
**2018**

An amendment bill setting out further proposed changes to the 1959 Criminal Code was presented to the Assembly.

*May*  
**2019**

QCA launched the “LGBTI+ in freedom from exploitation” project.

# DRIVERS OF REFORM

# DRIVERS OF REFORM

In February 2014, the TRNC took a very important step in not only repealing its colonial-era penal code provisions that criminalised private consensual same-sex sexual conduct between adults, sections 171 to 173 of the 1959 Criminal Code, but also reforming its sexual offences and other laws more broadly. The journey to these significant reforms was influenced and guided by a variety of factors, some seemingly more vital and significant than others. The TRNC's historical and political context created an environment conducive and receptive to reform, but what drove the reforms and placed them firmly and constantly on the legislative agenda were the efforts and strategy of domestic civil society (LGBT activists and organisations, human rights organisations and their supporters). The political will and climate at the time were also very influential factors in realising the changes in 2014.

Other important elements included: the engagement from and with the European and international community; litigation before the ECtHR challenging the criminalisation of same-sex intimacy as a violation of the ECHR; executing the changes as part of a package of reform; and the absence of organised and sustained opposition from faith groups.

This section considers each of these factors in turn.

## Historical and Political Context

The political history of the TRNC has been influential on the *de facto* state's legislative record and to some extent shaped the 1959 Criminal Code reforms in 2014. As explained previously, the 1959 Criminal Code itself and the sexual offences provisions within it are and were vestiges of past political colonial power, a remnant that many within the TRNC wanted to shed.

Moreover, the circumstances in which the TRNC was established, together with the state's non-recognition internationally and the successive search for a settlement to the Cyprus problem, provide the backdrop for the 1959 Criminal Code reforms. For decades following the conflict between the two Cypriot communities in the 1970s, the Turkish Cypriot position on settlement was staunchly in support of a confederation of two states and recurrent rounds of negotiations, which sought to find a solution palatable for both communities, failed.<sup>163</sup> It has been suggested that this state of affairs and the pre-occupation with the Cyprus question hindered development in both communities, particularly on human rights issues.<sup>164</sup>



*"The main problem here is that the 'Cyprus Question', which comes across in every aspect of our lives, allows many priorities, including human rights, to be preceded by excuses."*  
(translation)

**Mr. Çavuşoğlu**, IAH,  
and **Mr. Polili**, Advocate  
- Interview with KAOS  
GL Association,  
22 December 2008

*"Any kind of social change is a 'tough sell' in Cyprus, due to the country's recent political history. Cypriots have been accustomed to live with the 'Cyprus problem' overshadowing every other problem, especially social issues. It was never 'the time' for human rights, as they were perceived as simple issues not worth spending time or effort on, compared to the biggest problem of all."*

**Ms. Volga**, Former  
Project Coordinator of  
Unspoken and activist,  
2018

<sup>163</sup> Hannes Lacher & Erol Kaymak, *Transforming Identities: Beyond the Politics of Non-Settlement in North Cyprus*, Mediterranean Politics, Vol. 10, No. 2, 147–166, July 2005 (available at: <https://www.tandfonline.com/doi/abs/10.1080/13629390500124341>).

<sup>164</sup> KAOSGL, *The solution process on the island will bring opportunities to Cypriot LGBTs*, 22 December 2008 (available at: <https://translate.google.com/translate?hl=en&sl=tr&u=http://kaosgl.org/sayfa.php%3Fid%3D2287&prev=search>).



*“The Turkish Cypriot community have expressed their clear desire for a future within the European Union. The Council is determined to put an end to the isolation of the Turkish Cypriot community and to facilitate the reunification of Cyprus by encouraging the economic development of the Turkish Cypriot community.”*

**EU General Affairs Council,**  
26 April 2004

*“We . . . aim to scrap the old legislation under the Penal Code as part of our efforts to harmonise TRNC law with European Union law.”*

**Mr. Erhan Erçin,**  
Head of the  
EU Co-ordination Office,  
Cyprus Today,  
12 April 2013

By the early 2000s, burdening economic problems stemming from the 2001 financial crisis in Turkey, the failure to gain external recognition, increasing dissatisfaction with the existing political establishment, and the prospect of EU membership for a unified Republic of Cyprus had culminated in what has been described as a political and social transformation in the TRNC.<sup>165</sup> It is argued that it was this transformation that led Turkish Cypriots to turn to pro-settlement and pro-EU accession political parties by 2003.<sup>166</sup> As a result, and with EU accession aspirations high on the agenda, the TRNC sought to harmonise its laws with that of the EU and this initiative was supported by the EU through the Council Regulation No 389/2006 (‘Aid Regulation’).<sup>167</sup> Since 2006, and continuing today, the TRNC has received direct financial and technical assistance from the EU to enable Turkish Cypriots to prepare for the implementation of EU law, if and when a reunified state comes into existence as an EU member state.<sup>168</sup>

Whilst UN-led initiatives and plans have failed so far to achieve a resolution to the Cyprus problem, most notably the collapse of the UN Plan in 2004 (which was a blow to proponents given that it had been supported by 65 per cent of Turkish Cypriots), harmonisation efforts have continued and the TRNC appears to remain committed to aligning its legal framework with EU and international standards.<sup>169</sup> On 5 June 2015, for example, the TRNC Assembly passed 23 constitutional amendments, the first amendments to the 1985 Constitution.<sup>170</sup> These were designed in part to bring TRNC laws into greater harmony with EU standards. Regrettably, the final constitutional reform package was rejected by the public in a referendum.<sup>171</sup>

Decriminalisation of private consensual same-sex sexual acts between adults and the broader reforms to the 1959 Criminal Code in 2014 are yet further examples of the efforts of the TRNC to bring its legislation into conformity with EU and international law and international human rights conventions. It is worth reiterating that the TRNC was the last European territory to maintain criminalisation, an anomaly that was out of step with EU law and other EU member states.

<sup>165</sup> *Transforming Identities: Beyond the Politics of Non-Settlement in North Cyprus*, pp. 147–166, *Ibid.*, n.163.

<sup>166</sup> *Transforming Identities: Beyond the Politics of Non-Settlement in North Cyprus*, pp. 147–166, *Ibid.*, n.163.

<sup>167</sup> An instrument of EU assistance in the context of preparing for implementation of the *acquis communautaire*, the body of EU law - George Kyris, *The European Union in Northern Cyprus: Conceptualising the Avoidance of Contested States*, 5 December 2018 (available at: <https://doi.org/10.1080/14650045.2018.1552945>).

<sup>168</sup> *The European Union in Northern Cyprus: Conceptualising the Avoidance of Contested States*, *Geopolitics*, *Ibid.*, n.167.

<sup>169</sup> Freedom House, *Freedom in the World 2005: Northern Cyprus*, 2005 (available at: <https://freedomhouse.org/report/freedom-world/2005/northern-cyprus>).

<sup>170</sup> Freedom House, *Freedom in the World 2015: Northern Cyprus*, 2015 (available at: <https://freedomhouse.org/report/freedom-world/2015/northern-cyprus>).

<sup>171</sup> *Freedom in the World 2015: Northern Cyprus*, *Ibid.*, n. 170.

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## DRIVERS OF REFORM

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The reform to the 1959 Criminal Code must therefore be seen as part and parcel of this trajectory of legal change in the territory, with the realisation of those amendments being in part explained by the TRNC's political history and context and the subsequent strive for EU and international harmonisation.

### Political Climate and Will

As explained above, a process of legal harmonisation with the EU had been set in train since the early 2000s, and the amendments to the 1959 Criminal Code should be viewed through that prism. However, decriminalisation and the reforms to the TRNC's other sexual offences laws were only accomplished in 2014, despite a decade of harmonisation and an early attempt at reform and pledges made by former President Eroğlu in 2011. Harmonisation, therefore, only provides a partial explanation. Importantly, a key catalyst for the 2014 reforms were the 2013 elections that resulted in a coalition government being formed that comprised in part a new reformist grouping of deputies within the CTP.

From 2009 to 2013, the TRNC was governed by the UBP with a 26-seat majority. During this period, and despite pledges made by former President Eroğlu (the then leader of UBP), the reform of the 1959 Criminal Code was not prioritised. The focus was elsewhere, namely reunification negotiations and concerns related to the economic downturn.<sup>172</sup> Without any political appetite for reform, formal attempts to amend the 1959 Criminal Code in 2011 were ultimately unsuccessful.<sup>173</sup>

However, the formation of a coalition government in 2013 following the general election that saw the resurgence of the CTP (having secured 21 seats in the Assembly), led to a renewed impetus on reforming the 1959 Criminal Code. Amongst the CTP deputies were a number of new reformist deputies of the Assembly, namely Mr. Erhürman, Ms. Derya and Ms. Özdenefe. Those deputies had strong backgrounds in and links to civil society and human rights organisations, and having reached positions of influence, were committed to driving through reforms for which they had long advocated.<sup>174</sup>

Both Ms. Özdenefe and Ms. Derya were members of the CTP Women Organisation, an organised women's movement under the CTP.<sup>175</sup> The CTP Women Organisation aims to ensure that women have an equal voice both within the party and the community, and to expand gender equality to party politics, programmes and plans.<sup>176</sup> Ms. Derya was also a leading member of FEMA and had stood on a platform of gender equality

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<sup>172</sup> *Freedom in the World 2015: Northern Cyprus*, *Ibid.*, n. 170.

<sup>173</sup> These attempts are considered further in the consultation, drafting and passaged of reform section.

<sup>174</sup> Direnç Kanol, *Quality of Democracy in Unrecognised States: Lessons from Northern Cyprus*, *Journal of Southeast European and Black Sea Studies*, 2017 (available at: <https://www.tandfonline.com/doi/abs/10.1080/14683857.2017.1279257>).

<sup>175</sup> *Gender Equality and Anti-Discrimination against Women – List of Issues Ibid.*, n.13.

<sup>176</sup> *Gender Equality and Anti-Discrimination against Women – List of Issues Ibid.*, n.13.





“...when the subject is human rights, even if the community is a conservative one or even if it is illiberal, in these fields, the law makers should be concerned with human rights, not with other matters. When it is the matter of human rights, we should have a stronger stand and be an example to the community”.

**Ms. Özdenefe,**  
Legal and Political  
Affairs Committee  
meeting minutes,  
15 January 2014

“...it is necessary for us to save people from the discrimination they suffer and we are also obliged to prevent the violation of rights that they suffer and we must settle this matter once and for all.”

**Ms. Derya,**  
Debate in the Assembly,  
20 January 2014

and fighting violence against women.<sup>177</sup> On taking her seat in the Assembly, Ms. Derya modified the customary oath when she was sworn in to emphasise that she would:<sup>178</sup>

*“...work to ensure that every individual living in the country of Cyprus is not discriminated against because of his / her language, religion, race, place of birth, class, age, physical condition, gender or sexual orientation. I will endeavour to settle the values of peace and reconciliation, to adhere to the principles of democracy, the state of social law and human rights and freedoms.”*

**Ms. Derya, Assembly Deputy CTP-BG Nicosia, 12 August 2013**

Ms. Derya and Ms. Özdenefe in particular were instrumental in redrafting the 1959 Criminal Code amendments and lobbying others within the Assembly to support the reform.

Mr. Tufan Erhürman introduced the amending legislation to the Assembly and was an important and highly influential advocate behind the changes. It was this new political context in 2013 and the influence and commitment of political champions that made the reforms a reality in 2014.

## TRNC Civil Society

Although the TRNC’s political history and the prevailing political climate in 2013 were important factors in the realisation of the 2014 reforms, the chief driver of decriminalisation and consequently the broader reforms to the 1959 Criminal Code was undoubtedly domestic civil society. The relentless campaign forged by the IAH from 2007 (now known as the QCA), together with other supportive civil society groups (such as FEMA and Envision Diversity Association (‘Envision’)) and human rights organisations (such as the Turkish Cypriot Human Rights Foundation),<sup>179</sup> placed decriminalisation firmly on the legislative agenda and this, coupled with diverse strategies and an intersectional approach (which broadened the campaign’s appeal and reach), were crucial in applying maximum pressure on the political establishment and bringing about legal and social change.

## Non-Governmental Organisations

### IAH

LGBTI activists and their supporters initially came together under the banner of the IAH (*Homofobiye Karsi Inisiyatif Derneği*)<sup>180</sup> with the aim of raising awareness about homophobia and other issues facing the LGBTI community, and to advocate

<sup>177</sup> Kibris Postasi, Derya: “The visibility of women in the media should be observed”, 9 July 2013 (available at: [http://www.kibrispostasi.com/index.php/cat/35/news/109705/PageName/KIBRIS\\_HABERLERI](http://www.kibrispostasi.com/index.php/cat/35/news/109705/PageName/KIBRIS_HABERLERI)); Kibris Postasi, *Election message from queer and feminist organizations*, 15 July 2013 (available at [http://www.kibrispostasi.com/index.php/cat/35/news/110010/PageName/KIBRIS\\_HABERLERI](http://www.kibrispostasi.com/index.php/cat/35/news/110010/PageName/KIBRIS_HABERLERI)).

<sup>178</sup> Kibris Postasi, *Shock oath in Parliament*, 12 August 2013 (available at: [http://www.kibrispostasi.com/index.php/cat/35/news/112060/PageName/KIBRIS\\_HABERLERI](http://www.kibrispostasi.com/index.php/cat/35/news/112060/PageName/KIBRIS_HABERLERI)).

<sup>179</sup> The ASI Cultural Association and Baraka Cultural Association were also among the organisations actively supporting the IAH (see *solution process on the island will bring opportunities to Cypriot LGBTs*, *Ibid.*, n. 164).

<sup>180</sup> Kibris, *History of Queer Cyprus Association* (available at: <http://www.queercyprus.org/en/history-of-qca/>).

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## DRIVERS OF REFORM

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for the removal of section 171. The organisation sought to formally register as an association in 2008<sup>181</sup> as those involved believed that an organised movement geared towards protecting the fundamental universal rights and freedoms of LGBTI people would bring more effective results.<sup>182</sup> Some suggested that the absence of an organised movement had previously hampered progress.<sup>183</sup> Registration was also in part a strategic move to draw further attention to the concerns impacting LGBTI people as many expected that such a request would be refused by the authorities, and this refusal could then be challenged through the courts.<sup>184</sup> The application was, however, granted in 2009. The IAH was the first LGBTI association in the TRNC.

Importantly, from the outset, the IAH was supported by a diverse range of individuals from LGBTI, women's and human rights activists, to psychologists, sociologists, lawyers, and academics. This diversity likely broadened the influence and appeal of the IAH and advanced the association's intersectional approach.<sup>185</sup> Moreover, it likely enabled greater visibility of LGBTI issues. In light of the relatively small and generally conservative society in the TRNC, there was fear amongst those within the LGBTI community of their sexual orientation or gender identity being exposed due to their involvement in the IAH and the campaign for decriminalisation.<sup>186</sup> This had hampered the visibility of the LGBTI community.<sup>187</sup> With a broader constituency coming together as the IAH, this provided not only important support for LGBTI people and some cover, but also facilitated crucial visibility.

Working intersectionally, particularly through collaboration with women's and feminist organisations such as the YKP-Fem<sup>188</sup> and FEMA,<sup>189</sup> appears to have been a significant factor in strengthening the association and its advocacy efforts. Some examples of this collaboration include:

- The IAH launched the Solidarity and Networking Conference Cyprus in 2010 in collaboration with Accept Cyprus and ILGA-Europe, a three day event which

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<sup>181</sup> *History of Queer Cyprus Association, Ibid.*, n.180.

<sup>182</sup> *The solution process on the island will bring opportunities to Cypriot LGBTs, Ibid.*, n.164.

<sup>183</sup> *The solution process on the island will bring opportunities to Cypriot LGBTs, Ibid.*, n.164.

<sup>184</sup> Ms. Uluboy, Clinical and Developmental Psychologist – Interview with HDT, 28 February 2019.

<sup>185</sup> "Intersectionality" was coined in 1989 by Kimberlé Crenshaw, a civil rights activist and legal scholar. It is commonly understood to mean the interconnected nature of social categorizations such as race, class, and gender, regarded as creating overlapping and interdependent systems of discrimination or disadvantage.

<sup>186</sup> *The solution process on the island will bring opportunities to Cypriot LGBTs, Ibid.*, n. 164.

<sup>187</sup> *The solution process on the island will bring opportunities to Cypriot LGBTs, Ibid.*, n. 164.

<sup>188</sup> YKP-FEM is an autonomous and independent group, connected to the New Cyprus Party ('YKP'). It supports anti-militarist policies, the right to conscientious objection, refugee and LGBT rights and acts in parallel with the work of the party. The purpose is to raise awareness of the problems women face through activities and demonstrations, designed to effect a transformative change on society to make a more equal and free world.

<sup>189</sup> 101'inci 8 Mart Dünya Kadınlar Günü Etkinlikleri Çerçevesinde HOKİ ve FEMA'dan Dikkate Deger Bir Çağrı, 6 March 2011 (available at: <https://shortbusmovement.org/page/30/>).



*“With the awareness that we are right in the struggle that we have initiated, we believe that we can overcome some of the difficulties that we may face by taking international law and human rights behind us, as well as the pressures to be made by institutions such as the European Parliament and the European Commission, as well as the lobbying activities we have initiated in Turkey.”*

**Mr. Çavuşoğlu**, IAH, and **Mr. Polili**, Advocate, Interview with KAOS GL Association, 22 December 2008

invited speakers to talk about various issues affecting the LGBTI community in the TRNC;<sup>190</sup>

- The IAH partnered with ILGA-Europe in January 2011 to open the exhibition “Different Families, Same Love,” a photography exhibition that aimed to make a statement that LGBTI individuals have equal rights regardless of their orientation and gender identity;<sup>191</sup>
- The IAH partnered with FEMA in March 2011 to celebrate the centennial anniversary of the women’s struggle.<sup>192</sup> Some of their joint activities included a march to underscore that the struggle for gender equality is a struggle for democracy, justice, equality and freedom; and
- The IAH supported the creation of the Gender Equality Mechanism (‘TOCEM’),<sup>193</sup> participating in preparatory meetings, consulting on the draft law and lobbying MPs.<sup>194</sup> The feminist NGOs and women organisations were however at the forefront of campaigning for and establishing the Gender Equality Platform and Mechanism.

In addition to broadening IAH’s base, support network and appeal, an intersectional approach and previous collaborations paid dividends when the new wave of reformist deputies, including Ms. Derya and Ms. Özdenefe, were elected in 2013.

The development of a multi-pronged strategy, involving advocacy and lobbying, litigation, international and regional collaboration and awareness-raising, also emerges as an important element of the IAH’s and their supporters’ success by 2014. Some examples of this multi-faceted strategy are outlined below.

#### Advocacy and Lobbying

As early as 2007, the IAH was campaigning for the decriminalisation of private consensual same-sex intimacy between adults and this was primarily in the form of engagement with deputies in the Assembly. For instance, on 25 April 2008, the IAH presented a draft proposal to the Speaker of the Assembly, Hon. Dr. Ekenoğlu, which sought to repeal sections 171-173 of the 1959 Criminal Code.<sup>195</sup> This was followed by a meeting with the Chair of the Assembly’s Legal Affairs Committee, Mr. Kadri

<sup>190</sup> Kuir Kibris Press Release, *Solidarity and Networking Conference Cyprus*, 2010 (available at: <http://www.queercyprus.org/tr/dayanisma-ve-ag-olusturma-konferansi-kibris-2010/>).

<sup>191</sup> Kuir Kibris Press Release, *Different Families, Same Love*, 6 January 2011 (available at: <http://www.queercyprus.org/tr/farkli-aileler-ayni-sevgi/>).

<sup>192</sup> *The solution process on the island will bring opportunities to Cypriot LGBTs*, *Ibid.*, n.164.

<sup>193</sup> The bicomunal Technical Committee on Gender Equality, set up in 2015, was established to suggest ways of integrating a gender equality perspective, to form a mechanism for bringing gender equality specific and sensitive issues to the forefront, and provide specific recommendations on ensuring social gender equality in the TRNC (available at: <https://www.kktob.org/en/technical-committees>).

<sup>194</sup> *101’inci 8 Mart Dünya Kadınlar Günü Etkinlikleri Çerçevesinde HOKİ ve FEMA’dan Dikkate Deger Bir Çağrı*, *Ibid.*, n.189.

<sup>195</sup> *The solution process on the island will bring opportunities to Cypriots LGBTs*, *Ibid.*, n.164; New Age News, *Association for Initiative Against Homophobia and ILGA-Europe: WE WANT FREEDOM*, 10 December 2010 (available at: <http://www.ykp.org.cy/2010/12/yenicag/yenicag-haber/homofobiye-karsi-inisiyatif-dernegi-ve-ilga-avrupa-isbirligiyle-duzenlenen-%E2%80%9Cdayanisma-ve-ag-olusturma-konferansi-kibris-2010%E2%80%99da-vurgulandi-ozgurluk-istiyoruz/>) translated.

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Fellahoğlu.<sup>196</sup> On 3 December 2010, the IAH (with representatives from ILGA-Europe and Lambda Istanbul) visited the Speaker of the Assembly, Mr. Hasan Bozer, and presented a further law reform proposal. In response, Mr. Bozer gave indications that sections 171-173 would be changed as part of the EU harmonisation process<sup>197</sup> but unfortunately no further action was taken in respect of the proposed amendment.<sup>198</sup> The proposal was re-introduced by the TDP in 2011 (during the time of Mr. Sarris' arrest) as part of a wider effort by the TDP and CTP to engage in dialogue and garner support for the repeal of section 171.<sup>199</sup> These lobbying efforts and engagement were very important in order to break down the barriers that often existed when discussing issues associated with the rights of LGBT people.

### Awareness-Raising

In terms of awareness-raising and sensitisation (key components of the early work of the IAH), these activities provided increased visibility of the rights of the LGBTI community and the problems people were experiencing in the north regarding stigma and discrimination. Examples of awareness-raising activities include the conferences that IAH organised. In December 2010, the IAH organised an international conference, "Solidarity and Networking Conference Cyprus 2010," in collaboration with Accept LGBT Cyprus (an LGBT NGO in the Republic of Cyprus) and ILGA-Europe<sup>200</sup> and hosted by the Journalists Union.<sup>201</sup> The conference was bi-communal with events taking place in both the TRNC and the Republic of Cyprus, and the programme included a range of activities such as a workshop with TRNC NGOs and political parties and panel sessions on the experiences of LGBTI people. The conference highlighted how the criminalisation of private consensual same-sex sexual acts between adults in the TRNC was a violation of human rights.

As part of the conference, the organisations also launched a photography exhibition entitled "Different Families Same Love."<sup>202</sup> The exhibition received positive press coverage and provided an opportunity to present different and positive facets of the LGBTI community to the general public.<sup>203</sup>

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<sup>196</sup> Association for Initiative Against Homophobia and ILGA-Europe: *WE WANT FREEDOM*, *Ibid.*, n.195.

<sup>197</sup> Association for Initiative Against Homophobia and ILGA-Europe: *WE WANT FREEDOM*, *Ibid.*, n.195.

<sup>198</sup> Mr. Ethemer and Mr. Bullici, Co-founders, Envision Diversity Association – Interview with HDT, 2 March 2019.

<sup>199</sup> Mr. Ethemer and Mr. Bullici, Co-founders, Envision Diversity Association – Interview with HDT, 2 March 2019.

<sup>200</sup> ILGA-Europe are an independent, international non-governmental umbrella organization that advocate for human rights and equality in order to strengthen the LGBTI movement. More information is available at: <https://www.ilga-europe.org/who-we-are/what-ilga-europe>.

<sup>201</sup> *History of Queer Cyprus Association*, *Ibid.*, n.180.

<sup>202</sup> *Solidarity and Networking Conference Cyprus 2010*, *Ibid.*, n.190; *Different Families, Same Love*, *Ibid.*, n.191.

<sup>203</sup> ILGA Europe, *Different Families, Same Love – Conference on LGBT families in Europe*, 20 February 2008 (available at: <https://www.ilga-europe.org/resources/news/latest-news/different-families-same-love-conference-lgbt-families-europe>); ILGA Europe, *Statement "Different Families, Same Love" exhibition at European Parliament*, 19 December 2008 (available at: <https://www.ilga-europe.org/resources/news/latest-news/statement-different-families-same-love-exhibition-european-parliament>); ILGA Europe, *'Different Families, Same Love' posters, 2007* (available at: <https://www.ilga-europe.org/resources/ilga-europe-reports-and-other-materials/different-families-same-love-posters-2007>).



*"Why is the consent-based love of two adult men a crime? We do not make a special request. We just want everyone to have equal rights. We will achieve this."*

**Mr. Yoryis Regginos,**  
Press officer of Accept  
LGBT, Solidarity and  
Networking Conference  
Cyprus 2010



In October 2012, the IAH (under the association's new name QCA)<sup>204</sup> and Accept LGBT Cyprus jointly organised another bi-communal conference – “Towards Inclusion: Healthcare, Education and the LGBTI Community.”<sup>205</sup> The conference sought to raise awareness and develop the capacities of health care professionals, educators, and those in academia with regards to the LGBTI community in Cyprus. Participants were introduced to the problems and sensitivities of the LGBTI community and were provided with tools to tackle homophobia and transphobia in their respective working environments. The conference programme included formal presentations and interactive workshops with experts and activists from the USA, the UK, Turkey, Greece and Cyprus sharing their knowledge, practices and experiences.<sup>206</sup>

### Regional and International Support

Regional and international support appears to have been very important for the IAH and the association's objectives. The positive benefits of drawing on such assistance was particularly evident in the TRNC experience. Some of the above-mentioned examples highlight how the IAH (and later QCA) boosted the association's awareness-raising efforts through partnering and collaborating with NGOs from the Republic of Cyprus, such as Accept LGBT Cyprus, and regional European organisations, such as ILGA-Europe. In addition, and cognisant of the influence of the EU (this is explained in more detail in subsequent sub-sections), the IAH sought assistance from EU actors and institutions such as the European Parliament (in the form of the European Intergroup on LGBT Rights and associated MEPs), and the EU Programme Support Office (‘EUPSO’) in Nicosia.<sup>207</sup> Building these relationships helped: raise the

<sup>204</sup> *History of Queer Cyprus Association, Ibid.*, n.180. The association's mission today includes supporting the rights of LGBTI people, countering discrimination based on gender, gender expression, sexual orientation and gender identity and lobbying and taking legal actions at the local and international level to enhance and protect human rights and freedoms. Further information about the development of LGBT civil society can be found in the section below on Post-Reform Environment.

<sup>205</sup> Accept LGBT, *Bi-Communal International Conference – “Towards Inclusion: Healthcare, Education and the LGBT Community*, 13 October 2012 (available at: [http://www.acceptcy.org/sites/all/files/program-toward\\_inclusion\\_conference.pdf](http://www.acceptcy.org/sites/all/files/program-toward_inclusion_conference.pdf)).

<sup>206</sup> *Bi-Communal International Conference – “Towards Inclusion: Healthcare, Education and the LGBT Community, Ibid.*, n.205.

<sup>207</sup> The European Commission implemented an aid programme for the Turkish Cypriot community based on the Aid Regulation. The programme is managed by the Commission's Structural Reform Support Service. The programme aims to facilitate the reunification of Cyprus by encouraging the economic development of the Turkish Cypriot community. In the period 2006-2018, the EU allocated nearly EUR 520 million to projects in support of the Turkish Cypriot community. EUPSO, in the northern part of Nicosia, acts as a contact with the beneficiary community and helps deliver assistance.



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profile of LGBTI people in the TRNC; apply additional and external pressure on the TRNC authorities; and mobilise additional technical support.<sup>208</sup> The next sub-section explores the significance of the engagement with and from the international and European community in bringing about the Amendment Law.

### Media and Communication

Media and communication were yet another aspect employed by the IAH. By publicising visits by EU MEPs and the association's lobbying efforts, together with issuing statements and press releases condemning the enforcement of section 171, the IAH and their supporters sought to breakdown some of the stigma and prejudice against the LGBTI community. They kept the spotlight firmly on their law reform objectives and ensured that they sustained pressure on the government.<sup>209</sup>

### Litigation

Finally, litigation (both proactive and reactive) was a particularly significant tactic utilised by the IAH. At the domestic level and in response to the arrest of two men in 2010, lawyers who supported IAH represented the two individuals and sought to refer the case to the constitutional court on the basis that the criminalising law, section 171, violated the TRNC Constitution.

Litigation before the ECtHR was also pursued in 2012 and, in many respects, this was a last resort prompted by the lack of action taken by the TRNC authorities to repeal sections 171-173 (see the below sub-section for further details on the influence of the ECtHR litigation).

Both legal actions at the domestic and international level applied additional pressure on the government and were certainly contributory factors in the legislative action that was then taken in 2013/2014.

### Other Civil Society Groups

Other instrumental civil society groups included the Turkish Cypriot Human Rights Foundation, FEMA, the Shortbus Movement and Envision.

The Turkish Cypriot Human Rights Foundation was created in 2005 and initially dealt with all human rights aspects including LGBT rights which remained a taboo subject at that time. Shortly after its formation, the Turkish Cypriot Human Rights Foundation was the first organisation to hold a public debate on the rights of LGBT people and issues impacting the community.

FEMA is an activist organisation founded in 2008 that aims to eradicate discrimination and oppression against women and the LGBT community.<sup>210</sup>



*"We think that using various media communication tools during [Michael Cashman's] visit, it will be possible to break the prejudices about LGBT (Lesbian, Gay, Bisexual, Transgender) towards creating public opinion and raising public awareness."*

**Mr. Çavuşoğlu**, IAH, and **Mr. Polili**, Advocate, Interview with KAOS GL Association, 22 December 2008

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<sup>208</sup> History of Queer Cyprus Association, *Ibid.*, n.180.

<sup>209</sup> Hoki's Statement on Arrests in Cyprus, *Ibid.*, n.137.

<sup>210</sup> Yenidüzen, *Who is a Feminist Workshop? What does he do? How does it?*, 1 January 2011 (available at: <http://www.yeniduzen.com/feminist-atolye-kimdir-ne-yapar-nasil-yapar-18472h.htm>) translated.

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The group has had prominent members including Ms. Derya. FEMA contributed to the 2014 Criminal Code reforms by applying additional pressure on the TRNC's decision-makers through publicising the deficiencies in the 1959 Criminal Code on multiple communication platforms, supporting and collaborating with the IAH, and engaging with political parties and deputies with respect to reform proposals.<sup>211</sup>

The Shortbus Movement was established in 2008 and is an informal LGBT group, composed of volunteers and human rights activists.<sup>212</sup> Its aim is to promote equality for LGBT people by sharing information, organising cultural events and providing educational and support services to the LGBT community.<sup>213</sup> Having secured financial support from the European Commission,<sup>214</sup> the Shortbus Movement was able to raise awareness, both domestically and globally, on the issues facing the LGBT community in the TRNC through hosting workshops, organising gatherings and film screenings,<sup>215</sup> and attending Pride meetings and events in the UK.<sup>216</sup>

Envision, a human rights NGO founded in 2015,<sup>217</sup> has two principal aims: to provide an interactive platform to allow individuals to share their opinions, and to raise awareness and build a culture of tolerance.<sup>218</sup> Since its creation, Envision has provided substantial support to the LGBT community in the areas of sexually transmitted diseases and mental health, as well as organising seminars and workshops in various municipalities in Nicosia and Kyrenia.<sup>219</sup> Prior to the 2014 reforms, Envision applied pressure on political officials in order to encourage change.

From 2010 onwards, Mr. Ethemer (Co-founder of Envision) held meetings with politicians (including with Lord Cashman during his visit to the TRNC in 2012<sup>220</sup>) and the TRNC Parliament to apply pressure and encourage the 2014 reforms.

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**211** Ms. Derya, Deputy of the Assembly of the TRNC – Interview with HDT, 5 April 2019.

**212** Erman Dolmaci, *LGBTI+ movement in northern Cyprus* (available at: <https://prezi.com/6ukecsuxirxt/lgbti-movement-in-northern-cyprus/>).

**213** Shortbus Movement, *Empowerment of the LGBTI Community, Who are We* (available at: <https://shortbusmovement.org/about/who-are-we-biz-kimiz/>).

**214** The Lesbian and Gay Foundation, *New Group Sets About Achieving Support for LGBTI's in Northern Cyprus* (available at: <https://shortbusmovement.blogspot.com/2010/04/>).

**215** Shortbus movement, *5 years of moving* (available at: <https://shortbusmovement.org/2013/09/21/5-years-of-moving/>).

**216** *5 years of moving*, *Ibid.*, n. 215.

**217** The Communication Initiative Network, *Envision Diversity* (available at: <http://www.comminit.com/global/content/envision-diversity>).

**218** Facebook, *Envision Diversity Association - About* (available at: [https://en-gb.facebook.com/pg/envisiondiversity/about/?ref=page\\_internal](https://en-gb.facebook.com/pg/envisiondiversity/about/?ref=page_internal)).

**219** Mr. Ethemer and Mr. Bullici, Co-founders, Envision Diversity Association – Interview with HDT, 2 March 2019.

**220** Mr. Ethemer and Mr. Bullici, Co-founders, Envision Diversity Association – Interview with HDT, 2 March 2019.

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### Engagement with the European and International Community

Engagement with and from the European and international community in the form of drawing support and resources from international NGOs and European actors and institutions, as well as having the local voice strengthened and augmented by external interventions, were important supplementary influences on the push for decriminalisation and the 1959 Criminal Code reforms.

### European and International Civil Society

As described above, collaboration with regional and European LGBT and human rights organisations generated additional support, assistance and resources for the IAH and TRNC civil society. It also bolstered and amplified the call for reform adding further pressure on the TRNC government. The work with ILGA-Europe was particularly significant. In addition to supporting the IAH's and domestic civil society's own initiatives, ILGA-Europe was also involved in the following activities:

- Holding annual conferences, including a conference in 2011, where delegates expressed concern about the 2011 arrests under section 171 of the 1959 Criminal Code. The delegates called on former President Eroğlu to repeal section 171 without delay;<sup>221</sup>
- In October 2011, ILGA-Europe requested that charges against all men prosecuted under section 171 of the 1959 Criminal Code be dropped, and acted in collaboration with Amnesty International, Human Rights Watch, the International Gay and Lesbian Human Rights Commission and the IAH;<sup>222</sup> and
- Publicising its lobbying efforts in the TRNC. For example, in ILGA-Europe's monthly electronic newsletter from October 2011, ILGA-Europe published a letter to the former President Eroğlu, and former Prime Minister Küçük, demanding the release of men arrested for breaches of section 171 of the 1959 Criminal Code and advocating for its repeal.<sup>223</sup>



*"We believe as Envision Diversity that [reforming the Criminal Code] is an opportunity and an important step towards ensuring that LGBT people are not subject to any inhumane and antidemocratic discrimination and exclusion in the society"*

**Enver Ethemer,**  
reported in KP Daily News,  
17 May 2015

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<sup>221</sup> ILGA-Europe, *Declaration from the Annual Conference 2011*, 2011 (available at: <https://www.ilga-europe.org/conference/turin-2011/declaration-annual-conference-2011>).

<sup>222</sup> ILGA-Europe, *Release all men arrested and abolish last remaining law in Europe that criminalises homosexuality*, 21 October 2011 (available at: <https://www.ilga-europe.org/resources/news/latest-news/release-all-men-arrested-and-abolish-last-remaining-law-europe>).

<sup>223</sup> ILGA-Europe, *Rainbow Digest*, October 2011 (available at: [https://my.ilga-europe.org/index.php?q=civircrm/mailling/view&reset=1&id=58#node\\_17216](https://my.ilga-europe.org/index.php?q=civircrm/mailling/view&reset=1&id=58#node_17216)).

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## European Institutions

The significance of EU intervention on the 1959 Criminal Code reforms was two-fold. Not only did the involvement of various EU institutions and individuals bring with them technical resources and expertise, which facilitated law reform efforts, but the EU was also able to apply a level of diplomatic pressure on the reform process.

### Resources and Expertise

As discussed in the section on Political History, the movement towards resolution of the inter-communal dispute and the prospect of EU accession in the early 2000s (despite both aspects failing on the Turkish Cypriot side), resulted in a shift in the TRNC's relationship with the EU.<sup>224</sup> As a reward for their positive vote in the UN Plan, which indicated that the Turkish Cypriot people desired reunification and an EU future, in 2004, the European Commission declared its determination to help Turkish Cypriots and address their long-standing international isolation.<sup>225</sup> Against this background, the European Commission implemented an aid programme for the Turkish Cypriot community based on the Aid Regulation.<sup>226</sup> The aid programme aimed to facilitate the reunification of Cyprus by encouraging the economic development of the Turkish Cypriot community, with particular emphasis on:

- The economic integration of the island;
- Improving contacts between the two communities and with the EU; and
- The preparation for the EU body of laws (also referred to as the EU *acquis*) following a comprehensive settlement of the Cyprus issue.<sup>227</sup>

In the period 2006-2018, the EU allocated nearly EUR 520 million to projects in support of the Turkish Cypriot community.<sup>228</sup> EUPSO was established in the northern part of Nicosia, to act as a contact with the beneficiary community and to help deliver the assistance.<sup>229</sup>

This financial and technical assistance has helped the Turkish Cypriot community and has been a driving force behind essential development and some domestic changes.<sup>230</sup> In particular, we understand that the Technical Assistance and Information Exchange ('TAIEX'), was used by EUPSO and as described in more detail below, provided

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<sup>224</sup> Kyris, George, *The European Union and the Cyprus problem: a story of limited impetus*. Eastern journal of European studies, 3 (1). pp. 87-99, 2012 (available at: [http://eprints.lse.ac.uk/49389/1/Kyris\\_European\\_union\\_cyprus\\_2012.pdf](http://eprints.lse.ac.uk/49389/1/Kyris_European_union_cyprus_2012.pdf)).

<sup>225</sup> European Commission, *Turkish Cypriot Community*, 8 July 2019 (available at: [https://ec.europa.eu/cyprus/about-us/turkish-cypriots\\_en](https://ec.europa.eu/cyprus/about-us/turkish-cypriots_en)); European Commission, *Commission proposes comprehensive measures to end isolation of the Turkish Cypriot community*, 7 July 2004 (available at [europa.eu/rapid/press-release\\_IP-04-857\\_en.pdf](http://europa.eu/rapid/press-release_IP-04-857_en.pdf)).

<sup>226</sup> European Commission, *Aid Programme for the Turkish Cypriot community* (available at: [https://ec.europa.eu/info/funding-tenders/funding-opportunities/funding-programmes/overview-funding-programmes/aid-programme-turkish-cypriot-community\\_en](https://ec.europa.eu/info/funding-tenders/funding-opportunities/funding-programmes/overview-funding-programmes/aid-programme-turkish-cypriot-community_en)).

<sup>227</sup> *Aid Programme for the Turkish Cypriot community*, *Ibid.*, n.226.

<sup>228</sup> *Aid Programme for the Turkish Cypriot community*, *Ibid.*, n.226.

<sup>229</sup> *Aid Programme for the Turkish Cypriot community*, *Ibid.*, n.226.

<sup>230</sup> *The European Union and the Cyprus problem: a story of limited impetus*. Eastern journal of European studies, 3 (1). pp. 87-99, *Ibid.*, n.224.

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assistance by identifying the issues that needed to be addressed in the 1959 Criminal Code reforms.<sup>231</sup>

For example, the EU has provided important support to the reform efforts by enlisting specialist teams. In 2012, a team from the European Commission prepared a country report on the TRNC using TAIEX.<sup>232</sup> The EU used experts from a variety of backgrounds to analyse and assess the TRNC's legislative framework. The criminal law was identified as an area in need of reform, particularly to address the following: child labour, human trafficking, child abuse, domestic violence, the criminalisation of private consensual same-sex sexual acts and discrimination.<sup>233</sup> The team from the European Commission worked closely with various NGOs and at the end of 2012, thanks to the input and support of civil society, the project was accelerated and focused on the reform to section 171 of the 1959 Criminal Code.

The findings of TAIEX, the EU funding provided to the Turkish Cypriot community and the technical support that was made available were all factors that contributed to the reform process in 2014.

### Diplomatic Pressure

With the TRNC's strive for EU accession and ever closer ties with the EU, the EU's relevance to Turkish Cypriots has considerably increased.

Whilst there is some indication that the pro-European attitude of Turkish Cypriots has receded in more recent years,<sup>234</sup> the European relationship appears to remain highly significant. It is therefore no surprise that interventions made by EU institutions and individuals in respect of the call for the decriminalisation of private consensual same-sex sexual conduct and the reform of the 1959 Criminal Code were influential and prompted a reaction.

The main EU institution that played a central role in applying diplomatic pressure on the TRNC to reform the 1959 Criminal Code was the European Parliament, and specifically, the European Parliament Intergroup on LGBTI Rights ('EU LGBTI Intergroup')<sup>235</sup> and associated MEPs. Lord Cashman, Ms. Yannakoudakis and Ms. Eleni Theocharous<sup>236</sup> were particularly prominent supporters and advocates for



*"The EU constitutes the first major international actor to bilaterally engage with the Turkish Cypriot community. In this regard, the EU constitutes a 'bridge' between the isolated community and the international world."*

**George Kyris,**  
The European Union  
and the Cyprus problem:  
a story of limited impetus,  
2012

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<sup>231</sup> Interview with HDT, 11 April 2019.

<sup>232</sup> More information about TAIEX can be found at: [https://ec.europa.eu/neighbourhood-enlargement/tenders/taieux\\_en](https://ec.europa.eu/neighbourhood-enlargement/tenders/taieux_en).

<sup>233</sup> The TRNC TAIEX report is not a publicly available document. The information were have received is from an interview conducted by HDT with a team member who managed the project.

<sup>234</sup> *The European Union and the Cyprus problem: a story of limited impetus*. pp. 87-99, *Ibid.*, n.224.

<sup>235</sup> For more information see <https://lgbti-ep.eu>.

<sup>236</sup> Lord Cashman CBE served as an MEP for the UK from 1999 to 2014 and was Co-President of the EU LGBTI Intergroup during this time. Ms. Yannakoudakis served as an MEP for the UK from 2009 to 2014 and was a member of the EU LGBTI Intergroup during this time. Eleni Theocharous served as an MEP for Cyprus from 2009 to 2019 and was a member of the EU LGBTI Intergroup during this time.





*"The current Criminal Code wrecks lives, and Derviş Eroğlu's promise must be followed by steadfast action. I will personally go to Cyprus in order to meet him, other leaders and NGOs, and encourage repealing this outdated piece of legislation which has no place in Europe – or anywhere in the world."*

**Lord Cashman,**  
Former Co-President of the EU LGBTI Intergroup, February 2012

*"All my interlocutors agreed local laws need updating urgently. Now the Parliament must do its work, and align the Criminal Code with binding European standards."*

**Lord Cashman,**  
Former Co-President of the EU LGBTI Intergroup. Interview with Pink News, 16 April 2012

change, becoming involved in substantial and high-profile advocacy and lobbying efforts. Some of their engagement and activities are described below.

From as early as 1999, and shortly after being elected as an MEP, Lord Cashman met with former President Rauf Denktaş. During that meeting, Lord Cashman stressed the importance of promoting and progressing human rights across the whole island and in respect of all individuals. Following introductions between Lord Cashman and the IAH at the 2008 ILGA-Europe conference in Vienna,<sup>237</sup> the former Co-President of the EU LGBTI Intergroup became heavily involved in supporting the law reform efforts of domestic civil society and the Assembly. In February 2009, Lord Cashman visited the TRNC for four days on the invitation of the IAH. During this visit, he met with Hon. Dr. Ekenoğlu and stated that he was there to "give impetus and support to politicians to do the right thing."<sup>238</sup>

A further visit was undertaken in April 2012, organised by the IAH and other local civil society groups and prompted in part by a recent spate in arrests for section 171 offences. During that visit, Lord Cashman met with parliamentarians and party leaders, the Speaker of the Assembly, Hasan Bozer, Prime Minister Irsen Küçük, and President Derviş Eroğlu.<sup>239</sup> Discussions focused on the need for a comprehensive review of local laws, and there was general agreement that urgent changes were needed to decriminalise same-sex sexual activity, equalise the ages of consent, and reform the law of rape.<sup>240</sup>

Lord Cashman also commented that making homosexual sexual acts legal would help change the image of the TRNC and would "signal to the world that Turkish Cypriot society was one that tolerated and celebrated difference."<sup>241</sup> We understand that the 2012 visit by Lord Cashman was publicised extensively in local and international media,<sup>242</sup> which further increased the momentum behind the reform movement. It has also been suggested that it helped persuade local politicians, who were more resistant to reform, that pursuing the 1959 Criminal Code reforms would demonstrate to the world that the TRNC was a modern and progressive society.

These visits by Lord Cashman were done in a spirit of respectful and open cooperation, which helped build trust and consensus. Lord Cashman's British citizenship was also an asset, given the historical connections between the island

<sup>237</sup> The solution process on the island will bring opportunities to Cypriot LGBTs, *Ibid.*, n.164.

<sup>238</sup> Cyprus Mail - Simon Bahceli, *British MEP and actor pushes for gay rights in the north*, 25 February 2009 (available at 2.b of the Annex).

<sup>239</sup> Pink News, *Michael Cashman MEP meets Northern Cyprus leaders over anti-gay law*, 16 April 2012 (available at: <https://www.pinknews.co.uk/2012/04/16/michael-cashman-mep-meets-northern-cyprus-leader-over-anti-gay-law/>).

<sup>240</sup> *Michael Cashman MEP meets Northern Cyprus leaders over anti-gay law*, *Ibid.*, n.239; The European Parliament's LGBTI Intergroup, *Michael Cashman Advocates for Law Change in Northern Cyprus*, 16 April 2012 (available at: <http://www.lgbt-ep.eu/press-releases/michael-cashman-advocates-for-law-change-in-northern-cyprus/>).

<sup>241</sup> *British MEP actor pushes for gay rights in the north*, *Ibid.*, n.238.

<sup>242</sup> Media articles include: *British MEP actor pushes for gay rights in the north*, *Ibid.*, n.238; *Michael Cashman MEP meets Northern Cyprus leaders over anti-gay law*, *Ibid.*, n.239; *Michael Cashman Advocates for Law Change in Northern Cyprus*, *Ibid.*, n.240.

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and the UK and the colonial heritage of the criminal law. It is also notable that, among the arguments deployed in favour of reform, the removal of the colonial legacy was a key justification.

A number of visits to the TRNC were also made by Ms. Yannakoudakis for the purpose of advocating for legal reform. In 2011, for example, Ms. Yannakoudakis met with former President Eroğlu and secured an unofficial undertaking that the reform to section 171 would take place.<sup>243</sup> In letters between Ms. Yannakoudakis and the office of former President Eroğlu in early 2012, President Eroğlu emphasised the recognition of the superiority of the decisions taken by the ECtHR in national law, pledging again that steps would be taken to revoke sections 171-173.<sup>244</sup> In 2013, Ms Yannakoudakis returned to the TRNC and met with deputies of the Assembly and members of CTP, the DP and the TDP in a bid to revive the reform effort and ensure the Assembly approved the amendments to the 1959 Criminal Code.<sup>245</sup>

Numerous press releases were also issued by the EU LGBTI Intergroup including, amongst others, to publicise arrests under section 171 and the visits by MEPs.<sup>246</sup> The October 2011 arrest of Mr. Sarris was heavily criticised by Lord Cashman,<sup>247</sup> Ms. Theocharous and Mr. Ioannis Kasoulides.<sup>248</sup>

Following Ms. Theocharous' statement in 2012 which urged the TRNC to cease the prosecution of citizens for their sexual orientation, the then-President Eroğlu called on the European Parliament and the international community to exert pressure on Turkey to find a solution to the "Cyprus Problem," so as to ensure the implementation of EU law across the whole island.<sup>249</sup>

Domestic efforts to push for reform were certainly amplified and to some extent advanced by the engagement of the EU, and particularly by the involvement of

members of the EU LGBTI Intergroup. Some have even gone so far as to suggest that the 2014 reforms could not have been achieved through purely domestic efforts.<sup>250</sup>

<sup>243</sup> Parikiaki, *Cypriot British (MEP) Maria Yannakoudakis to meet Eroglu*, 10 October 2013 (available at: <http://www.parikiaki.com/2013/10/cypriot-british-mep-maria-yannakoudakis-to-meet-eroglu/>).

<sup>244</sup> Homoloji, *EP member Yannakoudakis criticises gay arrests and moratorium on Northern Cyprus*, 9 February 2012 (available at: <https://www.homoloji.com/2012/02/ap-uyesi-yannakoudakisden-kuzey-kbrsa.html>).

<sup>245</sup> *Cypriot British (MEP) Maria Yannakoudakis to meet Eroglu*, *Ibid.*, n.243.

<sup>246</sup> *3 men arrested for 'acts against nature': Members of the European Parliament call for their immediate release*, *Ibid.*, n.139; The European Parliament's LGBTI Intergroup, *Two more arrests for homosexuality in the north of Cyprus*, 1 February 2012 (available at: <https://lgbti-ep.eu/2012/02/01/two-more-arrests-for-homosexuality-in-the-north-of-cyprus/>).

<sup>247</sup> ILGA-Europe, *Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe*, 2011, p.58 (available at: [https://www.ilga-europe.org/sites/default/files/Attachments/annual\\_review\\_inside.pdf](https://www.ilga-europe.org/sites/default/files/Attachments/annual_review_inside.pdf)).

<sup>248</sup> *3 men arrested for 'acts against nature': Members of the European Parliament call for their immediate release*, *Ibid.*, n.139.

<sup>249</sup> *Two more people in homosexual relations arrested in northern Cyprus*, *Ibid.*, n.161.

<sup>250</sup> Ms. Derya, Deputy of the Assembly of the TRNC – Interview with HDT, 5 April 2019.



*"These arrests are in full breach of international law and the human right to private life. Charging them is illegal under human rights law, denies their most basic rights, and is wholly unnecessary as no harm was done. Consenting adults have the right to engage in sexual intercourse with people of the same sex, these men must be freed now!"*

**Ms. Theocharous/  
Ioannis Kasoulides,**  
MEP and Member of  
the EU LGBTI Intergroup,  
October 2011

*"The prosecution of citizens based solely on their sexual preference constitutes a vulgar violation of elementary human rights. I call upon the regime subordinate to Turkey in the occupied area of Cyprus to immediately release the two men and desist from any legal action against them." She added: "I call upon the European Parliament and the international community to exert pressure on Turkey for the solution of the Cyprus problem, so that the EU's 'acquis communautaire' is consequently implemented throughout Cyprus."*

**Ms. Theocharous,**  
MEP and Member of the  
EU LGBTI Intergroup,  
February 2022



*"Thanks to Michael's visit to Northern Cyprus, our demands for equal rights were heard by political leaders. Undoubtedly, most pressing for us is to fully decriminalise homosexuality, equalise the age of consent and better protect LGBTQ people under the law."*

**Mr. Reshat Shaban,**  
QCA, Interview with  
Pink News,  
16 April 2012

*"...if we don't amend this article, in one month, Turkey will be sentenced and found to be violating human rights."*

**Ms. Özdenefe,**  
Legal and Political  
Affairs Committee  
meeting minutes,  
15 January 2014

## Turkey

The relationship with and connection to Turkey cannot be discounted as a further factor in the legal developments in the TRNC. Whilst we can only speculate about possible bilateral engagement and pressure from the government of Turkey, the shift in Turkish policy from 2003 towards greater EU integration,<sup>251</sup> together with Turkey being directly implicated in the struggle to repeal sections 171-173 through litigation before the ECtHR (see the next sub-section on Litigation before the European Court of Human Rights), may have resulted in some pressure being applied from the Turkish authorities with respect to reforming the 1959 Criminal Code. Unlike the TRNC, Turkey's criminal law had never criminalised private consensual same-sex sexual conduct between adults, so there was no principled reason for Turkey to want to see the law maintained.

Given the significance of the EU relationship and the Turkey connection, it is unsurprising that these engagements were influential. Nevertheless, the importance and effectiveness of direct, face-to-face and cooperative dialogue between prominent MEPs and government and Assembly officials in the TRNC cannot be understated, especially when this was coupled with the campaigning work of the tight-knit domestic civil society community.

## Litigation before the ECtHR

The use of litigation was another strategy employed by the IAH and the association's supporters in order to prompt the TRNC government to reform the 1959 Criminal Code. Frustrated by the inertia of government and the Assembly, and cognisant of the influence of the EU and Turkey and the well-established case law of the ECHR on the issue of criminalisation, the IAH looked to the ECtHR for assistance. This strategy proved instrumental, as the case brought before the ECtHR in 2012 was sighted as a key reason for why the Assembly should take action and reform the 1959 Criminal Code before being instructed to do so by an external body.<sup>252</sup>

In 2012, H.Ç. (a citizen of the TRNC) supported by the IAH and local lawyer, Mr. Polili, and the Human Dignity Trust, issued proceedings in the ECtHR against the Government of Turkey (as the competent authority in the TRNC), on the basis that the ECHR, to which Turkey is a party, prohibits the criminalisation of private consensual same-sex sexual conduct between adults by virtue of the rights to privacy and family life, freedom from discrimination and freedom from inhuman and degrading treatment (*'H.Ç. v. Turkey'*).<sup>253</sup>

The ECtHR has held on a number of occasions that laws similar to the laws of the TRNC criminalising same-sex sexual conduct violate the right to privacy under

<sup>251</sup> *The European Union and the Cyprus Problem: a Story of Limited Impetus*, *Ibid.*, n.224.

<sup>252</sup> Assembly of the Turkish Republic of Northern Cyprus, *Minutes Journal*, 36th Session, 20 January 2014 (available at 3.d. of the Annex).

<sup>253</sup> *H.Ç. v. Turkey*, Application no. 6428/12, ECtHR, lodged on 30 January 2012 (available at 1.e of the Annex).

## DRIVERS OF REFORM



European Court of Human Rights.

Article 8 of the ECHR.<sup>254</sup> In particular, in 1993, the Court held, with an overwhelming majority of 8 to 1, in *Modinos v. Cyprus*, that the identical provisions in the Republic of Cyprus violated Article 8.

Notwithstanding that the *Modinos* case was a pivotal judgment and an important trigger for reform in the Republic of Cyprus (although the changes to the law did not materialise until 21 May 1998),<sup>255</sup> and despite being well reported in the TRNC, civil society in the TRNC was unable at the time to capitalise on the ground-breaking decision due to the absence of an organised movement.<sup>256</sup> Nevertheless, the *Modinos* case was used by the IAH and others to support their campaign for reform and was central to the *H.Ç. v. Turkey* case. In fact, in their written observations, the Turkish authorities acknowledged and conceded that should a case be referred to the TRNC Constitutional Court, the Court would follow the relevant judgments of the ECtHR, as it has done in previous cases and find that sections 171-173 were unconstitutional.

Notably, the Republic of Cyprus ratified and incorporated the ECHR into its domestic legal framework in 1962 by Law No. 39/1962, the effect of which was to subject the Republic of Cyprus to the jurisprudence and jurisdiction of the ECtHR. This law and its effect remain part of the TRNC's legal framework following the TRNC's self-proclaimed independence.<sup>257</sup> In the hierarchy of legal norms, the ECHR ranks higher



"Another important matter about this subject is this; some people did not mention it that much but it has been mentioned by some... They said things like 'You are preparing this law to save Turkey...' I should say this very clearly. Check the date 1993, it is very important. 21 years ago... the European Court of Human Rights took a decision which is known as the *Modinos Decision*.... Under normal conditions, the Turkish Republic of Northern Cyprus should have removed article 171 already 171 times. Here is the reason for that....The European Convention on Human Rights was signed in 1962, by the Judicial Body of the Turkish Republic of the Northern Cyprus, therefore, it is a part of the internal law of the Turkish Republic of Northern Cyprus and since it is this way, the European Convention on Human Rights; that decision of the European Court of Human Rights is to be deemed binding for us, not indirectly, but rather directly. Therefore, we should have abolished that 171 times in 21 years already."

**Mr. Erhürman,**  
Assembly of the TRNC:  
Minutes Journal,  
35th Session,  
16 January 2014

<sup>254</sup> *Dudgeon v United Kingdom* (A/45): 1981 4 E.H.R.R. 149; *Norris v Ireland* (A/142): (1988) 13 E.H.R.R. 186.

<sup>255</sup> Amending Law 40(I)/98; Nicos Trimikliniotis and Stavros Stavrou Karayanni, *The situation concerning homophobic and discrimination on grounds of sexual orientation*, March 2008, p.11 (available at: <https://www.statewatch.org/news/2010/jan/cyprus-homophobia-report.pdf>).

<sup>256</sup> *The solution process on the island will bring opportunities to Cypriot LGBTs*, *Ibid.*, n.164.

<sup>257</sup> Council of Europe, *Details of Treaty No.005*, (available at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005>).

"It is unlikely to be a coincidence that the TRNC Parliament drafted a bill in order to repeal the relevant articles of the criminal code immediately after it was communicated to them that the Human Dignity Trust lodged a case to the European Court of Human Rights."

**Mr. Polili,**  
Advocate, April 2013

"...there is a case pending against the Republic of Turkey before the European Court of Human Rights because of the law in the Turkish Republic of Northern Cyprus. Moreover, twenty years ago, because of exactly the same law, the Southern Greek Cypriot Administration was sentenced on the grounds of a human rights violation in the *Cyprus vs. Modinos* decision. As a result, the law was changed, but do you want us to follow the same path? So we should wait two more weeks or so when the hearing against the Republic of Turkey is held on the 15th and Turkey is sentenced because of this law? The Law is non-existent in their country, but it is in ours. As a Parliament shall we bury our heads in the sand or are we going to change the law only after being sentenced? Can't we keep up with the world?"

**Mr. Erhürman,**  
deputy of the  
Assembly of the TRNC,  
Parliamentary Debate  
of the Assembly,  
20 January 2014

than other domestic law and has superior force over municipal laws such as the 1959 Criminal Code.<sup>258</sup> Significantly therefore, sections 171-173 of the 1959 Criminal Code had long been incompatible with the ECHR and should have been amended. This point was powerfully made by Mr. Erhürman before the Assembly in January 2014.

Moreover, the reforms by the Republic of Cyprus pursuant to *Modinos* (and the resulting European pressure) had broken the symmetry between the criminal codes of the TRNC and the Republic of Cyprus for the first time since 1929. This glaring difference threw into question whether the reforms made in the Republic of Cyprus should have been mirrored in the TRNC.

In light of the well-established case law of the ECtHR, especially *Modinos*, and the significance of the ECHR within the TRNC legal framework, the likelihood of obtaining a positive outcome before the ECtHR, which could act as yet another pressure point on the TRNC authorities, was high. However, by 2013, the TRNC government had submitted a bill to amend the provisions of the 1959 Criminal Code dealing with sexual offences, including sections 171-173,<sup>259</sup> and this was referenced by Turkey as a reason to dismiss the ECtHR case. It is not clear to what extent the filing of the *H.Ç. v. Turkey* against Turkey prompted legislative reform, although there was much discussion and speculation about the significance of the case both publicly and politically.<sup>260</sup>

It seems evident that the ECtHR case accelerated a process that had been underway for some time, and it certainly played a contributory role in the Assembly's decision to pass the Amendment Bill in 2014, thus avoiding admonishment from the ECtHR.

The passage of the 1959 Criminal Code reforms through the Assembly and the Presidential assent on 6 February 2014 effectively brought the ECHR court proceedings to a conclusion as the relief sought in the case had been achieved. The Human Dignity Trust therefore submitted a letter to the ECtHR on 1 April 2014 seeking to have the case discontinued. The ECtHR sat on 3 June 2014 and, pursuant to the request, decided to strike the case from its list, thereby formally ending the proceedings.

<sup>258</sup> Article 90(5) TRNC Constitution (can be found at 1.a of the Annex).

<sup>259</sup> Amendment Law, 14 February 2013 (available at 1.c. of the Annex).

<sup>260</sup> Assembly of the Turkish Republic of Northern Cyprus, *Minutes Journal*, 35th Session, 16 January 2014, p. 45 – 51 (available at 3.c. of the Annex).



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## DRIVERS OF REFORM

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### A Package of Reform

When the Amendment Bill was introduced to the Assembly in March 2013, it proposed changes to 44 sections of the 1959 Criminal Code. Effectively, the Amendment Bill sought to overhaul the TRNC's sexual offences laws. Presenting the amendments to the 1959 Criminal Code as a package had a number of advantages: it provided the opportunity to address a variety of shortcomings in the criminal law; and it afforded some cover for more controversial issues, such as the decriminalisation of consensual same-sex sexual conduct. Importantly, the reforms, and particularly decriminalisation of sections 171-173, were made more credible and probable as part of this suite of reforms that the Assembly could and did coalesce behind and support.

The main focus of the IAH was on achieving the repeal of sections 171-173 of the 1959 Criminal Code, and certainly those provisions were a central component and purpose of the Amendment Bill. However, for both strategic and pragmatic reasons, the Amendment Bill contained a broad package of changes.

Those involved in the drafting of the Amendment Bill recognised that 2013 was an opportunity to not only amend sections 171-173, but also seek to address many of the other deficiencies in the TRNC's sexual offences laws. In this way, the legislative space that had been opened to tackle the criminalisation of consensual same-sex intimacy to some extent facilitated the opportunity for broader reform.

Equally, the broadening of the reform effort was not a zero-sum game as the Amendment Bill package likely provided some cover to the issue of decriminalisation. Rather than the reform targeting and highlighting one issue to be addressed, decriminalisation became just one aspect of the sexual offences laws amongst many that required modification. It has been suggested that presenting the reforms in this way, as a package, made the changes far more palatable for those more resistant to some of the proposed reforms.

### Other factors

#### Mr. Sarris' Arrest

Whilst there were many events which led to the eventual reforms in 2014, the arrest of Mr. Sarris in 2011 can be described as a stimulus. The arrest of three men in October 2011 (including Mr. Sarris) attracted the attention of the international community and media. This was predominantly due to the fact that Mr. Sarris was the former Cypriot Minister of Finance (and not a minister of the TRNC). The international criticism and engagement that followed the arrests placed the spotlight firmly on the TRNC and the continued existence and enforcement of section 171. The attention this created would have been hard to ignore and numerous pledges to reform the law soon followed. To what extent this was a result of the furore surrounding Mr. Sarris is hard to fully assess, but it was no doubt a factor.

Conversely, some observers noted that the Sarris arrest may have actually been somewhat counterproductive to the reform effort. Some of the complexities of the case, especially the allegations that offences had been committed against a minor,



*"All of our efforts to amend the law have been futile and Turkish Cypriot authorities are reluctant to show any good will. Despite the promises to amend the law authorities still charge people with this archaic law. The situation shows that Turkish Cypriot authorities have no courage to defend human rights. We are very pleased to show a good example of international solidarity with our work together with the Human Dignity Trust."*

**IAH,**  
Interview with  
PinkNews,  
7 February 2012

*"We decriminalised homosexuality but we also changed that whole section (of the code) to modernise laws protecting human rights."*

**Ms. Derya,**  
Deputy of the CTP,  
Reuters - Nicosia,  
28 January 2014

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*"[R]eligion is not the first priority of Turkish Cypriots and they look at issues from a social perspective rather than a religious perspective."*

**Mr. Harmancı  
(Mayor of Nicosia),**  
- Interview with HDT,  
1 March 2019

was described as adding fuel to the fire of some of the prejudices against LGBT people and emboldened opponents and the arguments that they were deploying to oppose decriminalisation, such as the protection of children.

### **Absence of Significant and Sustained Religious Opposition**

Although there was opposition to the decriminalisation of private consensual same-sex sexual acts between adults, particularly from conservative Islamic groups (which generally manifested itself in press comments and articles),<sup>261</sup> there was an absence of significant and sustained religious opposition and this arguably assisted in the process of introducing the Amendment Law and allowed for its relatively smooth enactment. One explanation for the lack of religious involvement in the reforms, is the desire of Turkish Cypriots to maintain a secular society in which religion and politics remain separate.<sup>262</sup>

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**261** Ms. Derya, Deputy of the Assembly of the TRNC – Interview with HDT, 5 April 2019. E.g. A platform (Gönüllü Teşekküller Platformu- Volunteer Organizations Platform) made up by Islamic organizations published press comments about rejecting decriminalisation of same sex relations – see Havadis Kibris, *Volunteer Organisation Platform shock statement!*, 24 January 2014 (available at: <https://www.havadiskibris.com/gonullu-tesekkuller-platformundan-sok-aciklama/>).

**262** Mr. Uzuner, Interview with HDT, 28 February 2019.





# **CONSULTATION, DRAFTING AND PASSAGE OF REFORM**



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## CONSULTATION, DRAFTING AND PASSAGE OF REFORM

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Following a number of unsuccessful attempts and early pledges by government officials in 2011-2012 to reform the 1959 Criminal Code, the Amendment Bill was finally introduced in March 2013 and enacted in February 2014. The passage of reform between 2013 and 2014 was however discontinuous, with changes in government both suspending and resurrecting the Amendment Bill. Ultimately, it appears that the re-emergence of the CTP and their deputies in the July 2013 general election proved decisive in getting the Amendment Bill over the line. The newly formed CTP-led government was quick to re-table the Amendment Bill to the Assembly shortly after it came into office. With the help of NGOs and certain government figures, the Legal and Political Affairs Committee ('LPA Committee') developed the Amendment Bill and attempted to address the shortcomings of the 1959 Criminal Code with respect to same-sex intimacy and child protection. Finally, during Assembly debates, key figures such as Mr. Erhürman and Ms. Özdenefe gave powerful speeches in favour of the Amendment Bill, which enabled its prompt approval and passing on 27 January 2014.

### Drafting



In March 2013, the Amendment Bill was introduced to the Assembly and published in the Official Gazette on 27 March 2013.<sup>263</sup> According to online sources, the Amendment Bill was drawn up by the Prime Minister's EU Co-ordination Office as part of efforts to harmonise TRNC legislation with EU law.<sup>264</sup> The amendments were

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<sup>263</sup> Official Gazette, *Proposed legislation (bill) submitted to the Republican Assembly of the TRNC amending the Criminal Code Cap 154* (27 March 2013), (available in 3.e. of the Annex).

<sup>264</sup> QCA Facebook page, *Report of Decriminalisation of Homosexuality*, 12 April 2013 (available at: <https://www.facebook.com/queercyprus/posts/cyprus-today-exclusive-anil-isikhomosexuality-is-to-be-legalised-in-the-trnc-if/290873201044806/>).



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prepared in consultation with local legal advisers, police, immigration officials and human rights advocates, as well as experts from the EU, US and Turkey.<sup>265</sup>

The Amendment Bill proposed to repeal sections 171-173 of the 1959 Criminal Code, as well as eradicate gender discrimination within the sexual offences provisions, create greater legal protection for children against sexual abuse and address human trafficking.<sup>266</sup> It also introduced a new category of “sexual choice-based hate crime” under an amended section 152(2)(G). The proposed amendment stated that “any person, who performs an unlawful act against another person due to his/her sexual choice and sexual life, and/or insults that person or incites hatred or disgust against that person due to his/her sexual choice and sexual life, has committed a sexual choice based hate crime and can be sentenced to prison for up to three years if found guilty.”<sup>267</sup>



*“As with any legislative Acts, all civil organisations are welcome to express their views during discussions at the committee. If there is a need to revise some of the elements of Bill, it can be done.”*

**Mr. Erçin,**  
Head of the EU  
Co-ordination Office,  
Interview with  
Cyprus Today,  
6 April 2013

Civil society raised concerns early on about the initial draft Amendment Bill. Mr. Polili, for example, a lawyer/advocate in the TRNC and supporter of the QCA and the Turkish Cypriot Human Rights Foundation, said the amendment was still out of step with Europe in its terminology, and there was a need for changes.<sup>268</sup> He was particularly concerned about the use of the term “sexual choice” instead of “sexual orientation” in the amended section 152.<sup>269</sup>

Prior to being introduced to the Assembly, the Cabinet had approved the Amendment Bill and it was expected to go before the LPA Committee in mid-April 2013.<sup>270</sup> It appears, however, that the Assembly’s consideration of the Amendment Bill stalled in May 2013 with the collapse of the government of Prime Minister Küçük. An interim government was formed by June 2013 and an early general election took place on 28 July 2013.<sup>271</sup>

Following the election of July 2013, a new coalition government between the CTP and the DP was formed. The re-emergence of the CTP within this coalition government and the Assembly enabled three CTP deputies (Ms. Derya, Ms. Özdenefe and

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<sup>265</sup> QCA Facebook page, *Report of Decriminalisation of Homosexuality*. *Ibid.*, n.264.

<sup>266</sup> Parliament of the Republic Legal and Political Affairs Committee, Report for “Penal (Amendment) Law Proposal, L.P.NO:14/2/2013”, 2 January 2014 (available at 3.f of the Annex).

<sup>267</sup> Legal and Political Affairs Committee, Raw Minutes of Meeting, 7 January 2014, p. 30 (available at 3.a. of the Annex).

<sup>268</sup> QCA Facebook page, *Report of Decriminalisation of Homosexuality*. *Ibid.*, n.264.

<sup>269</sup> Legal and Political Affairs Committee, Raw Minutes of Meeting, 7 January 2014, p. 30 – 36 (available at 3.a. of the Annex).

<sup>270</sup> QCA Facebook page, *Report of Decriminalisation of Homosexuality*. *Ibid.*, n.264.

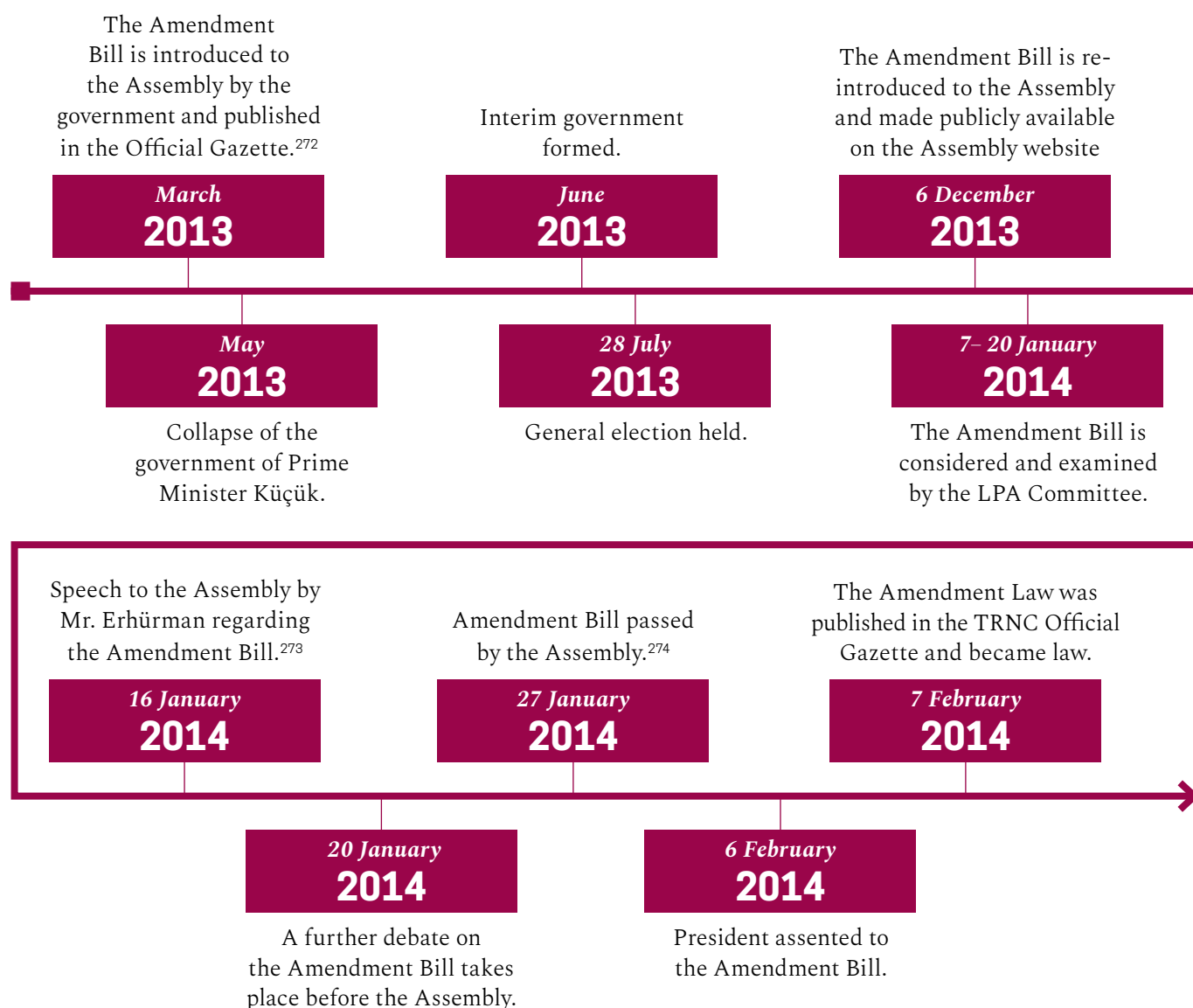
<sup>271</sup> Freedom House, *Freedom in the World - Northern Cyprus*, 2014 (available at: <https://freedomhouse.org/report/freedom-world/2014/northern-cyprus>).

## CONSULTATION, DRAFTING AND PASSAGE OF REFORM

Mr. Erhürman) to champion efforts to reform the 1959 Criminal Code. As described in the Drivers of Reform chapter, they played a significant role in reintroducing the Amendment Bill to the Assembly, developing the proposed changes at the committee stage in consultation with civil society groups and advocating for its approval.

### Passage of Reform

#### Timeline from proposal to enactment in 2013 - 2014



<sup>272</sup> Official Gazette, Proposed legislation (bill) submitted to the Republican Assembly of the TRNC amending the Criminal Code Cap 154 (27 March 2013), (available in 3.e. of the Annex).

<sup>273</sup> Tufan Erhürman, Parliamentary Speech before the Assembly (16 January 2014) (available at 3.c. of the Annex).

<sup>274</sup> Assembly of the TRNC: Minutes Journal, 36th Session, 20 January 2014 (available at 3.d of the Annex).

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## Committee Stage and Consultation

With a new coalition government in place, progress on the Amendment Bill before the Assembly could resume. The Amendment Bill was re-introduced to the Assembly on 6 December 2013 and made available on the Assembly website. The Amendment Bill was considered by the LPA Committee between 7 and 20 January 2014. Mr. Erhürman was the President of the LPA Committee, Mrs. Özdenefe was amongst its membership, and Ms. Derya offered her support as an expert at certain committee meetings.<sup>275</sup>

On all accounts, the LPA Committee comprehensively examined and deliberated the Amendment Bill and did so in a consultative manner.<sup>276</sup> Although, as far as we are aware, no large-scale public consultations took place or were undertaken by the Assembly, 10 different NGOs participated in the LPA Committee meetings, including: QCA, the Human Rights Foundation, FEMA and KAYAD (Kadından Yaşama Destek Derneği, which translates as ‘association of women to support living’), amongst others, and a number of key stakeholders provided their expert opinions.<sup>277</sup> This is clearly commendable, but the absence of an official public awareness-raising programme or consultation may have contributed to a lack of general understanding amongst the public about the changes to the 1959 Criminal Code.<sup>278</sup>

During the committee stage, members of civil society organisations contributed to the discussions by clarifying and suggesting revisions to certain sections of the Amendment Bill. For example, on 7 January 2014, Ms. Pasa of QCA, Mrs. Colak of the Turkish Cypriot Human Rights Foundation and Ms. Atli of KAYAD, joined the LPA Committee meeting as expert guests. They assisted in defining and incorporating terminology such as “gender, sexual orientation and sexual identity” into the new sections 151 and 152.<sup>279</sup>

Furthermore, during the meeting of 15 January 2014, Mr. Ergun Kizilokgil and Mr. Rana Kenanoglu of the Public Prosecutor’s Office assisted committee members in their attempt to introduce hate speech laws. The merits of basing the new section 171 on pre-existing defamation provisions in section 194 were examined.<sup>280</sup>

Despite assistance from guest experts, there was an absence of support from expert legislative drafters, hence the LPA Committee was responsible for revising and redrafting the Amendment Bill. As a result, the final Amendment Bill did suffer from a number of drafting issues.

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<sup>275</sup> For example, Dogus Derya joined the LPA Committee meeting of 7 January 2014 as a guest.

<sup>276</sup> Assembly of the Turkish Republic of Northern Cyprus, *Minutes Journal, 35th Session*, 16 January 2014 (available at 3.c. of the Annex).

<sup>277</sup> Assembly of the Turkish Republic of Northern Cyprus, *Minutes Journal, 35th Session*, 16 January 2014 (available at 3.c. of the Annex).

<sup>278</sup> Assembly of the Turkish Republic of Northern Cyprus, *Minutes Journal, 35th Session*, 16 January 2014 (available at 3.c. of the Annex).

<sup>279</sup> Assembly of the Republic, Legal and Political Affairs Committee, *Minutes of the Meeting of 7 January 2014*, p. 30-36 (available at 3.a. of the Annex).

<sup>280</sup> Assembly of the Republic, Legal and Political Affairs Committee, *Minutes of the Meeting of 15 January 2014*, p. 61. (available at 3.b. of the Annex).

## CONSULTATION, DRAFTING AND PASSAGE OF REFORM

While the LPA Committee meetings were thorough and inclusive, there was a lack of public understanding about the Amendment Bill and a misconception that it was purely about decriminalising consensual same-sex sexual conduct.<sup>281</sup>

Mr. Erhürman sought to rectify those misconceptions through addressing them head on in his speeches before the Assembly.<sup>282</sup> However, a public consultation process may have been more beneficial and effective.

### Assembly Debates

Debates in the Assembly provided an opportunity for champions of the reform to set out powerful arguments in favour of amending the 1959 Criminal Code. Whilst the majority of deputies were in favour of the reforms and the debates were positive, there was some opposition as well as reports that the Amendment Bill was being referred to in a derogatory manner.<sup>283</sup>

The debates provided an opportunity for deputies to advocate for the reform to the 1959 Criminal Code and many of the arguments put forward in favour of the reforms centred on human rights issues, the discriminatory and archaic nature of the 1959 Criminal Code, psychological impacts of section 171, and wider developments across the world in terms of sexual offences.

Mr. Erhürman asked the deputies to consider the psychological impact of the criminalisation of consensual same-sex sexual acts and related stigmatisation, particularly on young boys.

Further, it was noted that consensual same-sex sexual acts had never been illegal in Turkey and it was therefore illogical for such acts to be criminalised in the TRNC.

The deputies also highlighted the deficiencies in the 1959 Criminal Code as arguments in favour of reform. They noted that the fact that the majority of the sexual offences could not be perpetrated by women was also nonsensical.

Although the comments in the debates were mostly positive, the progress of the Amendment Bill through the Assembly was not without some resistance. During the debates, some deputies raised concerns that the TRNC community was not ready for the proposed reforms, whilst others were apprehensive about certain language used in the Amendment Bill, specifically with respect to the proposed provisions regarding hate speech and a person's gender identity. The deputies struggled to agree upon wording which would stand the test of time, as it was noted that terminology on the subject of gender identity is continuously evolving.<sup>284</sup>

<sup>281</sup> Assembly of the Turkish Republic of Northern Cyprus, *Minutes Journal*, 35th Session, 16 January 2014, (available at 3.c. of the Annex).

<sup>282</sup> Assembly of the Turkish Republic of Northern Cyprus, *Minutes Journal*, 35th Session, 16 January 2014, (available at 3.c. of the Annex).

<sup>283</sup> As suggested by Mr. Tufan Erhürman during debate in the Assembly on 20 January 2014, p. 135 (available at 3.d. of the Annex).

<sup>284</sup> Assembly Debates: Legal and Political Affairs Minutes, 7 January 2014 (available at 3.a of the Annex).



*"... we are facing a big information pollution problem and this information pollution situation reflects to our parliamentarians through objections and complaints from the public. The primary form of information pollution is the assumption that this Law Proposal is simply a proposal that aims to exclude homosexual relationships from being deemed a crime."*

**Mr. Erhürman,**  
Speech before  
the Assembly,  
20 January 2014

*"What we actually do is ruin the psychological wellbeing of those people, because that is what happens if we promote hate speech, attack them in our newspapers all the time, if we always draw new cartoons and make jokes about their sexual orientation."*

**Mr. Erhürman,**  
Debate in the Assembly,  
20 January 2014

*"The community is ... very tolerant, curious and excited about the affairs of the world, with urges to come out of this closed and conservative system."*

**Ms. Derya,**  
Debate in the Assembly,  
20 January 2014

*"In the history of the Republic of Turkey, this has never been a crime...In other words, the Turkish public are ready for this and we are not? This is not acceptable."*

**Mr. Erhürman,**  
Debate in the Assembly,  
20 January 2014

*"A large majority do not accept this...I propose we re-negotiate the parts about these articles again in the Committee...the Turkish community of Cyprus has custom folkways, traditions and common manners...I suggest listening to the wider sections of the community."*

**Mr. Tore,**  
Debate in the Assembly,  
20 January 2014

*"This proposal is for an amendment of 44 articles and unfortunately, for the change in one of the articles, there are some people who try to name the law in funny un-tasteful ways. Only 3 articles among the 44 articles are about the subject which is talked about by some people in a foul way."*

**Mr. Erhürman,**  
Debate in the Assembly,  
20 January 2014

During the debates, Mr. Erhürman suggested that some were using derogatory terminology to refer to the Amendment Bill and particularly the proposals to repeal sections 171-173. This derogatory language is a further example of the discrimination and stigma that the LGBT community were facing.

Despite the concerns raised, which predominantly focused on the expected opposition to the Amendment Bill by the TRNC society, the Amendment Bill passed through the Assembly with relatively little resistance. The Assembly voted on the Amendment Bill on 27 January 2014. There were 28 votes in favour of the reform, one vote against and 21 abstentions.

Former President Eroğlu assented to the Amendment Law on 6 February 2014 and the legislation was published in the TRNC Official Gazette and became law on 7 February 2014.

## **Criminal Code (Amendment) Law - Key Changes**

The Amendment Law made changes to 44 sections of the 1959 Criminal Code, creating a far more contemporary sexual offences framework. Greater gender neutrality was created throughout the sexual offences chapter and there was an attempt to create a more appropriate penalty regime, which assessed the severity of an offence against the harm caused and the culpability of the attacker. Crucially, men and boys were recognised as potential victims of sexual offences, including rape and incest, and a contemporary consent provision was introduced into the statute. However, deficiencies remain as a result of issues with drafting and consultation, notably in areas regarding age of consent, unsatisfactory penalties in some cases of sexual assault, and the limited application of hate crime and hate speech laws.

Some of the key changes introduced by the Amendment Law are briefly outlined below.

### **Consent**

The Amendment Law explains that a person is able to provide consent if he/she "has the freedom and capacity to make a choice to give permission to do an act himself/herself."<sup>285</sup> It goes on to describe a number of scenarios where victims will not be deemed to have consented. For example, no consent is deemed given where the perpetrator has: used violence; detained the victim; if the victim was asleep or unconscious; if the victim has a physical disability that makes it impossible for the victim to grant consent; or if the victim took any substance against his/her will that weakens consciousness or causes drug-induced dizziness.<sup>286</sup> Furthermore, no consent is given if the sexual offences are committed by coercion, intentional deception, or where the victim is under the perpetrator's care.<sup>287</sup>

<sup>285</sup> Section 143(4) of the Amendment Law (available at 1.c of the Annex).

<sup>286</sup> Section 143(4)(A) of the Amendment Law (available at 1.c of the Annex).

<sup>287</sup> Section 143(4)(B) of the Amendment Law (available at 1.c of the Annex).



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While the Amendment Law is a significant step forward in terms of the incorporation of a statutory definition of consent,<sup>288</sup> the legislation fails to provide that, where consent is an issue, the accused must show that he/she took reasonable steps to determine if the other person consented to the sexual conduct. Therefore, further clarification over the definition would be desirable.<sup>289</sup>

### Rape

The offence of rape was expanded to include not just penile-vaginal penetration, but also the insertion of any part of the body or any object into other specified orifices.

*“the (i) insertion of a penis into the vagina, anus or mouth of any person who does not give consent to such act, (ii) insertion of any part of his/her body or any object, with sexual behaviour, into the vagina, anus or mouth of a person without the consent of such person.”*<sup>290</sup>

Not only has the rape offence expanded with respect to the scope of the offence, the definitions under the Amendment Law are more anatomical. For example, the definition of rape under the Amendment Law, as set out above, is much clearer and therefore provides greater protection than the rape provision under the 1959 Criminal Code.<sup>291</sup> In addition, the exception for marital rape has been removed.<sup>292</sup>

The penalties for rape and attempted rape are also much more stringent; life imprisonment and up to 10 years of imprisonment respectively.<sup>293</sup>

The Amendment Law has been modernised to include provisions that specifically protect “mentally disabled persons” against rape and attempted rape,<sup>294</sup> where the victim is not capable of providing reasonable consent. This is in addition to offences carrying longer sentences or larger fines when they are carried out against such mentally disabled people.

### Incest

Section 147 of the Amendment Law creates three offences regarding incest, which provide greater protection to victims.

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<sup>288</sup> Sections 153(1) and 149 of the Amendment Law (available at 1.c. of the Annex).

<sup>289</sup> Section 143(4)(B) of the Amendment Law (available at 1.c of the Annex).

<sup>290</sup> Sections 144-146, 153(1), 153(2), 153(3)(A), 153(3)(B) of the Amendment Law (available at 1.c. of the Annex).

<sup>291</sup> Section 144 of the 1959 Criminal Code (available at 1.b of the Annex).

<sup>292</sup> Section 144 of the 1959 Criminal Code (available at 1.b of the Annex).

<sup>293</sup> Section 145 and 146 of the Amendment Law (available at 1.c of the Annex).

<sup>294</sup> Sections 155(1) and 155(2) of the Amendment Law (available at 1.c of the Annex).

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Section 147(2) provides that a person over the age of 18 commits a serious crime if he/she enters into sexual relations with his/her child/grandchild/sibling/adopted child or child of his/her sibling who is below the age of 18.<sup>295</sup> The offence is committed regardless of whether consent has been given and therefore recognises the vulnerability of victims. The penalty for this offence is life imprisonment, which is commensurate with the seriousness of the acts and addresses the inadequate penalty of seven years under the 1959 Criminal Code.

The other provisions in section 147 of the Amendment Law create minor crimes with reduced penalties (up to six months' imprisonment or a fine) if:

- Any person above 18 has sexual intercourse with his/her grandchildren, child, mother, father, grandfather, grandmother, aunt, uncle, maternal uncle or aunt who is more than 18 and aware of the familial relation between the two.<sup>296</sup>
- Any person between 16 and 18 engages in sexual relations with a sibling/step-sibling/adopted sibling who is also between 16 and 18. This therefore introduces a so-called "Romeo and Juliet provision."<sup>297</sup>

All of the incest offences contain gender-inclusive language – "any person" can be a perpetrator or victim, thereby correcting the deficiency of the 1959 Criminal Code where female aggressors were not recognised, and the list of potential victims now includes both male and female family members. The offences also recognise contemporary family units by extending protection to step-siblings and adopted children.

Both sections 147(1) and 147(3) do not explicitly state that the sexual intercourse must be "consensual." Though this can be implied from the rest of the provision, and in practice a perpetrator would be charged under the rape provision in section 145 if a non-consensual sexual act took place with a relative, these provisions would benefit from greater clarity in this regard.

### **Sexual assault**

Section 152 of the Amendment Law creates two sexual assault offences to replace the indecent assault provisions under the 1959 Criminal Code:

- Section 152(1) provides that "any person who makes intentional physical contact with any other person with sexual behaviour without that person's consent" commits a minor crime, which is punishable by up to three years imprisonment.<sup>298</sup>
- Section 152(2) provides a list of aggravating factors which converts the crime into a serious crime which is punishable by up to four years of imprisonment, for

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<sup>295</sup> Section 147(2) of the Amendment Law (available at 1.c of the Annex).

<sup>296</sup> Section 147(1) of the Amendment Law (available at 1.c of the Annex).

<sup>297</sup> Section 147(3) of the Amendment Law (available at 1.c of the Annex).

<sup>298</sup> Section 152(1) of the Amendment Law (available at 1.c of the Annex).

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example if the offence is committed against a wife, partner, ex-wife or ex-partner; against a child, grandchild, mother, father, sibling, grandfather, grandmother regardless of whether the person is adopted; against a person between 16 and 18 or with mental disability; or by using a weapon or physical violence; via threat; against a person against whom he/she is responsible for protection or care; or because of his/her hatred or prejudice towards the victim's gender, sexual orientation or sexual identity.<sup>299</sup>

These provisions are an improvement on the provisions from the 1959 Criminal Code – sexual assault is defined more precisely as ‘intentional physical contact with sexual behaviour’ (compared with the vague concept of ‘indecent assault’ under the 1959 Criminal Code). The Amendment Law also recognises a number of aggravating factors, which if present, result in the perpetrator facing increased penalties.

There are still deficiencies with section 152(2), since the maximum punishment for the notional ‘serious crime’ is only four years. Though this is an improvement on the penalty of two years for a misdemeanour under the 1959 Criminal Code, there may be circumstances where this would be lenient and far below the sentences imposed in other countries for the equivalent offence (e.g. sexual assault carries a ten year prison sentence in the UK). Moreover, although the sexual assault provisions appear to be gender neutral, an act committed against a person's husband or ex-husband is not listed as one of the aggravating factors under section 152(2).<sup>300</sup>

### Child Sexual Offences

To complement the offences of rape and sexual assault described above, sections 153 and 154 of the Amendment Law create crimes of rape and sexual assault against a child under the age of 16.<sup>301</sup> Both sections 153 and 154 introduce greater protection for children against sexual abuse and exploitation with the penalties substantially higher than under the 1959 Criminal Code. For instance, the penalty for attempted rape of a child under the age of 16 increased to imprisonment of up to 15 years,<sup>302</sup> as compared with the previous penalty of imprisonment of three years for an attempt to defile girls under the age of 13. Furthermore, the scope of those protected has also expanded to children of both genders under the age of 16, as compared with only girls under the age of 13 under the previous legislation.

The principal offence in section 153(1), which carries a life sentence, includes penile and non-penile penetration and corrects the gender imbalances under the 1959 Criminal Code by recognising that both boys and girls can be victims.<sup>303</sup> Attempted

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<sup>299</sup> Section 152(2) of the Amendment Law (available at 1.c of the Annex).

<sup>300</sup> Section 152(2)(B) of the Amendment Law (available at 1.c of the Annex).

<sup>301</sup> Section 153 of the Amendment Law (available at 1.c of the Annex).

<sup>302</sup> Section 153(2) of the Amendment Law (available at 1.c of the Annex).

<sup>303</sup> Section 153(2) of the Amendment Law (available at 1.c of the Annex).

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rape under section 153(2) is punishable by up to 15 years imprisonment (as compared with ten years for attempted rape of a person over 16).<sup>304</sup>

Section 154(1) largely mirrors the sexual assault provision in section 152. It provides that a serious crime punishable by 16 years imprisonment is committed by a person “above the age of eighteen [who] enters into intentional physical contact with sexual behaviour with a child...or makes the child touch him/her.”

Also, as with many of the other reformed sections, section 153(3) and 154(2) provide for a lesser sentence for attempted offences and those committed by those under 18 years old. Both include “Romeo and Juliet” type provisions for rape against children and sexual assault against children where the perpetrator is under the age of 18 and their victim is up to two years younger than them.<sup>305</sup> For example, in the case of section 154(2)(B), if the “Romeo and Juliet” age conditions are met and there is intentional physical contact by the perpetrator, then there is no sexual assault offence committed.

Despite the improvements, there is, however, an inconsistency between the above provisions and the incest provisions, since children above the age of 16 but under the age of 18 are not afforded protection. This would be resolved by extending protection to all children under 18, which would be in line with the Convention on the Rights of the Child.

### **Hate speech**

Sections 171 and 172 of the Amendment Law introduced provisions to protect individuals subjected to “hatred, insult or humiliation” due to their “gender and/or sexual orientation and/or gender identity”, and raised the severity of this offence to a serious crime when committed via social media and therefore punishable for up to four years of imprisonment and a monetary fine.<sup>306</sup>

Due to the connection with defamation, an individual can only be prosecuted if there is hate speech towards a specified individual, and not a group of people such as the LGBT community. Though these provisions were originally designed to combat hate speech, they are considered ineffective as in practice they merely amount to an extension of pre-existing defamation laws and fall short of creating a new, dedicated law to tackle hate speech.

Sections 171 and 172 of the Amendment Bill as initially presented to the Assembly by the LPA Committee proposed that a person commits the crime of hate speech by “speak[ing] ill” of a gender, sexual orientation or gender identity of a person or group

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**304** Section 153(2) of the Amendment Law (available at 1.c of the Annex).

**305** Section 153(3)(B) and section 154(2)(B) of the Amendment Law (available at 1.c of the Annex).

**306** Section 171 and 172, Chapter 154, Amendment Law (available in 1.c of the Annex).

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of people.<sup>307</sup> However, when introduced to the Assembly, the UBP and DP rejected the proposed sections claiming that they were too broad. As a result, the provisions were modified to be based on the pre-existing law of defamation.<sup>308</sup>

### Hate crime

Hate crime is protected under section 152(2), which provides that if the perpetrator commits sexual assault because of his or her hatred or prejudice towards the victim's gender, sexual orientation or sexual identity the offence will be punishable by up to four years of imprisonment.<sup>309</sup> This particular hate crime is confined to sexual assault cases only and there is no equivalent general assault hate crime offence based on the hatred of a person's sexual orientation.

In the Government Observations report from 28 June 2013, an offence of "hate crimes against sexual orientation" was proposed at section 152 and it was intended to cover all illegal conduct (including insults or humiliation due to sexual orientation or sexual life).<sup>310</sup> However, this provision was removed from the Legal and Political Affairs Committee Report<sup>311</sup> presented to the Assembly on 20 January 2014. There is little commentary or explanation as to why the proposed general offence was not included in the Amendment Law.

Overall, therefore, whilst these changes brought about by the Amendment Law provide additional protections for the LGBT community, there are limitations. In addition, the Amendment Law generally is in need of further reform to address some of the continuing deficiencies.

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**307** Parliament of the Republic Legal and Political Affairs Committee, Report for "Penal (Amendment) Law Proposal (L.P.No:14/2/2013), Article 37" (available at 3.f of the Annex).

**308** Ms. Özdenefe, Deputy of the Assembly of the TRNC – Interview with HDT, 1 March 2019.

**309** Section 152(2) of the Amendment Law (available at 1.c of the Annex).

**310** Official Gazette of the TRNC, *Proposed legislation (bill) submitted to the Republican Assembly of the TRNC amending the Criminal Code Cap 154*, 27 March 2013 (available at 3.e of the Annex).

**311** Parliament of the Republic Legal and Political Affairs Committee, Report for "Penal (Amendment) Law Proposal (L.P.No:14/2/2013)" (available at 3.f of the Annex).



# **THE POST-REFORM ENVIRONMENT**

# THE POST-REFORM ENVIRONMENT

## Implementation and Monitoring

There is no available evidence or information to suggest that following the passing of the Amendment Law, a comprehensive programme of implementation was developed and rolled out by the TRNC. The amendments to the 1959 Criminal Code, together with the enactment of other relevant laws such as the Family Law 2015 (which is discussed further below) and the ratification of the Istanbul Convention, for example, have raised awareness among the Turkish Cypriot authorities and community of issues of women's rights and equality. However, there appears to be a general absence of state implementation programmes, training and awareness-raising with respect to legal and policy changes, and this is particularly acute amongst administrative authorities.<sup>312</sup> Furthermore, the TRNC appears to lack the established apparatus and mechanisms to be able to undertake such functions.<sup>313</sup> The Gender Equality Department, for example, which is designed to be the primary body where research, policies and awareness raising mechanisms for women will be designed and supported, has yet to be fully established, despite legislation having been passed in 2014.<sup>314</sup>

There is no equivalent department envisaged to tackle child rights or issues of diversity, including the rights of the LGBT people.

The gap in state implementation programmes has, to some extent, been filled by civil society groups (such as QCA, Envision, the Turkish Cypriot Human Rights Foundation, KAYAD and FEMA) who have and continue to undertake awareness-raising campaigns on gender, equality and women's rights.<sup>315</sup> This work is, however, no substitute for a comprehensive state-led programme of implementation.

More recently, there have been strides to bolster police capacity and capabilities with the opening of a specialised anti-violence unit whose purpose is to tackle domestic violence.<sup>316</sup> However, additional efforts are required.

Monitoring and evaluating the implementation of legislation is another area that is a major challenge in the TRNC.<sup>317</sup> Such post-legislative assessment is critical to ensure laws are appropriate and are applied as originally intended by lawmakers. Yet, we have

<sup>312</sup> Gender Equality and Anti-Discrimination against Women – List of Issues Ibid., n.13.

<sup>313</sup> Gender Equality and Anti-Discrimination against Women – List of Issues Ibid., n.13.

<sup>314</sup> Gender Equality and Anti-Discrimination against Women – List of Issues Ibid., n.13 – the Turkish Cypriot authorities adopted a law to establish a Gender Equality Department.

<sup>315</sup> Gender Equality and Anti-Discrimination against Women – List of Issues Ibid., n.13.

<sup>316</sup> Cyprus Today, *Women March for their Rights*, 1 December 2018 (available at: <https://www.pressreader.com/cyprus/cyprus-today/20181201/282995400936630>).

<sup>317</sup> Gender Equality and Anti-Discrimination against Women – List of Issues Ibid., n.13.



*"[T]he most significant challenge in the Turkish Cypriot Community is the implementation of the existing international and local legal framework."*

**Cyprus Dialogue Forum,**  
70th Session of the  
CEDAW Committee  
on Cyprus, July 2018

*"It is important to speed up the formation of the Gender Equality Department and the institutionalisation of raising awareness of gender equality."*

**Ms. Ayşegül  
Baybars Kadri,**  
Interior Minister,  
December 2018

*"[I]t should be noted that the authorities are failing to provide training and raising the awareness within administrative authorities such as the police department and judicial bodies who are at the first line of action in dealing with the violation of rights and cases of discrimination."*

**Cyprus Dialogue Forum,**  
70th Session of the  
CEDAW Committee  
on Cyprus, July 2018

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found no evidence that such monitoring is happening habitually nor that there has been a post-legislative assessment of the Amendment Law. According to civil society groups, the Turkish Cypriot authorities do not have official data or systematic records of cases of sexual assault and rape, which compounds the problem.<sup>318</sup> The collection and retention of reliable data and statistics on sexual offences is essential for on-going monitoring and evaluation.

## Positive outcomes

### Greater openness within and visibility and awareness of the LGBT community

It has been reported that the repeal of sections 171-173 has had an empowering impact on the LGBT community, with more LGBT people feeling able to be more open and visible.<sup>319</sup>

The Pride marches exemplify this shift and have further facilitated visibility. A Pride march was held for the first time in 2014. Since then, Pride marches have been held every year with ever growing strength.<sup>320</sup>



Since the 2014 reform, there has been greater public support from political leaders - something that was previously extremely rare. For example, the Mayor of Nicosia, Mr. Harmancı, has sought to publicly support and align with the LGBT community.

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<sup>318</sup> Gender Equality and Anti-Discrimination against Women – List of Issues Ibid., n.13.

<sup>319</sup> Ms. Derya, Deputy of the Assembly of the TRNC – Interview with HDT, 5 April 2019; Mr. Uzuner, Interview with HDT, 28 February 2019.

<sup>320</sup> LGBTI News Turkey, *Cyprus Pride March – Out and Proud 2019*, 6 May 2019 (available at: <https://lgbtinewsturkey.com/2019/05/06/cyprus-pride-march-out-and-proud-2019/>).

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In addition to raising the rainbow flag since becoming Mayor of Nicosia, Mr. Harmancı has organised various seminars to increase awareness of inequality and discrimination, as part of the International Day Against Homophobia, Transphobia and Biphobia ('IDAHOBIT'), and launched other initiatives, such as decorating roundabouts in Nicosia with rainbow banners.<sup>321</sup> Mr. Harmancı has also signed QCA's LGBTI+-Friendly Local Governance Protocols, which seek to create greater protection for the LGBTI community.<sup>322</sup>

### Strengthening of LGBT civil society

LGBT civil society groups have continued and strengthened their work and capacity.

#### QCA

QCA, for example, has refocused its energy away from an emphasis on legal reform to greater grassroots support and advocacy, and has run a variety of programmes and events since January 2014, which are aimed at protecting as well as building acceptance of LGBTI people in the TRNC. The QCA launched the Unspoken project in 2015 in collaboration with the Thomson Foundation and the Cyprus Community Media Centre funded by the EU under the Cypriot Civil Society in Action grant scheme. It was a two-year project that aimed to raise greater awareness and strengthen dialogue in the TRNC on the rights of LGBTI people. The programme encompassed a variety of activities, including: a media monitoring report, opinion surveys and a billboard campaign.

The billboards campaign launched on 1 November 2016 and was rolled out across the TRNC. The billboards were brightly coloured, with rainbow backgrounds and simple slogans that read, for example, "Brother Kamil, I'm a lesbian" or "Auntie Mediha, I'm gay."

The aim of the billboards was to raise awareness and promote social change. While most of the TRNC population were supportive and accepting of the billboards, some people took offence and used social media to condemn the campaign, claiming they were



*"Where all the colours live together."*

**Mr. Harmancı**  
(Mayor of Nicosia),  
Interview with HDT,  
1 March 2019

*"Take steps to protect the rights and the liberties of LGBTI+ individuals, to undertake egalitarian, liberal, transparent and participatory local governance practices in the district I am running for."*

**Queer Cyprus**  
**Association's LGBTI+**  
**Friendly Municipality**  
**Protocol,**  
2018



<sup>321</sup> LGBTI News Turkey, *QCA's LGBTI+ Friendly Municipality Protocol*, (available at: <https://lgbtinewsturkey.com/2018/05/28/queer-cyprus-associations-lgbti-friendly-municipality-protocol/>).

<sup>322</sup> QCA's LGBTI+ Friendly Municipality Protocol, *Ibid.*, n.321.

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“provocative” and would “normalise homosexuality” which could “influence children to turn gay.”<sup>323</sup> Several billboards in Dikmen and Magusa were destroyed or defaced. The individuals who defaced the billboards have not yet been brought to justice.

Despite these pockets of resistance, QCA was undeterred and additional billboards were erected in 2017 to promote equality and freedom of the LGBTI community, bearing explanations of sexual orientation and gender identities such as lesbian, gay, heterosexual, transsexual and intersex.<sup>324</sup>

The QCA has also established a free “Solidarity Line” to provide call centre support to LGBTI people.<sup>325</sup>

Finally, the QCA has more recently launched the Diversity of Colours project, which began in December 2018 and will run for 36 months. The project aims to improve access for LGBTI people to human rights and to prevent discrimination. The programme is funded by the EU under the “Cypriot Civil Society in Action VI” grant scheme.<sup>326</sup>

#### Envision

Following the 2014 reforms, Envision has continued to support the LGBT community through various initiatives. For example, on 17 May 2016, Envision together with QCA and MAGEM formed an organisation committee which included 11 civil society groups and the gender equality platform, representing 21 political parties, to organise a series of events for the IDAHOBIT.<sup>327</sup>

Envision has also worked with Civic Space, a technical assistance project for civil society established in September 2015.<sup>328</sup> The project is funded by the EU to help strengthen the role of civil society in the TRNC community as well as promote EU values to facilitate the integration of Turkish Cypriot civil society into the EU.

Envision’s other post-reform activities include:

- Collaborating with ILGA-Europe to organise a roundtable discussion in 2016 on the rights of transgender people;

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**323** ILGA-Europe, *Call for solidarity with Northern Cyprus*, November 2011, (available at: <https://www.ilga-europe.org/resources/news/latest-news/call-solidarity-LGBT-community-northern-cyprus>).

**324** LGBTI News Turkey, Kaos GL: *LGBTI billboards on the streets of Cyprus once more!*, September 2017 (available at: <https://LGBTnewsturkey.com/2017/09/05/kaos-gl-LGBT-billboards-on-the-streets-of-cyprus-once-more/>).

**325** ILGA-Europe Report 2018 (available at: [https://ilga.org/downloads/ILGA\\_Annual\\_Report\\_2018\\_eng\\_web.pdf](https://ilga.org/downloads/ILGA_Annual_Report_2018_eng_web.pdf)); Cyprus Today, *New LGBTI Helpline is launched*, 25 November 2017 (available at: [https://pressreader.com/@nickname12389405/csb\\_Ytul\\_B9G\\_YgfwxVJ9d6cZdPQdJK5IGrFhw2EW7jvc7WMYP6EJD-sbVDH8XA-QoHH](https://pressreader.com/@nickname12389405/csb_Ytul_B9G_YgfwxVJ9d6cZdPQdJK5IGrFhw2EW7jvc7WMYP6EJD-sbVDH8XA-QoHH)).

**326** Queer Cyprus Association, *Diversity of Colours Project* webpage, (available at: <http://www.queercyprus.org/en/diversity-of-colours/>).

**327** IGLYO, *Member of the Month*, 21 February 2019 (available at: <https://www.iglyo.com/iglyo-member-of-the-month-queer-cyprus-association/>).

**328** AB Bilgi Merkezi, *EU Aid Programme* (available at: <https://www.abbilgi.eu/en/eu-aid-programmes.html>).



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- Working with Gaile, the magazine supplement of the TRNC national newspaper Yeniduzen, to produce issues commemorating IDAHOBIT in May 2016, 2017, 2018; and
- Working in collaboration with the 17 May Organisation Committee and inviting the U.S. Embassy to attend the Nicosia Pride march in 2016.<sup>329</sup>

### Media

There have also been some notable changes in some of the media outlets approach to reporting LGBT issues, with greater visibility of the LGBT community and an improvement in language and tone. The Unspoken project's media report ('Media Report') found that there was an increase in the number of articles reporting on LGBTI issues in the TRNC between 2015 and 2017, and that those articles mainly used positive language despite occasional errors in terminology.<sup>330</sup>

An example of a more positive portrayal of LGBT people was seen in May 2016 as major newspapers, including Kibris Postasi and Kibris Gazetesi, covered Pride events and published QCA's IDAHOBIT press release. Almost all news sources tracked during May 2016 were positive, except one article which used "problematic" language in an interview with a transgender man.<sup>331</sup> Positive discourse also surrounded the reporting of LGBT film festivals, marches (including the International Women's Day march organised by the Gender Equality Platform) and protests.

This is a welcome development, albeit a slow evolution, and can help to reduce stigma and discrimination against the LGBT community in the longer term. A number of journalists in the TRNC have also received sensitisation training from the Thomson Reuters Foundation, to better equip them to report on issues impacting LGBT people.

However, there are challenges in regulating derogatory comments made about the LGBT community on social media, which has been widely used by citizens of the TRNC since 2010. NGOs have reported that there is substantial cyber-bullying directed towards the LGBT community.

Therefore, although progress has been made on how the media report on LGBT issues, additional work needs to be done to raise journalism standards and empower the TRNC Media Board to sanction inappropriate reporting and regulate the tone of communications on social media. Additional measures need to be taken to ensure that the LGBT community is protected.

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<sup>329</sup> Mr. Ethemer and Mr. Bullici, Co-founders, Envision Diversity Association – Interview with HDT, 2 March 2019.

<sup>330</sup> Queer Cyprus Organisation. *Unspoken: Creating Dialogue on LGBTI Rights in the Turkish Cypriot Community, 2015 – 2017* (available at <http://www.queercyprus.org/wp-content/uploads/2019/01/Media-Monitoring-Report-ENG-1.pdf>).

<sup>331</sup> *Unspoken: Creating Dialogue on LGBTI Rights in the Turkish Cypriot Community, Ibid.*, n.330.

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### **Further Related Legislative and Policy Reform**

Since the Amendment Law, the TRNC has sought to continue to progress and develop its legal framework to provide further legal protection for women and children. However, in practice, bringing those reforms to fruition and effectively implementing legal changes remains a challenge.

For example, in 2015 the Family Law was passed, overruling the previous Turkish Family Law of 1998. The new legislation provides for the equality between sexes in relation to family roles and improved the protection of women against domestic violence.<sup>332</sup> Such legal developments are important in the effort to tackle the patriarchal structures that exist in the TRNC and combat gender stereotypes. However, entrenched cultural norms continue to inhibit women from realising their rights.<sup>333</sup>

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**332** *Gender Equality and Anti-Discrimination against Women – List of Issues Ibid.*, n.13, p. 47.

**333** *Gender Equality and Anti-Discrimination against Women – List of Issues Ibid.*, n.13, p. 47.





# **AREAS FOR ONGOING WORK**

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## AREAS FOR ONGOING WORK

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### 1959 Criminal Code

Although the reforms in 2014 to the 1959 Criminal Code are hailed as a success in the effort to decriminalise private consensual same-sex sexual acts between adults, and to improve the protection of women and children against sexual offences, the general consensus is that further reform is necessary to both address the continuing deficiencies in the sexual offences provisions (these have been set out in the above section - Criminal Code (Amendment) Law - Key Changes) and tackle a number of other shortcomings in the 1959 Criminal Code that were not part of the 2014 changes.

As to the latter point, a further amendment bill to the 1959 Criminal Code was put before the Assembly, having been introduced in 2017 and again on 31 May 2018, the Criminal Code (Amendment) Bill ('2018 Amendment Bill'). The 2018 Amendment Bill was developed and proposed by Ms. Derya and Ms. Özdenefe, among other women CTP deputies, and seeks to amend the laws on: lawful termination of pregnancy, human trafficking and rectify the provision on hate speech, as well as decriminalise attempted suicide.<sup>334</sup> With recent changes in government as a result of the collapse of the CTP coalition, it is not clear when these amendments may be enacted or whether they will be prioritised by the new coalition government.

### Domestic Violence

Domestic violence in the TRNC continues to be a current and pressing issue, with 600 cases of violence against women recorded between 2016 and 2018.<sup>335</sup> Presently, the TRNC has no specific legislation that deals with domestic violence, although this may be set to change. Domestic violence currently can only be prosecuted under a general assault/battery clause in the 1959 Criminal Code.<sup>336</sup> A long-term movement has been forged by KAYAD, a women's organisation working in the field of community development in the TRNC, to seek the enactment of standalone domestic violence legislation. The organisation continues to work on a draft domestic violence bill<sup>337</sup> as part of the "Resisting Domestic Violence" project that has been funded by the EU. If it comes before the Assembly in the future and is passed, the legislation would complement the other structural changes that have been made or are contemplated. Importantly, however, a comprehensive implementation and monitoring programme should be part and parcel of this new legislation.

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<sup>334</sup> General Justification, Criminal Code (Amendment) Bill presented to the Assembly of the Republic, 31 May 2018, (available at 1.d. of the Annex).

<sup>335</sup> Cyprus Mail, Over 600 cases of abuse against women in the north, report says (available at <https://cyprus-mail.com/2018/11/22/over-600-cases-of-abuse-against-women-in-the-north-report-says/>).

<sup>336</sup> Section 151 and 152 of Chapter 154 of the 1959 Criminal Code (available at 1.b of the Annex).

<sup>337</sup> Women March for their Rights *Ibid.*, n. 316.





*"27 January 2014 is considered as an important milestone in terms of rights movements..."*

*However, three years after this date, LGBTI and sexual orientation-gender identity and gender policies in terms of the state has failed to fulfill many responsibilities."*

**Envision Diversity,**  
reported in Kibris  
Gazetesi,  
27 January 2017

*"There still exist a large and rampant homophobia, transphobia and discrimination against LGBTI community in Turkish Republic of Northern Cyprus which aggregately violates UN, EU and other international legal instrument which TRNC is a signatory."*

**Mr. Ethemer,**  
reported in KP Daily,  
17 May 2015

## Inequality and Discrimination Persists

As stated above, in addition to removing a key structural barrier to progress by repealing the law criminalising consensual same-sex intimacy, a number of positive consequences have flowed from the repeal, including increased visibility of LGBT people, the increased presence of LGBT-friendly civil society, and an improvement in the language and tone used by the media in respect of LGBT people. However, discrimination and stigma against LGBT people remains.

QCA conducted two surveys: one in 2016 and the other in 2017. Both concluded that homophobia, biphobia, and transphobia still persist in the Turkish Cypriot community.<sup>338</sup> Despite events such as Pride and the attempts by civil society organisations to raise visibility of LGBT people,<sup>339</sup> LGBT people reportedly still frequently conceal their sexual orientation or gender identity to avoid discrimination,<sup>340</sup> particularly in the workplace.<sup>341</sup> The QCA has also found that there continues to be a reluctance on the part of LGBTI people to seek legal redress when they have suffered discrimination.<sup>342</sup>

There have been calls for all-encompassing anti-discrimination and/or equality legislation to be enacted to address some of the specific discrimination faced by LGBT people, women and other minority groups. Whilst an attempt was made in 2015 to enact two laws to combat discrimination in the labour market,<sup>343</sup> neither were passed by the Assembly.<sup>344</sup>

Despite the continued discrimination and lack of legislation to tackle such problems, there are some mechanisms in place to protect the rights of LGBT people. For example, the Ombudsperson and the complaints procedure under that agency, in particular, has been used to good effect in at least one case. In 2016, the Minister of Education rejected an application from Envision to show a Turkish documentary

<sup>338</sup> Unspoken, Study on Homophobia and Transphobia in the Northern Part of Cyprus, 2017, pg. 46 (available at: [http://www.queercyprus.org/wp-content/uploads/2019/01/survey\\_stage-2.pdf](http://www.queercyprus.org/wp-content/uploads/2019/01/survey_stage-2.pdf)); Unspoken, Study on Homophobia and Transphobia in the Northern Part of Cyprus, 2016, (available at: [http://www.queercyprus.org/en/study-on-homophobia-and-transphobia\\_stage-1/](http://www.queercyprus.org/en/study-on-homophobia-and-transphobia_stage-1/)).

<sup>339</sup> The aim of the QCA Unspoken and Diversity of Colours projects include in their aims the ambition to increase the visibility of LGBT people in the TRNC, and raise awareness of their rights.

<sup>340</sup> Cyprus 2018 Human Rights Report, US Department of State (available at: <https://www.state.gov/wp-content/uploads/2019/03/CYPRUS-2018-HUMAN-RIGHTS-REPORT.pdf>).

<sup>341</sup> Cyprus 2018 Human Rights Report *Ibid.*, n.340.

<sup>342</sup> Cyprus 2018 Human Rights Report *Ibid.*, n.340.

<sup>343</sup> *Gender Equality and Anti-Discrimination against Women – List of Issues Ibid.*, n.13 p. 48.

<sup>344</sup> *Gender Equality and Anti-Discrimination against Women – List of Issues Ibid.*, n.13 p. 48.

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called “MyChild” in schools in the TRNC as it was claimed that “it could encourage children to be gay.” The documentary follows five families with lesbian, gay, or transgender children who discuss the ramifications of informing their families about their sexual orientation and gender identity. Envision submitted a complaint to the Ombudsperson, who subsequently wrote a report to the Assembly recommending that the film be shown in schools as it would be a means to help combat discrimination.<sup>345</sup>

*“LGBTI individuals suffer serious human rights abuses in society due to their sexual identity. Therefore the Administration should be more conscious of such issues and weigh in toward raising awareness (of such issues)... In addition, public awareness should be raised that all people must have equal rights and opportunities. Since guidance teachers in particular serve as a bridge between the student and the student’s parents, viewing this documentary would help them understand parents’ behaviour and the problems they experienced...”*

*The Division on Psychological Counselling, Guidance and Research has the duty of conducting preventative and protective efforts to prevent students from being subject to discrimination on grounds of ethnicity, religion, class consciousness, and sexual orientation in schools. For this reason, this division affiliated with the TRNC Ministry of National Education and Culture should inform not only the students, but also the family, and provide the needed support.”*

**Ombudsperson of the Turkish Republic of Northern Cyprus,**  
Report no. OMB.0.00-01/00-17/140, 16 May 2017

Despite the Head of the LPA Committee reportedly agreeing with the Ombudsperson’s recommendation, the Minister of Education has not yet given permission to show the documentary.

## Hate Crime and Hate Speech

### Hate Speech

As noted in the Criminal Code (Amendment) Law - Key Changes section, the introduction of specific hate speech provisions as part of the Amendment Law to provide protection for LGBT people does not adequately achieve this aim, as the provisions may in any event be inoperable in practice due to their connection to the general defamation law. The limited extent of reform in this area was due to the “technical difficulties” faced following the rejection of the original hate speech provisions.<sup>346</sup>



*“Chapter 154 Criminal Code criminalised disparaging Sexual Orientation or Gender Identity, but this law was not enough to get rid of prejudice and discrimination against LGBTI individuals in our society. LGBTI individuals in our society are still exposed to discrimination, difficulty finding employment and being excluded from the society due to their sexual preference and gender identity.”*

**Emine Dizdarli,**  
reported in Yeni Bakis,  
20 May 2016

*“The objective of this Law is to ensure anti-discrimination and the implementation of the principle of equal treatment in terms of employment, recruitment... in issues related with disabilities, age and sexual orientation.”*

**Draft Law on Anti-Discrimination and Equality,**  
2015

<sup>345</sup> Mrs. Dizdarli, Ombudsperson of the TRNC – Interview with HDT, 1 March 2019.

<sup>346</sup> Gundem Kibris, ‘Ceza Yasası’ konusunda yapılabilecek değişiklikler Alanlı’ya sunuldu, 31 March 2017 (available at: <https://www.gundemkibris.com/mansetler/ceza-yasasi-konusunda-yapilabilecek-degisiklikler-alanliya-sunuldu-h206931.html>).

*"We made this arrangement [on hate speech] in order to pave the way for the will of the Assembly in 2014."*

**Ms. Özdenefe in Gündem Kıbrıs,**  
*Changes to the 'Criminal Code' were presented to Alanlı,*  
31 March 2017

*"With the amendment to the Main Code in 2014, this was arranged under the section titled "Defamation Targeting Gender, Sexual Orientation and Gender Identity" but evidently it wasn't enforced in practice because it was subject to Section 194. The objective of the proposed amendment is to make the Assembly's decision of 2014 functional."*

**General Justification, 2018 Amendment Bill,**  
presented to the Assembly of the Republic, 31 May 2018  
(available in the Annex)

The current section 171 also remains limited in scope as it fails to address hate speech incited by an individual or group's ethnicity, political views or potential disability.<sup>347</sup> Further work, therefore, needs to be undertaken to ensure that there are workable, clear and sufficient protections against all kinds of hate speech.

The 2018 Amendment Bill addressed above sought to rectify some of the deficiencies in these provisions by proposing a stand-alone, functional hate speech law. Section 5 of the 2018 Amendment Bill proposes "Hate Speech Targeting Gender, Sexual Orientation and Gender Identity".<sup>348</sup>

The proposed article defines hate speech targeting gender, sexual orientation or gender identity as use of statements, printed matter, scripture, painted matter or any other similar material for the purpose of causing hatred or disgust towards or humiliation of any person or group on basis of their gender, sexual orientation or gender identity. Any person for the purpose of causing hatred or disgust towards or humiliation of and/or defaming and/or discrediting in society and/or pointing as target any person or group on basis of their gender, sexual orientation or gender identity and/or to make any statement, publication, printing and/or to display any material or painted matter for the purposes described above in any way that would result in humiliation or disgust shall be deemed to have committed a petty crime punishable by a fine or a prison sentence up to one year.<sup>349</sup> Hate speech via press or social media shall be an aggravated crime punishable by up to two years of imprisonment and a monetary fine.<sup>350</sup>

However, with the change in government, the 2018 Amendment Bill is now unlikely to be passed in the short term.<sup>351</sup>

### **Hate Crime**

The current hate crime provisions fall short of providing comprehensive protection. Typical hate crime provisions include: racially and religiously aggravated, homophobic, biphobic, and transphobic abuse and violence; with an uplift in sentences for those committed of such crimes, however this protection is not offered within the TRNC as it stands.<sup>352</sup>

<sup>347</sup> Öncel Polili, Kuzey Kıbrıs'ta Nefret Söylemi ve Hukuk, 26 October 2015 (available at: <http://www.yeniduzen.com/kuzey-kibrista-nefret-soylemi-ve-hukuk-82775h.htm>).

<sup>348</sup> Sections 171(2) and (3) of the 2018 Amendment Bill (available at 1.d of the Annex).

<sup>349</sup> Sections 171(1) of the 2018 Amendment Bill (available at 1.d of the Annex).

<sup>350</sup> Sections 171(2) of the 2018 Amendment Bill, 31 May 2018 (available at 1.d of the Annex).

<sup>351</sup> Ms. Özdenefe, Deputy of the Assembly of the TRNC – Interview with HDT, 1 March 2019.

<sup>352</sup> For example, the provisions operative in the UK: Sections 28-32 Crime and Disorder Act 1998 and sections 145-146 Criminal Justice Act 2003.

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In 2017 the Republic of Cyprus amended its Criminal Code to include article 35A,<sup>353</sup> which allows the courts to take into account as an aggravating factor the motivation of prejudice against a group of persons or a member of such group on the basis of race, colour, national or ethnic origin, religion or other belief, descent, sexual orientation or gender identity. This amendment therefore provides an overarching protection of hate crime.<sup>354</sup> It has been commented that the TRNC needs to follow in these footsteps, as with the decriminalisation of same-sex intimacy, but to date, there is no indication that the current deficiencies of the hate crime provisions in the TRNC will be addressed.<sup>355</sup>

### Next Steps for the TRNC

Overall, the TRNC has made significant, positive strides towards creating greater legal protection for its citizens, particularly women, children and LGBT people, from sexual crimes, violence, abuse and discrimination in very challenging circumstances. Going forward, further legislative action will need to be taken – and a number of proposals are already on the table. However, laws are not enough – they need to be operationalised. It is hoped that mechanisms such as a functioning Gender Equality Department will to some extent fill this void. Ultimately, it is the resolution of the Cyprus problem that would fundamentally change the TRNC's circumstances and legal environment.

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<sup>353</sup> Republic of Cyprus Criminal Code (available at: [https://sbaadministration.org/home/legislation/01\\_02\\_09\\_01\\_COLONIAL\\_CAPS\\_1959/01\\_02\\_01\\_04\\_Caps-125-175A/19600101\\_CAP154\\_u.pdf](https://sbaadministration.org/home/legislation/01_02_09_01_COLONIAL_CAPS_1959/01_02_01_04_Caps-125-175A/19600101_CAP154_u.pdf)).

<sup>354</sup> Hate crime recording and data collection practice across the EU, The European Union Agency for Fundamental Rights, 2018 (available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2018-hate-crime-recording\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-hate-crime-recording_en.pdf)).

<sup>355</sup> Ms. Özdenefe, Deputy of the Assembly of the TRNC – Interview with HDT, 1 March 2019.

# LESSONS LEARNED



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## LESSONS LEARNED

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The TRNC experience demonstrates vividly the important role of civil society both in legal and policy changes, but also social transformation. The work of domestic civil society groups, supported by international NGOs, was instrumental in raising awareness of the previously archaic and discriminatory provisions of the 1959 Criminal Code and advocating for change. Through intersectional collaboration and a multi-pronged strategy, these groups, particularly the IAH (and later QCA), applied significant political pressure in favour of reform. Following the enactment of the Amendment Law, it is again civil society that has filled the gap left by the state through rolling out crucial education and awareness-raising projects. The role played by civil society and their significant contribution is likely most discernible and pronounced in a jurisdiction like the TRNC, which finds itself isolated from the international community. Unlike other UN member states, the authorities of the TRNC are not monitored by international stakeholders or the treaty bodies. Rather it is domestic civil society that is the check and balance on state actions and actors.

A number of valuable lessons can be gleaned from the 1959 Criminal Code reform process, which may be useful and insightful to other jurisdictions that are considering similar reforms. These are outlined below.

### **An Intersectional and Multi-faceted Approach**

Working intersectionally, particularly the collaboration between LGBT groups and women's and feminist organisations, was an important element that both broadened and strengthened advocacy efforts in the TRNC. Equally, the development of a multi-pronged strategy, involving advocacy and lobbying, litigation, international and regional collaboration and awareness-raising, was very effective in the TRNC context. These actions combined to apply and maintain the necessary political pressure for the reform effort to succeed and was a significant factor in civil society's success by 2014.

### **The Importance of Political Champions**

Without dedicated political champions it is unlikely that the Amendment Bill would have been prioritised nor certain challenges overcome, such as the legislative backlog or the dissenting opinions voiced during the Assembly debates. Having influential and committed parliamentarians, such as Ms. Derya, Mr. Erhürman and Ms. Özdenefe of the CTP, was crucial in having the 1959 Criminal Code amendments placed on the political agenda and ultimately enacted within six months of having formed a coalition government. Assisted by civil society groups, it was the newly elected domestic champions within the government that were able to spearhead the Amendment Law and successfully advocate for its enactment.

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## **The Significance of Broad Reforms**

The Amendment Bill proposed changes to 44 sections of the 1959 Criminal Code and effectively sought to overhaul the TRNC's sexual offences laws. Presenting the amendments to the 1959 Criminal Code as a package provided the opportunity to address a variety of shortcomings in the criminal law, and it afforded some cover for more controversial issues, such as the decriminalisation of consensual same-sex sexual conduct. Importantly, the reforms, and particularly decriminalisation, were made more credible and probable as part of this suite of reforms that the Assembly could and did coalesce behind and support.

## **Limited Resources and Technical Expertise**

The limited resources and lack of technical legal expertise within the TRNC administration and Assembly were highlighted as key issues during the reform process. Consequently, the legislative gaps that have emerged post-reform may be symptomatic of this lack of capacity. The insufficient number of skilled drafting lawyers across governmental departments had reportedly caused a substantial backlog of incomplete legislative bills to accumulate before the Assembly. Whilst the hard work of civil society experts and the CTP deputies ensured that the Amendment Bill bypassed this issue, certain deficiencies in its legal drafting have since become apparent. Moreover, it is important that drafted amendments fit in seamlessly within existing legal frameworks to ensure that laws are not only operable, but benefit constituents in the way originally intended by lawmakers. The on-going legislative shortcomings in the 1959 Criminal Code may have been avoided if greater resources and specialised lawyers were available to assist with the drafting process.

## **Legal Change needs to be accompanied by Implementation**

The legislative process does not stop when a bill is passed by a legislature. Laws require implementation and going forward they need to be monitored to ensure that the aims and objectives of the legislation are fully realised and longer-term societal change and progress is achieved. Effective monitoring mechanisms are also only possible however where there is the collection and maintenance of reliable data and statistics. Despite the achievement of the important legal changes in 2014, the passing of the Amendment Law has not gone hand in hand with a comprehensive programme of implementation and monitoring. This may again be a result of limited resources and technical expertise, but undoubtedly it is a missed opportunity and one that is impacting on the effective operation and application of the reformed 1959 Criminal Code.







**ANNEX**

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# ANNEX

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## 1. Law and Legislation

- a. Constitution of the TRNC 1983 (extracts)
- b. Chapter 154 of the 1959 Criminal Code (extracts)
- c. The Criminal Code Amendment Law, 20/2014  
(Turkish and English translation)
- d. Criminal Code (Amendment) Bill presented to the Assembly of the Republic,  
31 May 2018
- e. H.Ç. v Turkey, ECtHR Application No. 6428/12

## 2. Analyses, Policy Documents and Reports

- a. Enver Ethemer, Turkish Cypriot Human Rights Foundation –  
Mapping of Human Rights in Northern Part of Cyprus Project
- b. Cyprus Mail – Simon Bachceli, British MEP and actor pushes for  
gay rights in the north, 25 February 2009

## 3. Assembly Documents

- a. Assembly Debates: Legal and Political Affairs Minutes 07.01.2014  
(Turkish and English translation)
- b. Assembly Debates: Legal and Political Affairs Minutes 15.01.2014  
(Turkish and English translation)
- c. Assembly of the TRNC: Minutes Journal, 35th Session, 16 January 2014  
(Turkish and English translated extracts)
- d. Assembly of the TRNC: Minutes Journal, 36th Session, 20 January 2014  
(English translated extracts)
- e. Official Gazette, Proposed legislation (bill) submitted to the Republican  
Assembly of the TRNC amending the Criminal Code Cap 154, 27 March 2013
- f. Parliament of the Republic Legal and Political Affairs Committee Report  
for “Penal (Amendment) Law Proposal (L.P.No:14/2/2013)”





