The Internally Displaced Kurds of Turkey: Ongoing Issues of Responsibility, Redress and Resettlement

MARK MULLER AND SHARON LINZEY

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Kurdish Human Rights Project
KHRP
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Bar Human Rights Committee
OF ENGLAND AND WALES

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Kurdish Human Rights Project is an independent, non-political human rights organisation founded and based in London, England. A registered charity, it is dedicated to promoting and protecting the human rights of all people in the Kurdish regions of Turkey, Iraq, Iran, Syria and elsewhere, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its supporters include Kurdish and non-Kurdish people.

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CONTENTS

LIST OF ABBREVIATIONS

AKP	(*Adalet ve Kalkınma Partisi*, Justice and Development Party)
CHP	(*Cumhuriyet Halk Partisi,* Republican People's Party)
DPT	(*Devlet Planlama Teşkilatı,* State Planning Organisation)
ECHR	(European Convention for the Protection of Human Rights and Fundamental Freedoms)
ECtHR	(European Court of Human Rights)
EU	(European Union)
Göç-Der	(*Göç Edenler Sosyal Yardımlaşma Ve Kültür Derneği,* Association for Solidarity with Migrants and Culture)
HRW	(Human Rights Watch)
ICCPR	(International Covenant on Civil and Political Rights)
İHD	(*İnsan Hakları Derneği,* Human Rights Association of Turkey)
KHRP	(Kurdish Human Rights Project)
NGO	(Non-Governmental Organisation)
PKK	(*Partiya Karkaren Kurdistan,* Kurdistan Workers' Party)
RVRP	(Return to Village and Rehabilitation Project)
TESEV	(*Türkiye Ekonomik ve Sosyal Etüdler Vakfı,* Turkish and Economic Social Studies Foundation)
TOHAV	(*Toplum ve Hukuk Araştırmaları Vakfı,* Foundation for Social and Legal Studies)
UDHR	(Universal Declaration of Human Rights)
YTL	(*Yeni Türk Lirası*, New Turkish Lira)

EXECUTIVE SUMMARY

Since early in the 20th century, the position of the Kurds in Turkey has been precarious. This was particularly so during the 1980s and 1990s when state security forces forcibly evacuated some 3,500 towns and villages in the Kurdish regions of Turkey. Between 3 and 4 million people became internally displaced during this period.

The problem of internal displacement is not unique to Turkey. There are an estimated 25 million internally displaced people (IDPs) worldwide, overtaking the number of refugees. While IDPs are protected to a certain extent by general human rights instruments such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the Geneva Conventions, the gravity of the situation prompted a specific international response, resulting in the UN Guiding Principles on Internal Displacement (the Guiding Principles). The Guiding Principles now represent the benchmark for national, international and non-state actors in their interactions with the internally displaced, providing guidelines in relation to each stage of the phenomenon of internal displacement, as well as providing a framework for the consideration of issues of responsibility.

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) provides some scope for complaints against the Turkish Government and indeed, KHRP has submitted many cases to the European Court of Human Rights (ECtHR) on behalf of Kurds from south-east Turkey who have been forced to leave their homes. However, even where individual IDPs are successful in obtaining a judgment at the ECtHR, they are often left without a remedy as the Turkish Government routinely fails to implement judgments. Therefore, while Turkey is subject to a number of obligations and responsibilities at international law, the international legal regime has so far failed to provide the impetus for significant change to the benefit of IDPs.

Since becoming a candidate for accession to the European Union (EU) in 1999, Turkey has received a greater level of attention from the international community, particularly in relation to its progress towards meeting the standards required for EU membership, including various human rights standards. However, comparatively little attention has been given to the specific issue of the vast number of Internally Displaced Persons in Turkey, and what's more, there has been no intergovernmental financial or other support structure designated to assist Turkey in addressing this massive humanitarian catastrophe. While Turkey's progress to date should be

encouraged, KHRP believes that the EU must maintain the integrity of its accession requirements, particularly ensuring the full implementation of reforms proposed by the Turkish Government. Without a robust approach to the accession process, it is unlikely that Turkey will develop its human rights standards beyond paper reform.

Since the mid-1990s the Turkish Government has purported to resolve the situation of internally displaced people in Turkey through monetary compensation and limited programmes for return. The most recent of these, the Law on Compensation for Damage Arising from Terrorism or the Struggle to Combat Terrorism (The Compensation Law)[1] and the Return to Village and Rehabilitation Project (RVRP) are plagued with legal and practical deficiencies. As a result, NGOs continue to report that the rate of returns is extremely low and returning IDPs receive little governmental support. KHRP's fact-finding missions to Diyarbakır and Van in 2005 and 2006 confirmed that returns are practically non-existent. Recent information released in the form of the Hacettepe Survey indicates that the number of IDPs in Turkey has historically been grossly understated by the Turkish Government. Significant evidence has also been gathered by NGOs, civil society organisations and the international community to demonstrate the need for a more comprehensive multi-faceted approach to the situation of IDPs.

Those IDPs who do attempt to return are faced with a range of serious obstacles of which the village guard system is of particular concern. As an unregulated armed force, the village guards pose a threat to IDPs on a number of levels. KHRP strongly encourages the Turkish Government to abolish the village guard regime. In addition, most IDPs (whether in the cities or having returned to their villages) experience a lack of public infrastructure, inadequate social services, a lack of education, acute poverty and a climate of impunity that reinforces their disadvantage.

This report provides an overview of the Turkish Government's programmes for return, resettlement and redress. It also addresses the issue of responsibility, both in the context of the EU and the international community more generally. Finally, we survey the current difficulties facing IDPs in Turkey. It is only by adopting a holistic approach that addresses not only the fact of displacement, but also its causes and its consequences that the Turkish Government will make significant progress on this issue. Without that commitment on the part of the Turkish Government, the future remains bleak for IDPs. The issue of internal displacement retains its critical importance for the Kurds in south-east Turkey, the European Union and the region overall and I believe that this report will assist all those involved in moving forward.

Kerim Yildiz, Executive Director, KHRP

1 See Appendix 1.

PART ONE - HISTORICAL OVERVIEW: THE KURDS AND DISPLACEMENT

A. A Brief History of the Kurds

The Kurds, who are believed to number around 30 million, are native inhabitants to an area which spreads across the mountainous area where the borders of Iraq, Iran, Syria and Turkey meet. The backbone of Kurdistan is formed by the Taurus and Zagros mountain chains, which stretch down to the Mesopotamian plain in the south, and in the north and north-east, up to the steppes and plateaus of what was once Armenian Anatolia. The small Kurdish-populated areas just inside the Armenian and Azerbaijani borders with Turkey and Iran, respectively, are sometimes included as part of Kurdistan. These areas have been known as 'Red Kurdistan.' Smaller minority communities, including Christians, Turcomans, Assyrians and Armenians, also inhabit Kurdistan as a whole. Kurdistan has no fixed borders, and no map may be drawn without contention because Turkey has always denied Kurdistan's existence. Iran and Iraq have always been reluctant to acknowledge that Kurdistan is as extensive as the Kurds purport, and Syria denies that it extends into its territory at all.

The Kurds as an ethnic group do not have a single origin, rather, they are the product of thousands of years, stemming from tribes such as the Adianbene, Carduchi, Gordyene, Gutis, Hatti, Kassitises, Khaldi, Kurti, Manna, Mard, Mede, Mittanni, Mushku, Urartu, Zila, and the migration of Indo-European tribes to the Zagros mountain region some 4,000 years ago.[2] There are 800 tribes in Kurdistan, yet there is no single Kurdish identity.[3]

At the time of the Arab conquest of Mesopotamia in the seventh century AD, the name 'Kurd' was used to describe the nomadic people who lived in this region. The Kurdish identities that are now distinguished in Iran, Iraq, Syria and Turkey transcend borders. Pan-regional relations between the Kurds have always been complex and intimate. The mountain ranges that mark the frontiers between nations do not reveal breaks in linguistic, cultural or familial continuity. The term 'Kurdistan' itself means 'land of the Kurds', and first appeared in the twelfth century

2 Mehrdad A. Izady, History: Origins (2004) The Encyclopaedia of Kurdistan <http://www.kurdistanica.com/english/history/histroy-frame.html> (last accessed March 2007).

3 Dr. Vera Saeedpour Meet the Kurds (1999), Kurd and Proud 9-13, <http://www.kurd.us/article.htm> (last accessed 3 September 2007)

when the Turkish Seljuk Prince Saandjar created a province with that name. That historic province roughly coincides with today's Kurdistan (Kordestan) region situated in modern Iran. It was not until the sixteenth century that the term 'Kurdistan' came into common usage to denote a system of Kurdish fiefs generally, which was outside the Saandjar-created province.

The Kurdish population is as heterogeneous as any other of a similar size, and at 30 million strong, it may be the world's largest nation without a state. There are no official population figures for the Kurds because the four bordering states to the Kurdistan region either deny the Kurds' existence, or they desire to understate their numbers for political reasons. The majority of the Kurdish population is in Turkey where their numbers run from 15-20 million, or about 23 per cent of the population.[4] There are 4 million Kurds in Iraq (15 per cent of the overall population). There are believed to be 7 million Kurds in Iran, or 15 per cent of the population, and over 1 million in Syria, or 9 per cent of the population. There are 75,000 Kurds in Armenia (1.8 per cent of the population) and 200,000 in Azerbaijan (2.8 per cent of the population). Using these conservative estimates, the Kurds easily comprise the fourth largest ethnic group in the Middle East.

It has served the purposes of the countries inhabited by the Kurds to downplay the size of their Kurdish populations due to the threat they may pose in the event that they became politically powerful. The prospect of the emergence of Kurdish political power also underlies the oppressive policies of the four governments of Iran, Iraq, Syria and Turkey toward the Kurds. These four states have often used the same or similar tactics to control and subjugate their Kurdish populations, denying them autonomy and cultural rights, and devising policies to ensure their economic marginalisation. Internal displacement is one of the many detrimental consequences suffered by Kurdish people as a result of such approaches.

B. The Origins of Internal Displacement in Turkey

The Kurds have historically occupied the border lands between the Ottoman and Persian empires. The region was held by a line of rulers including the Seljuk Turks in the eleventh century, the Mongols from the thirteenth to the fifteenth century, and then the Safavid and Ottoman empires. During these times the Kurds were afforded autonomy and considerable freedom to manage their own affairs, particularly under the Ottomans.

4 Commission of the European Communities, Regular Report on Turkey's Progress Towards Accession (2004) European Commission p 39 <http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf > (last accessed 3 September 2007). ('2004 Regular Report')

After World War I the Ottoman Empire disintegrated. The Treaty of Sèvres, signed by the Constantinople Government and the Allied Powers on 10 August 1920, solidified the partitioning of the Ottoman Empire. The Great Powers were concerned that the non-Turkish minorities of the Ottoman Empire be 'assured of an absolute unmolested opportunity of autonomous development,'[5] and the Treaty therefore contained a provision stating that the Kurds (along with the Armenians and the people of Hejaz) were to have the opportunity to establish their own state. Under Article 64 of the Treaty, the Kurds would be granted independence within a year. However, with the exception of Greece, the signatory countries did not ratify the Treaty of Sèvres and the provision for Kurdish autonomy never materialised. Fears in Europe over the Soviet Union's possible influence over newly formed states, coupled with Britain's unsubstantiated conviction that there was no appropriate choice for a Kurdish leader who would prioritise Kurdish nationhood above his own tribal interests, kept Kurdish independence from becoming a reality.

The 1923 Revolution led by Mustafa Kemal, later known as Atatürk ('father of the Turks'), changed the course of history. The Revolution was motivated by a sense of humiliation and the desire to revoke the terms of the Treaty of Sèvres, and Atatürk overthrew the Turkish administration which had signed the Treaty. He led a war of independence on behalf of non-Arab Muslims of the Ottoman Empire against the French, Greeks and Armenians, who staked competing claims for parts of the former Ottoman territories. In November 1922 the newly established Grand National Assembly abolished the Sultanate thus establishing the modern Republic of Turkey.

After briefly considering the idea of meaningful Kurdish autonomy in the new state, Atatürk pressed hard to assimilate minority populations into the Turkish nation.[6] Atatürk blamed minority and ethnic aspirations for the fall of the Ottoman Empire. In his view, the aspirations of various minorities were not only an internal source of unrest, they were also a source of vulnerability when manipulated by foreign forces, which sought to destabilise the Empire. Atatürk resolved to create a highly centralised, secular nation-state, the territorial integrity of which was to be ensured by manufacturing a new and purely Turkish homogeneous national identity from the heterogeneous population which existed.

5 President Woodrow Wilson Fourteen Point Programme for World Peace (1918) <http://usinfo.state.gov/usa/infousa/facts/democrac/51.htm> The United States Department of State (last accessed 3 September 2007).

6 The minutes of the Amasya interview and the proceedings of the Erzurum and Sivas Congresses in 1919 make this clear. See Michael M. Gunter, Turkish Membership in the EU and the Kurds, (paper presented at The EU, Turkey, and the Kurds International Conference, 22-23 November 2004, European Parliament, Brussels).

The Kurds were the largest minority within the new Republic. They had fought with the Turks in the War of Independence as a Muslim brotherhood and naturally expected this loyalty to bring them recognition in keeping with the Treaty of Sèvres. However, Atatürk had no intention of making such a concession and promoted his nationalist ideology before the League of Nations at the Conference of Lausanne in the winter of 1922. The Kurds sent representatives to defend their right to autonomy. Some diplomats were sympathetic to their pleas, but the resulting Treaty of Lausanne contained no mention of a Kurdish state or even the Kurdish people for that matter.[7] The Treaty restored the territory subject to the Treaty of Sèvres to Turkey and divided the rest of Kurdistan between Iran, the French Mandate of Syria, and the newly created British Mandate of Mesopotamia (modern-day Iraq). Articles 37 to 45 of the Treaty provided for minority protection, but most related to Turkey's non-Muslim minorities such as the Jews, Armenians and Christians.

Even so, the Treaty imposed obligations upon Turkey which related directly to the Kurds' ability to retain their distinct cultural identity through the medium of their language. In this respect, Article 38(1) states that,

> The Turkish Government undertakes to accord to all inhabitants of Turkey full and complete protection of their life and liberty, without distinction of birth nationality, language, race and religion

Article 39(4) states that,

> No restrictions shall be imposed on the free use by any Turkish national of any language in private intercourse, in commerce, religion, in the press, or in publications of any kind or at public meetings.

Finally, Article 39(5) states that,

> Notwithstanding the existence of the official language, adequate facilities shall be given to Turkish nationals of non-Turkish speech for the oral use of their own language before the Courts.

The Allies attempted to entrench these guarantees through Article 37:

> Turkey undertakes that the stipulations contained in Articles 38 to 44 shall be recognized as fundamental laws, and that no law, no regulation, nor official action shall conflict or interfere with these stipulations, nor shall any law, regulation, nor official action prevail over them.

7 Treaty of Peace with Turkey (The Lausanne Treaty), 24 July 1923 <http://wwi.lib.byu.edu/index.php/Treaty_of_Lausanne> (last accessed 3 September 2007).

The Grand National Assembly officially designated their 70 Kurdish Parliamentarians as the MPs of Kurdistan. The Turkish representative, Ismet Pasha, declared at Lausanne: 'The Kurds and the Turks are the essential components of the Republic of Turkey. The Kurds are not a minority but a nation; the government in Ankara is the government of the Turks as well as of the Kurds.'[8]

However, after signing the Treaty of Lausanne, Ankara's policy turned in a different direction. The Kemalist leadership paid no attention to the patchwork of ethnicities in Anatolia and the goal of a unified nation quickly displaced any notion contained in the Treaty of Lausanne of citizens' rights to use their respective languages. Atatürk's policies were directed towards the total suppression of the Kurds' distinct identity as manifest in their culture and language. The 1924 Turkish Constitution denied the Kurds their existence and even the words 'Kurdish' and 'Kurdistan' were forbidden. Turkey's Grand National Assembly barred the official use of the Kurdish language and Kurdish topographical names were replaced by Turkish names. Turkish also became the sole language of the courts. In addition, Kurds were largely excluded from the education system, as instruction in Kurdish was banned and an education tax was levied only in Kurdistan. These policies reflected the authorities' use of exclusion from education as a means of comprehensively disempowering the Kurds and more generally, that the education system had been seized upon as an institution in which policies of repression could be effectively implemented.

From 1938, the Kurds were simply referred to as Mountain Turks or Turks from the East and the Kurdish names of over 20,000 settlements were replaced with Turkish names. The 1924 Constitution established the Turkish state's total control over identity, an ideological monopoly maintained in Turkey's subsequent Constitutions of 1964 and 1982: Article 88 explicitly provided that 'in Turkey, from the point of view of citizenship, everyone is a Turk without regard to race or religion.'

Atatürk's refusal to acknowledge Turkey's heterogeneous population was necessary if he were to avoid any notion of separatism, which the recognition of the Kurdish people would imply. Atatürk tried to break the influence of traditional leaders when their leadership was based on rank (*aghas*) or religion (*sheikhs*).[9] The Grand National Assembly passed laws that led to the expropriation of large landholdings in the Southeast and the removal of many Kurdish leaders to the west of the country. The expropriated land was not given to the local landless Kurds, but to Turkish or turkicised settlers from elsewhere.

8 Kemal Burkay The Kurdish Question: Its History and Present Situation p 8 <http://members.aol.com/KHilfsvere/Kurds.html> (last accessed 3 September 2007). ('The Kurdish Question').

9 Bill Frelick The Wall of Denial: Internal Displacement in Turkey (Washington D.C.: US Committee for Refugees (1999) p 2. ('The Wall of Denial').

Not surprisingly, the measures which were designed to suppress the Kurdish identity and culture were often counterproductive and instead served to awaken Kurdish nationalism. In 1925 Sheikh Said, along with members of the Kurdish intelligentsia, military and religious leaders, led the Kurds in a revolt against the State. The uprising was brutally suppressed and tens of thousands of Kurds were killed or driven into exile, while other *sheikhs*, *aghas* and families were deported to western Anatolia.[10] The methods used to crush the Sheikh Said Revolt included the Turkish Government's first practice of mass displacement and village destruction in the Kurdish Southeast. The aim was to destroy Kurdish society altogether by subjecting the Kurds to intense cultural and linguistic assimilation. Although this uprising did not pose a serious threat to the Turkish Government, it constituted a milestone in the relationship between Turkey and the Kurdish population. The uprising prompted a sharpening in official policies designed to destroy Kurdish identity and confirmed the Government's inclination towards a distinctively authoritarian form of governance. From this point on, the control of Kurdistan would be the primary focus of the Turkish army, which saw itself—and continues to see itself—as the guarantor of the survival of Atatürk's state ideology. On 21 April 1925 İsmet İnönü, who was installed as Prime Minister at the outset of the Sheikh Said rebellion, announced that,

> We are openly nationalist…Besides the Turkish majority, none of the other [ethnic] elements shall have any impact. We shall at any price, Turkicise those who live in our country, and destroy those who rise up against the Turks and Turkdom.[11]

Since 1923 the large majority of the army's actions have been directed against the Kurds: the invasion of Cyprus in 1974 is the only exception. Systematic deportation and razing of villages, raping and killing of innocent civilians, martial law and special regimes in Kurdistan became the commonplace experience of the Kurds whenever they defied the state. Kurdish sources claim that, between 1925 and 1928, almost 10,000 Kurdish dwellings were razed, more than 15,000 Kurds were killed, and more than 500,000 deported, of whom 200,000 perished.[12] From 1925 until 1965, south-east Turkey was designated as a 'militarised zone,' and foreigners were officially forbidden from entering.[13]

The program of Turkification initiated by Atatürk continued throughout the 1920s and well beyond his death in 1938. For example, the Turkish Penal Code enacted

10 Kemal Burkay The Kurdish Question p 8.

11 M. van Bruissen Uprising in Kurdistan (paper presented at A Democratic Future for the Kurds of Turkey International Conference on North West Kurdistan, Brussels, 12-13 March 1994) p 33.

12 Bill Frelick The Wall of Denial p 2.

13 Bill Frelick The Wall of Denial p 8.

in 1926 prohibited organisations and propaganda seeking to destroy or weaken nationalist feeling. The judiciary's broad interpretation of the relevant provisions meant that any expression of Kurdish identity could result in a conviction.

Further, in 1934, the Government enacted The Law on Resettlement (Law 2510) authorising forced evacuations by dividing Turkey into three zones. Firstly, the mountainous Kurdish regions, which were too difficult for the Government to effectively control, were evacuated due to security concerns and the villages were destroyed to prevent the return of their Kurdish inhabitants. The second zone consisted of districts of the country with a Turkish majority, to which Kurdish emigrants would be relocated. The third zone, the inhabitants of which were predominantly non-Turkish, was repopulated with Turks. Law 2510 gave the Government full authority to transfer populations requiring assimilation, and it banned all non-Turkish associations.[14] The aim was to disperse the Kurds so as to ensure that they could constitute no more than five per cent of the population in any given area.[15] Although the impracticability of the plan meant that it was only implemented in a localised and piece-meal fashion, complaints made by Kurdish refugees from Van, Bitlis, Muş, and Siirt suggested that massacres, deportations and forced assimilation were proceeding apace.[16] Foreign Minister Tawfiq Rushdi expressed frankly the views circulating in the cabinet at that time:

> In their [Kurdish] case, their cultural level is so low, their mentality so backward, that they cannot be simply in the general Turkish body politic...they will die out, economically unfitted [*sic*] for the struggle for life in competition with the more advanced and cultured Turks... as many as can [*sic*] will emigrate into Persia and Iraq, while the rest will simply undergo the elimination of the unfit.[17]

The total suppression of the Kurdish identity continued the following decades.

In 1974 the Kurdistan Workers' Party, (the PKK) was formed by some members of the Ankara Democratic Patriotic Association of Higher Education including Abdullah Öcalan, founding member and leader of the PKK. On 12 September 1980, General Kenan Evren, Chief of the Turkish General Staff, and a junta of four other military officials took over the Government, dissolved the Grand National Assembly and suspended the 1961 Constitution, imposing a three year period of martial law. All political parties, trade unions and civil society associations were dissolved.

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14 Bill Frelick The Wall of Denial p 2.

15 David McDowall A Modern History of the Kurds (London: I.B. Tauris & Co Ltd) 1996 p 105. ('The Kurds').

16 David McDowall The Kurds p 207.

17 David McDowall The Kurds p 200.

The enactment of a new Constitution in 1982 (as amended in 2001) reaffirmed the official policy towards the Kurdish population, excluding them from the protection of the rights enshrined therein. The European Communities were involved in negotiations with the National Security Council throughout this period and was closely involved in the restoration of democracy in 1983. They criticised the denial of minority rights to the Kurds as well as the open-ended definition of terrorism. However, this criticism did not prevent the continued passage of laws which reconfirmed the state's intention to suppress Kurdish cultural identity in even the most peaceful means of expression.

The Kemalist strategy of forced movement of populations to achieve assimilation has succeeded to some extent, considering that about half of Turkey's Kurds now live outside the Southeast.[18] It is common to find people of Kurdish origin in Turkey who do not speak Kurdish and who are fully integrated into Turkish society. Some Kurds, particularly among the landowning classes (the *aghas*), accepted assimilationist policies and taught their children Turkish or sent them to Turkish language boarding schools in the western part of Turkey.[19] As a result, some assimilated Kurds have risen to prominent positions in government and society. However, as will be discussed below, the second half of the 1980s and the 1990s saw a worsening of the situation for the Kurdish population in many respects. The Kurds had very few rights and were subjected to massive oppression, resulting in widespread poverty. They saw all peaceful and legal avenues of political struggle closed off to them.

18 Bill Frelick The Wall of Denial p 3.

19 Bill Frelick The Wall of Denial p 3.

PART TWO - VILLAGE EVACUATION DURING THE 1990s CONFLICT

Throughout the 1980s and 1990s, state security forces forcibly evacuated thousands of rural communities in the Kurdish regions of Turkey. Some 3,500 towns and villages were destroyed and illegal detention, torture and extra-judicial execution by both state forces and non-state actors were common. Between 3 and 4 million villagers were forced from their homes throughout this period.[20] In exploring the dynamics of village evacuation during the 1990s and the issue of internal displacement in Turkey more generally, the nature and origins of the conflict between the Turkish Government and the PKK and the position of the Kurdish population in that context is critical.

A. The PKK Conflict and the State of Emergency 1984-1999

Although the PKK was formed in 1974, it was not until 1984 that the armed struggle between the PKK and the Government became a major feature of the situation in Turkey. The PKK focused upon securing rights for the Kurds through an ideology of Kurdish nationalism; a platform that the Turkish Government perceived as a grave threat to its ideal of national unity and a homogenous national identity. The PKK's methods were violent, including suicide bombing, kidnapping, assassination and sabotage. Further, the PKK targeted a broad range of parties that they perceived as collaborators with the state, including the state-sponsored armed gendarmerie (an armed security and law enforcement force) and village guards; and civilian state employees, such as teachers.

The Government responded to the actions of the PKK with force. Large numbers of Turkish troops and gendarmerie were employed and a system of village guards was established, a counterinsurgency tactic that is common in divided nations. The village guard was to act as a local militia in towns and villages, protecting against attacks and violence arising from the conflict. The village guard system offers

20 The Ministry of Interior counted fewer than 400,000 IDPs, but its figure includes only persons displaced as a result of village and hamlet evacuations in the southeast, and does not include people who fled violence stemming from the conflict between the government and the PKK, which included evacuations, spontaneous movement, displacement and related rural-to urban movement within the southeast itself. See U.S. Committee for Refugees and Immigrants World Refugee Survey (2005) <http://www.refugees.org/countryreports.aspx?id=1336> (last accessed 3 September 2007).

the state a local force that augments its permanent forces by providing regional knowledge and language assistance in military operations against armed groups.

The conflict between the PKK and the Government placed the Kurdish population in an impossible situation. Apart from having a devastating impact on the physical environments in which the Kurds lived, rural Kurdish communities were faced with the impossible choice between joining the village guards, thereby exposing themselves and their communities to attacks by the PKK; or failing to subscribe to the village guard system which put the community in danger of being viewed as sympathetic to the PKK. This was, in part, a direct result of the Government's refusal to see the Kurdish issue as a political one, stemming from its repressive treatment of the Kurdish population. Rather, the Government perceived the problem as falling solely within the arena of internal security, arising from the Kurdish separatist threat. Influenced by the National Security Council, a body dominated by the military and having considerable influence in Turkey, the Government has continued to focus on military solutions that fail to address the underlying causes and continuing impact of the conflict.

In 1983 the notorious State of Emergency Law, commonly known by its Turkish acronym as 'OHAL' was enacted.[21] This allowed the state to take control of the areas in the south in which the PKK were based. It provided for the establishment of a civil administration and the appointment of a Regional Governor.[22] All powers of the state of emergency were vested within this office, with a number of ancillary powers being delegated to local Governors. Both the exercise of state of emergency powers by the Regional Governor and statutory orders issued under the law conferring power on local governors also enjoyed immunity from constitutional review.

On 19 July 1987 the OHAL legislation was invoked and a state of emergency declared in relation to the majority of the Kurdish provinces, including Elazığ, Bingöl, Diyarbakır, Hakkari, Bitlis, Mardin, Siirt, Tunceli, Van, Şırnak and Batman.[23] The OHAL governor was authorised to remove persons whose presence he deemed to be detrimental to public order.[24] Considerable license was granted to this office and there was no provision for independent judicial review of its action, a situation which contributed substantially to the breakdown of the rule of law under OHAL. The state of emergency was characterised by an oppressive military presence, regular checkpoints, curfews and lack of access to the courts. The

21 Law No 2935, 25 October 1983; Regulation No. 19204, 27 October 1983.

22 Decree No. 285 (Decree having the Force of Law on the Establishment of the State of Emergency Regional Governance) 10 July 1987; amended by Decree Nos. 424, 425 and 435.

23 Council of Europe List of the Declarations Made by Turkey Complete Chronology as of 3/9/2007 <http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?PO=TUR&NT=&MA=3&CV=0&NA=&CN=999&VL=1&CM=5&CL=ENG> (last accessed 3 September 2007).

24 Bill Frelick The Wall of Denial p 23.

legislation conferred widespread powers to suppress the Kurdish culture by limiting freedom of expression, confiscating the means of producing the mass media and providing a host of measures with which to punish the Kurdish population. The ill-treatment of Kurds throughout this period was also facilitated by the lack of controls on prolonged incommunicado detention by public authorities and a climate of impunity among the police and gendarmerie in which convictions were rare and sentences light.

Although Turkey has been bound by the ECHR since 1989, in August 1990 it filed declarations with the Council of Europe pursuant to Article 15 of the ECHR, which provides for limited derogations in times of emergency. The declarations related to the rights to liberty and security of person; a fair hearing; respect for private and family life; an effective remedy; and freedoms of expression and of association (Articles 5, 6, 8, 10, 11, and 13). In its declarations, Turkey stated that threats to its national security in south-east Anatolia amounted to a threat to the life of the nation within the meaning of Article 15 of the ECHR.[25]

B. Village Evacuation in the 1990s

In addition to the torture, killing and ill-treatment of Kurds in detention and the atmosphere of intimidation and violence that prevailed throughout this period, Decree 285 of July 1987 granted the Governor power to evacuate villages on a temporary or permanent basis. Although purportedly directed towards defeating the PKK insurgency, the village evacuation programme was also designed to forcibly eliminate Kurdish dominance in the region. In 1993 President Özal called for 'a planned, balanced migration, including members of all segments of [Kurdish] society, to predetermined settlements in the West.'[26]

Officially sanctioned village evacuations were accompanied by violent state security operations against Kurdish villages that were considered unsupportive of the government agenda, thereby generating further displacement. In the process of evacuation, Kurds were subjected to a range of forms of maltreatment, including torture and sexual assault. In some cases, food embargoes were imposed, forcing villagers out of their homes.[27] Security forces then destroyed the foundations of the community by burning houses, farmland and forests, slaughtering livestock

25 Council of Europe List of the Declarations Made by Turkey Complete Chronology as of 3/9/2007 <http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?PO=TUR&NT=&MA=3&CV=0&NA=&CN=999&VL=1&CM=5&CL=ENG> (last accessed 3 September 2007).

26 Turkish Probe and Turkish Daily News mid-November 2003, quoted in David McDowall The Kurds p 440.

27 Human Rights Foundation of Turkey Monthly Report August 2001 p 5.

and denying villagers the opportunity to collect their personal possessions.[28] Even where inhabitants were not formally evacuated, they were often compelled to resettle elsewhere as a result of the destruction of their physical and social communities with no resources to rebuild.

The circumstances surrounding such displacement were exacerbated by the frustration of Kurdish attempts to further their political agenda. Throughout the 1990s, political parties focusing on securing rights for the Kurds encountered a cycle of being declared illegal, reforming, and again being dissolved. These obstacles had a significant impact on the ability of such groups to participate in the mainstream political process and bring issues such as displacement to the fore. Further, the Turkish military blocked its own highest civilian officials from visiting some areas to assess the causes and conditions of forced displacement during the State of Emergency.[29]

The village evacuations and violence in the Southeast did not begin to truly decline until 1999 with the arrest of Abdullah Öcalan and the subsequent PKK ceasefire. The State of Emergency ended in 2002, at which point Turkey embarked on a programme of reforms designed to align Turkish law with European standards in terms of democracy and human rights. However, displacement continues along with many other abuses of Kurdish rights.

28 Göç-Der Recommendations on the Kurdish Problem and Internal Displacement to the Turkish Government, Kongra-Gel (PKK) and the EU (8 December 2004).

29 Bill Frelick The Wall of Denial p 8.

PART THREE - TURKEY'S INTERNATIONAL OBLIGATIONS TOWARDS IDPs

According to the Guiding Principles 'internally displaced persons' includes any person or group of persons who involuntarily left their home or habitual settlements especially as a result of or in order to protect themselves from the consequences of armed conflict. In general, this could involve any condition including violence, the violation of human rights or natural or human-made disasters, which results in the displacement of people but not across an internationally recognised state border.[30] The definition historically used by Turkey has been more restrictive and should be made consistent to include those recognised by the international definition.[31] For example, an MP from Tunceli disagreed with the Government's statistics regarding the number of IDPs in Turkey, as it did not include his own village (Balık) or those who felt compelled to leave, for example, because of conflict with the village guards.[32]

Aside from Turkey's commitments under EU Accession standards, which will be discussed in more detail in Part Four, Turkey is party to international declarations, conventions and treaties, several of which are legally binding. The most significant obligations are those under the UDHR; the ICCPR; Common Article 3 and Protocol II of the Geneva Conventions of 1949; the Guiding Principles; and the ECHR.

A. Universal Declaration of Human Rights

The General Assembly of the United Nations (UNGA) adopted the UDHR on December 10, 1948.[33] Turkey accepted the UDHR in 1949. One of the objectives of the Declaration was to protect human rights by the rule of law so that people are not 'compelled to have recourse, as a last resort, to rebellion against tyranny

30 Dr Francis Deng UN Guiding Principles on Internal Displacement Hum. Rts. Res. 1998/50, U.N. Doc. E/CN.4/1998/53/Add.2 (1998), Introduction [2]. ('Guiding Principles').

31 TESEV, Norwegian Refugee Council and Internal Displacement Monitoring Centre Overcoming a Legacy of Mistrust: Towards Reconciliation between the State and the Displaced: Update on the Recommendations made by the UN Representative on IDPs (2006) p 11 <http://www.tesev.org.tr/eng/events/Turkey_report_1June2006.pdf> (last accessed 4 September 2007). ('Overcoming a Legacy of Mistrust').

32 Bill Frelick The Wall of Denial p 6.

33 Universal Declaration of Human Rights G.A. Res. 217A, UN GAOR, 3rd sess pt I, Resolutions, at 71, UN Doc. A/810 (1948) <http://www.un.org/Overview/rights.html> (last accessed 3 September 2007). ('UDHR').

and oppression.'[34] Though the UDHR is not a binding convention and there are no signatories, it is fundamental to international human rights law and is of such importance that it arguably falls within the moral obligations of states to adhere to its provisions. The UDHR contains a number of provisions that are relevant to internal displacement.

The UDHR provides a number of important procedural rights that are outlined here. Firstly, Article 2 provides that all people are entitled to the rights and freedoms set forth in the declaration without distinction of any kind. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it is independent, trust, non-self-governing or under any other limitation of sovereignty. Further, it provides that all people are equal before the law and are entitled to equal protection of the law without any discrimination, including protection against any incitement to such discrimination.[35] Importantly, the UDHR provides that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to them by the constitution or by law.[36]

B. International Covenant on Civil and Political Rights

The ICCPR embodies many of the most important civil and political rights that are addressed by the UDHR. The ICCPR was adopted and opened for signature on 16 December 1966 but it did not enter into force until 23 March 1976.[37] Turkey signed the ICCPR on 15 August 2000 and ratified it on 23 September 2003.[38] However, when ratifying the ICCPR Turkey made a reservation in connection to Article 27 stating:

> The Republic of Turkey reserves the right to interpret and apply the provisions of Article 27 of the International Covenant on Civil and Political Rights in accordance with the related provisions and rules of the Constitution of the Republic of Turkey and the Treaty of Lausanne of 24 July 1923 and its Appendixes.[39]

34 UDHR Preamble [3].

35 UDHR Art 7.

36 UDHR Art 8.

37 International Covenant on Civil and Political Rights GA Res 2200A (XXI) 1966 <http://www.unhchr.ch/html/menu3/b/a_ccpr.htm> (last accessed 3 September 2007). ('ICCPR').

38 Office of the High Commissioner for Human Rights ICCPR Ratifications and Reservations (updated 20 July 2007) <http://www.ohchr.org/english/countries/ratification/4.htm> (last accessed 3 September 2007). ('ICCPR Ratifications').

39 Office of the High Commissioner for Human Rights ICCPR Ratifications.

Article 27 of the ICCPR states:

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

The reservation to Article 27 demonstrates Turkey's intention to comply with the Covenant only to the extent that its principles are recognised by the Turkish Constitution. This means that the protections of the ICCPR may only pertain to the non-Muslim minorities (Jews, Armenians and Greek Orthodox) that are recognised under the Treaty of Lausanne and the Constitution of the Republic of Turkey. Therefore, the Kurds in Turkey are likely to be excluded in practice from the protections offered by the ICCPR.

The ICCPR guarantees every human being the inherent right to life (Article 6); freedom from torture and cruel, inhuman or degrading treatment (Article 7); the right to liberty and security of person (Article 9); the right, if deprived of liberty, to be treated with humanity and with respect (Article 10); freedom from arbitrary or unlawful interference with one's privacy, family, home or correspondence, and from unlawful attacks on one's honour and reputation (Article 17); and freedom from discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (Article 26).

The provisions of Articles 6 (right to life) and 7 (freedom from torture) are non-derogable and may not be limited during times of public emergency which threaten the life of the nation (Article 4). The rights contained in Articles 9 (liberty and security of person), 10 (the right to be treated with humanity and respect), 17 (freedom from arbitrary or unlawful interference with privacy, family, home or correspondence), and 26 (freedom from discrimination) are classed as derogable provisions and may be dispensed with in times of public emergency which threaten the life of the nation. However, this qualification is strictly interpreted. Any limitations imposed by states on these rights must be for one of the purposes specified and it must be proportionate to achieving that purpose.

C. Common Article 3 and Protocol II of the Geneva Conventions of 1949

International humanitarian law traditionally relates to the conduct of armed conflict between states. However, there is a growing body of international rules that regulate the conduct of armed conflicts that take place within the territory of a state. Article 3, common to all four of the Geneva Conventions of 1949, falls within this category. It applies to 'armed conflict not of an international character'

that occurs within the territory of a High Contracting Party.[40] Turkey is party to the Geneva Conventions and is thus bound by this provision. Nevertheless, the Turkish Government disputes the application of Article 3 to the conflict in south-east Turkey.

Common Article 3 requires that all persons taking no active part in hostilities be treated humanely. In its comments to Common Article 3, the International Committee of the Red Cross (ICRC) indicates that it 'applies first and foremost to civilians — that is to people who do not bear arms.'[41] Common Article 3 specifies certain acts that are inhuman and forbidden by the Convention, if perpetrated against civilians and those taking no part in the hostilities, including:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
(b) taking of hostages;
(c) outrages upon personal dignity, in particular humiliating and degrading treatment;
(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

The issue of whether Common Article 3 is applicable to the conflict in south-east Turkey is initially problematic in that the article does not define 'armed conflict not of an international character.' However, it is arguable that the matter should be settled in the affirmative, considering the commentary of the ICRC and definitions used by international tribunals.

The ICRC suggests the following criteria as indicative of whether a conflict is to be considered internal, as defined by Common Article 3: (1) the party in revolt possesses an organized military force and an authority responsible for its acts; (2) the Government is obliged to have recourse to its regular military forces; (3) the Government has recognised itself or the insurgents as belligerents; and (4) the

40 Convention (No. I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1949) 75 U.N.T.S. 31; Convention (No. II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea (1949) 75 U.N.T.S. 85; Convention (No. III) Relative to the Treatment of Prisoners of War (1949) U.N.T.S. 135; and Convention (No. IV) relative to the Protection of Civilian Persons in Time of War (1949) 75 U.N.T.S. 287.

41 ICRC Commentary on the Geneva Conventions p 40 <http://www.icrc.org/ihl.nsf/COM/380-600006?OpenDocument> International Humanitarian Law – Treaties & Documents (last accessed 3 September 2007).

insurgents have an organization purporting to have the characteristics of a State.[42] In addition, the Appeals Chamber of the International Criminal Tribunal for former Yugoslavia defined 'armed conflict' as 'protracted armed violence between governmental authorities and organized armed groups or between such groups within a state.'[43]

Common Article 3 expressly applies not only to the State Party to the Convention, but also to other parties in the armed conflict. One could argue that the hostilities between Turkey and the PKK that lasted from 1984 until the PKK announced a ceasefire in 1999 amounted to an armed conflict on the basis of these definitions. Organised combatants fighting for the PKK fought the Turkish military forces during these years, setting up bases in northern Iraq for the purposes of targeting Turkish forces. While the ICRC has not officially declared whether the hostilities in south-east Turkey constituted an armed conflict for the purposes of Common Article 3, it has referred to incursions by the Turkish army into Northern Iraq in pursuit of the PKK as war. Thus, international law applicable in armed conflict, as well as Common Article 3 to the Geneva Conventions, should apply to the conflict in South-east Turkey.

Turkey has not ratified Protocol II to the Geneva Conventions of 1977.[44] However, this body of international humanitarian law applies to internal conflicts and it has been ratified by over 150 states. Some or all of the provisions of Protocol II may therefore qualify for recognition as customary international law, which would make it binding on all states, regardless of ratification. Protocol II may also be viewed as an authoritative guide to the interpretation of the obligations under common Article 3 since '[t]his Protocol … develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions or application…'[45]

42 ICRC Commentary on Article 3 of the Geneva Conventions pp 35 - 36 <http://www.icrc.org/ihl.nsf/COM/380-600006?OpenDocument> International Humanitarian Law – Treaties & Documents (last accessed 4 September 2007).

43 Prosecutor v. Dusko Tadic, Case No. IT-94-1-T (May 7, 1997). Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, [70].

44 Additional Protocol (No. II) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, open for signature 8 June 8 1977, 1125 U.N.T.S. 609, Entered into force 7 December 1978. ('Protocol II to the Geneva Conventions').

45 Protocol II to the Geneva Conventions Art 1.1.

Protocol II further elaborates the fundamental guarantees that must be given to those not taking part in hostilities, including civilians. Article 17 explicitly prohibits the forced movement of civilians:

1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.

2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.

Article 17 of Protocol II applies to the situation in south-east Turkey due to the mass destruction of homes and villages, and the forcible evacuation of people to other parts of Turkey. In fact, the ICRC notes that displacements are all too often considered as measures falling within the range of military operations.[46] Although the prohibition of forced movement is an important element in the protection of the civilian population, common Article 3 does not address the matter.[47] Article 17 of Protocol II serves to fill the gap in Common Article 3 to address the major issue of forced movement of ethnic and national groups opposed to the Government.[48] The ICRC points out that the exceptional circumstances in which displacement of civilians is permitted 'requires the most meticulous assessment of the circumstances.'[49] Deporting civilians requires military necessity, which is qualified by imperative military reasons which are also referred to in Article 49 of Convention IV.[50] On that point, it is clear that imperative military reasons cannot be used to justify political motives, such as moving a population in order to exercise more effective control over a dissident ethnic group.[51]

It is therefore arguable that the forcible evacuation of the Kurds in Turkey should be considered in the light of Turkey's binding international obligations arising under Common Article 3 of the Geneva Conventions of 1949 and also potentially arising

46 ICRC Commentary on Protocol II to the Geneva Conventions p 1471 <http://www.icrc.org/ihl.nsf/COM/475-760023?OpenDocument> International Humanitarian Law – Treaties & Documents (last accessed 4 September 2007).

47 ICRC Commentary on Protocol II to the Geneva Conventions p 1471.

48 ICRC Commentary on Protocol II to the Geneva Conventions p 1471.

49 ICRC Commentary on Protocol II to the Geneva Conventions p 1471.

50 ICRC Commentary on Protocol II to the Geneva Conventions pp 1471, 1473.

51 ICRC Commentary on Protocol II to the Geneva Conventions pp 1471, 1473.

from the classification of Article 17 of Protocol II to the Geneva Conventions of 1977 as customary international law.

D. United Nations Guiding Principles on Internal Displacement

In 1994 the UN Commission on Human Rights gave Dr Francis Deng the mandate to develop the Guiding Principles, a document that addresses the specific needs of IDPs worldwide by identifying rights and guarantees relevant to their protection before, during and after such displacement.[52] The Guiding Principles are consistent with international human rights law and international humanitarian law, now widely accepted and promulgated in various instruments.[53]

Importantly, the Guiding Principles are directed towards both governmental authorities, intergovernmental and non-governmental organisations, which would include the PKK. Since their adoption by the UN Commission on Human Rights in 1998, the Guiding Principles have been noted with approval or acknowledged by the UN General Assembly, the UN Security Council, the Economic and Social Council and a number of regional organisations. They have also been taken up by governments, NGOs, and displaced communities. This document now represents the benchmark for states and others regarding internal displacement.

As previously mentioned, the Guiding Principles define internally displaced persons as:

> persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.[54]

This definition clearly encompasses the many internally displaced Kurds in Turkey.

The Guiding Principles address each stage of the phenomenon of displacement, as well as outlining the responsibility of states and others in that process. Section I outlines the general principles according to which the Guiding Principles are to be applied. Within that section, Principle 3 provides that 'national authorities have the primary duty and responsibility to provide protection and humanitarian

52 Dr Francis Deng Guiding Principles.

53 Dr Francis Deng Guiding Principles Introduction [3].

54 Dr Francis Deng Guiding Principles Introduction [2].

assistance to internally displaced persons within their jurisdiction.'[55] Further, internally displaced persons have the right to request and receive such protection and assistance free from persecution or punishment.[56] In the context of internal displacement in Turkey, these provisions would require greater protection and assistance for Kurdish people, for example, against the continuing threat posed by village guards for IDPs who wish to return to their villages.

Section II contains principles directed towards protecting people from displacement and ensuring that the human rights of individuals are respected. Principle 6 provides that 'every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.'[57] Arbitrary displacement includes, as relevant to the situation of the Kurds in Turkey:

- displacement that is based on practices aimed at altering the ethnic, religious or racial composition of the affected population;[58]

- displacement that is occurring in a situation of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;[59] and

- displacement that is used as a collective punishment.[60]

It is arguable that the displacement of Kurdish civilians in south-east Turkey may fall within the scope of the prohibition on arbitrary displacement.[61]

In addition, Principle 7 requires that the authorities explore all feasible alternatives in order to avoid displacement and states that 'where no alternatives exist, all measures shall be taken to minimise displacement and its adverse effects.'[62] It is evident that the minimisation of displacement has not been the predominant concern of the Turkish authorities in evacuating thousands of villages, resulting in the displacement of some 3 million individuals. Principle 7 also mandates that to the greatest practicable extent, IDPs must be provided with proper accommodation,

55 Dr Francis Deng Guiding Principles Principle 3(1).

56 Dr Francis Deng Guiding Principles Principle 3(2).

57 Dr Francis Deng Guiding Principles Principle 6(1).

58 Dr Francis Deng Guiding Principles Principle 6(2)(a).

59 Dr Francis Deng Guiding Principles Principle 6(2)(b).

60 Dr Francis Deng Guiding Principles Principle 6(2).

61 Roberta Cohen 'Introduction to the Guiding Principles on Internal Displacement' (speech delivered at the International Conference on Kurdish Refugees and Internally Displaced Kurds, Washington D.C. 23 September 2001) <http://www.brookings.edu/views/speeches/CohenR/20010923_kurds_gps.htm> (last accessed 11 July 2007.)

62 Dr Francis Deng Guiding Principles Principle 7(1).

satisfactory conditions of nutrition, health and hygiene; and that members of the same family should not be separated.[63] Further, where displacement occurs otherwise than in the emergency stages of armed conflicts and disasters, certain guarantees of due process must be met.[64] Principle 9 is also relevant to the situation of the Kurds in Turkey, asserting that States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, pastoralists and other groups with a special dependency on and attachment to their lands.

In ensuring protection during displacement, the Guiding Principles set out a broad range of fundamental human rights and measures directed towards their protection in the particular conditions suffered by IDPs. For example, Principle 10 provides for the protection of the right to life.[65] In protecting that right, the Guiding Principles prohibit starvation as a method of combat;[66] direct or indiscriminate attacks or other acts of violence, including the creation of areas in which attacks on civilians are permitted;[67] and the use of anti-personnel landmines.[68] It is arguable that each of these provisions was violated by Turkey during the village evacuations of the 1990s and that violations of some of the principles continue to occur.

The Guiding Principles also address the return, resettlement and reintegration of displaced persons. These provisions are critical for the Kurds, many of whom now wish to return to their homes and villages. Principle 28(1) is particularly significant in this respect. It provides that:

> competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country.

Further, Principle 28(2) provides that 'special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.'

Although the Guiding Principles are not legally binding on governments, the fact that they reflect and are consistent with international human rights law and

63 Dr Francis Deng Guiding Principles Principle 7(2).

64 Dr Francis Deng Guiding Principles Principle 7(3).

65 Dr Francis Deng Guiding Principles Principle 10(1).

66 Dr Francis Deng Guiding Principles Principle 10(2).

67 Dr Francis Deng Guiding Principles Principle 10(2)(a).

68 Dr Francis Deng Guiding Principles Principle 10(2)(e).

international humanitarian law means that the standards they contain should influence Turkey's approach to dealing with the issue of internal displacement.

E. European Convention for the Protection of Human Rights and Fundamental Freedoms

In 1950 the Council of Europe established the ECHR, with the aim of implementing provisions of the UDHR and achieving greater unity and understanding between the Council members.[69] Turkey ratified the ECHR in 1954. The right for individual applications from Turkish citizens to the European Commission of Human Rights was recognised in 1987 and the compulsory jurisdiction of the ECtHR was recognised in 1989.[70] However, as mentioned previously, by May 1990 Turkey had filed declarations of its intention to derogate from a range of rights in response to 'threats to its national security in south-east Anatolia.'[71]

KHRP has submitted many cases to the ECtHR on behalf of Applicants whose homes and villages were destroyed in south-east Turkey during the 1990s. The main rights invoked in these cases have been the right to life;[72] freedom from torture or inhuman or degrading treatment or punishment;[73] the right to home, privacy and family life;[74] the right to an effective remedy before a national authority;[75] and the right to peaceful enjoyment of possessions.[76]

These proceedings before the ECtHR have centred on whether the evidence before the Court was sufficient to prove that violations had occurred, rather than whether the alleged acts, if proven, constituted a violation of the relevant right. The Applicants generally alleged that the security forces had destroyed villagers' homes, personal belongings, livestock and crops, forcibly evicting them from their homes and, in some cases, torturing or killing their relatives or being responsible for their disappearance. Although the Turkish Government usually denied the allegations,

69 European Convention for the Protection of Human Rights and Fundamental Freedoms, Opened for signature 4 November 1950, 213 U.N.T.S. 222, Entered into force 3 September 1953 <http://www.echr.coe.int/echr/> (last accessed 4 September 2007). ('ECHR').

70 Protocol No. 11 to the ECHR, which came into force on 1 November 1998, mainstreamed the existing twinned Strasbourg mechanisms (European Court of Human Rights and the European Commission on Human Rights) with a single body, the European Court of Human Rights.

71 See above 'The PKK Conflict And The State Of Emergency 1984-1999.' p

72 ECHR Art 2.

73 ECHR Art 3.

74 ECHR Art 8.

75 ECHR Art 13.

76 Protocol I to the European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, Entered into force 20 March 1952, Art 1 <http://conventions.coe.int/treaty/en/Treaties/Html/005.htm> (last accessed 11 July 2007).

asserting instead that the PKK was responsible, the Court has increasingly found Turkey responsible for these serious violations. On these occasions the Court has ordered Turkey to pay the Applicants pecuniary and non-pecuniary damages, which reflect both the damage to their property and their significant trauma and psychological suffering.

One of the most important provisions under the ECHR is the obligation to provide an effective remedy. This includes a 'thorough and effective investigation capable of leading to the identification and punishment of those responsible, including effective access for the complainant to the investigatory procedure,' under Article 13 of the ECHR, and under Articles 2 and 3 ECHR where an allegation exists of a killing, disappearance or the use of torture.[77] The Court has found a series of violations of Article 13 in particular because of the ineffectiveness of the criminal law system in respect of actions of the security forces in south-east Turkey in the 1990s, including in relation to IDPs.

Although restitution and compensation are established remedies under international law, the ECHR has never, in the case of the Kurds of south-east Turkey, ordered the Applicants' property to be returned to them. When comparing this practice to other cases not involving Turkey it is apparent that the Court has indeed ordered the return of property to the Applicants, or failing that, the payment of compensation.[78]

In *Papamichalopoulos v. Greece* the Court held that the occupation of the Applicants' land by the Greek Navy Fund violated Article 1 of Protocol 1 to the ECHR.[79] In that case the Court relied on the 1928 judgment from the Permanent Court of International Justice (PCIJ) in the *Chórzow Factory* Case, in which the PCIJ stated that:

> Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it - such are the principles which should serve to determine the amount of compensation due for an act contrary to international law.[80]

77 KHRP Case, ECtHR, Appl. No. 21987/93, Aksoy v Turkey, judgment of 26 November 1996.

78 ECtHR, Appl. No. 14556/89, Papamichalopoulos v. Greece, judgment 31 October 1995. See also Appl. No. 28342/95, Brumărescu v. Romania, judgment 23 January 2001.

79 ECtHR, Appl. No. 14556/89, Papamichalopoulos v. Greece, judgment of 24 June 1993.

80 PCIJ, Ser. B., No. 3, 1925, Case Concerning the Factory at Chorzów, judgment of 26 July 1927, para. 36.

It is clear from this statement that the aim of restitution, in the view of the PCIJ, is to restore to Applicants the rights ('restitution in kind') they enjoyed before a violation occurred. If restitution is not possible the Applicants are entitled to compensation reflecting the value of the right they have lost.

Similarly, in *Brumărescu v. Romania* the ECtHR ordered the restitution of property where the Applicant's property had been nationalised without payment of compensation.[81] The Court found that the interference violated Article 1 of Protocol 1 of the ECHR and confirmed that the taking of property could only be justified if it could be shown that it was in the public interest, subject to the conditions provided by law and in accordance with the principle of proportionality.[82]

Although the Court, in the case of the Kurds in Turkey, has never awarded restitution it has awarded compensation instead. In its 1996 decision on the *Akdivar* case, the Court held that the question of claims for pecuniary and non-pecuniary damages should be reserved for decision at a later date.[83] Subsequently, in its judgment on just satisfaction in 1998, the Court held that the state should 'make reparations for [the consequences of its breach] in such a way as to restore as far as possible the situation existing before the breach', also known as the principle of *restitutio in integrum*.[84] However, the Court stated that if *restitutio in integrum* is practically impossible the respondent States are free to choose the means whereby they will comply with the judgment under the supervision of the Committee of Ministers, and the Court will not make consequential orders or declaratory statements in this regard.[85]

The decision in *Akdivar* has been applied in numerous other similar cases, including *Selcuk and Asker v Turkey*[86], *Mentes and Others v Turkey*[87] and *Orhan v. Turkey.*[88] In the latter case, the Applicants were evacuated after their son disappeared, and their homes were burned. Although compensation was awarded, the Court refused to

81 ECtHR, Appl. No. 28342/95, Brumărescu v. Romania, judgment of 23 January 2001, paras. 22-23.

82 ECtHR, Appl. No. 28342/95, Brumărescu v. Romania, judgment of 28 October 1999, para. 78.

83 KHRP Case, ECtHR, Appl. No. No 21893/93, Akdivar and Others v Turkey, judgment of 16 September 1996, para.112.

84 KHRP Case, ECtHR, Appl. No. No 21893/93, Akdivar and Others v Turkey, judgment of 1 April 1998, para 47.

85 KHRP Case, ECtHR, Appl. No. No 21893/93, Akdivar and Others v Turkey, judgment of 1 April 1998, para 47.

86 KHRP Cases, ECtHR, Appl. Nos. 23184/94 and 23185/94 , Selcuk and Asker v. Turkey, judgment of 24 April 1998.

87 KHRP Case, ECtHR, Appl. No. 23186/94 , Mentes and Others v. Turkey, judgment of 28 November 1997.

88 KHRP Case, ECtHR, Appl. No. 25656/94, Orhan v. Turkey, , judgment of 18 June 2002.

order that the demolished homes be reconstructed and the Applicants be allowed to return to their land due to the ongoing security situation.[89]

The Applicants in these cases represent only a fraction of the number of Kurdish victims that are still unable to go home. In *Akdivar*, it was likely that the Court, due to the security situation in the southeast, ordered the payment of compensation instead of ordering Turkey to allow the Applicants to return. However, the Court made statements to the effect that if there was a change in circumstances, with less conflict in the Southeast, the Government should develop positive policies to allow for the return of IDPs to their villages and homes.[90] Since the lifting of the state of emergency in the region in 2002, applicants before the ECtHR were hopeful that they might be afforded the opportunity to return to their villages and start rebuilding their lives. However, as will be detailed later, considerable obstacles still remain.

The Council of Europe's Committee of Ministers is vested with the responsibility to ensure that the applicants are able to return to their properties, pursuant to the Court's decree. However, the Committee of Ministers has not been successful in ensuring the Applicants' remedy or persuading the Turkish Government to implement an effective general return policy. In fact, Turkey often fails to implement adverse ECtHR judgments when they are given. In its 2002 Regular Report the EU pointed out that 'Turkey's failure to execute judgments of the ECtHR remains a serious problem.'[91] It cited 90 cases in which Turkey failed to ensure just satisfaction of the Court's orders, and a further 18 freedom of expression cases in which the state failed to rectify the consequences of domestic criminal convictions which violated the ECHR.[92] Subsequent reports have stated that Turkey has made increased efforts since 2002 to comply with ECtHR decisions, yet while the Commission believes these efforts may assist in combating systematic violations of international law, further action will be necessary in order to eradicate the systematic infringements of the civil and political rights of the populace.[93] Such continual violence may be taken to indicate an underlying vacuum of established rights. Recent progress reports attest to this, stating that despite recent reforms Turkey still accounts for over 14 per cent of cases pending before the Committee of Ministers for execution

89 KHRP Case, ECtHR, Appl. No. 25656/94, Orhan v. Turkey, judgment of 18 June 2002, p. 87.

90 Mark Muller 'Strategy and Discussion Meeting on the Situation of Internally Displaced Persons and the Law on Compensation for Damage Arising from Terror and Combating Terror (Law 5233)' (speech delivered at conference between KHRP, BHRC and DBA conference, Diyarbakir, Turkey, 11 June 2005).

91 Commission of the European Communities Regular Report on Turkey's Progress Towards Accession (2002) European Commission p 26 <http://www.europarl.europa.eu/meetdocs/committees/afet/20021021/sec(02)1412_EN.pdf> (last accessed 4 September 2007). ('2002 Regular Report').

92 Commission of the European Communities 2002 Regular Report p 26.

93 Commission of the European Communities 2004 Regular Report pp 16-17.

control.[94] There are also restrictions in Turkish legislation that are preventing the execution of ECtHR judgments in over 100 cases relating to fairness before former state security courts.[95] In 2006, the ECtHR delivered 320 judgments finding that Turkey had violated at least one article of the ECHR.[96] Despite such critical decisions, 100 new applications have been made to the ECtHR concerning Turkey between 1st September 2005 and August 2006. The mere fact that more than 2/3 of these new applications refer to the right to a fair trial (Article 6) and the protection of property rights (Article 1 of Protocol No. 1) is a clear indication that much advancement could still be made.[97]

94 Commission of the European Communities Regular Report on Turkey's Progress Towards Accession (2006) European Commission p 11 <http://ec.europa.eu/enlargement/pdf/key_documents/2006/nov/tr_sec_1390_en.pdf> (last accessed 4 September 2007). ('2006 Regular Report').

95 Commission of the European Communities 2006 Regular Report p 11.

96 Registry of the European Court of Human Rights Survey of Activities (2006) European Court of Human Rights p 42 <http://www.echr.coe.int/NR/rdonlyres/69564084-9825-430B-9150-A9137DD22737/0/Survey_2006.pdf> (last accessed 4 September 2007.)

97 Commission of the European Communities 2006 Regular Report p 11.

PART FOUR - EU ACCESSION AND THE PROBLEM OF THE INTERNALLY DISPLACED

In 1993, at the Copenhagen European Council, the EU took a decisive step towards enlargement, agreeing that 'the associated countries in Central and Eastern Europe that so desire shall become members of the European Union'. The membership criteria, also known as the Copenhagen Criteria, comprise both economic and political conditions. While the specified economic criteria are beyond the scope of this publication, the political criteria are particularly relevant, as they require of the candidate country that it must achieve the 'stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities' before a decision to open accession negotiations can be reached. [98]

When Turkey was granted the status of candidate country in 1999, the Helsinki European Council concluded that Turkey's candidature for membership would be assessed against the same criteria as the candidate countries from Central and Eastern Europe. This meant that Turkey, as a condition for the opening of accession negotiations, was required to fulfil the Copenhagen Criteria. The Criteria have been seen as providing a window of opportunity for Turkey to improve its human rights record, including the situation relation to IDPs in the Southeast.

At the 2002 Copenhagen summit, EU leaders agreed to open negotiation with Turkey 'without delay', provided that the country was deemed to have fulfilled the Copenhagen Criteria. In 2004 the European Commission concluded that while there were still issues to be resolved, Turkey had 'sufficiently fulfilled' the Copenhagen Criteria and the Commission therefore recommended that formal accession negotiations with Turkey were opened.[99] In December 2004 the European Council concurred with the Commission's recommendation and agreed to open negotiations on 3 October 2005, provided that Turkey brought into force

98 European Parliament Copenhagen European Council, Official Positions of the Other Institutions and Organs, 21-22 June 1993 <http://www.europarl.eu.int/enlargement/ec/cop_en.htm> (last accessed 16 July 2007).

99 Commission of the European Communities, Communication from the Commission to the Council and the European Parliament: Recommendation of the European Commission on Turkey's Progress Towards Accession (2004) <http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=504DC0656> (last accessed 14 July 2007).

six pieces of outstanding legislation.[100] The European Council therefore invited the Commission to present a proposal for a framework for EU negotiations with Turkey. This framework was adopted by the Council in connection with the official opening of accession negotiations. The framework outlines the procedure for negotiations and lists the principles which will govern the negotiations between the EU and Turkey.[101] In January 2006 the Council further adopted a revised version of the 2003Accession Partnership with Turkey, setting out the principles, priorities, immediate objections and conditions governing the accession negotiations.

The Council's Decision of 23 January 2006 on the Principles, Priorities, and Conditions contained in the Accession Partnership with Turkey listed the situation in the east and south-east of Turkey as a short-term priority; that is, a priority that could realistically be expected to be accomplished within one to two years.[102] In order to address the situation, the Commission stated that Turkey should abolish the village guard system in south-east Turkey and that measures should be pursued to facilitate the return of IDPs to their original settlements in accordance with the recommendations of the UN Secretary General's Special Representative for Displaced Persons. Further, the Commission recommended that Turkey develop a comprehensive approach to reducing regional disparities, and in particular to improving the situation in south-east Turkey, with a view to enhancing the economic, social and cultural opportunities for all Turkish citizens, including those of Kurdish origin. It also recommended that fair and speedy compensation be offered to those who have suffered loss and damage as a result of the security situation in the Southeast.[103]

A. Assessment of Turkish Reforms

While Turkey has made progress towards reform and meeting the mandates of the Copenhagen Criteria, there is disagreement on the extent to which Turkey has actually met the standards stipulated. By 1 June 2005, Turkey had enacted the six pieces of legislation set out in the Council's decision of 17 December 2004 as pre-requisites to the opening of formal accession talks. However, KHRP is concerned that the EU has not been sufficiently robust in enforcing Turkish compliance with its

100 These included the Law on Associations; the new penal code; the Law on Intermediate Courts of Appeal; the Code of Criminal Procedure; the legislation establishing the judicial police; and the legislation on the execution of punishments and measures. See The European Council Turkey: Presidency Conclusions 16-17 December 2004 p 2 <http://ec.europa.eu/enlargement/pdf/turkey/presidency_conclusions16_17_12_04_en.pdf> (last accessed 16 July 2007).

101 See The European Council Turkey: Presidency Conclusions p 2.

102 Council Decision of 23 January 2006 (2006/35/EC) on the Principles and Conditions Contained in the Accession Partnership with Turkey [2006] OJ L 22/34 <http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_022/l_02220060126en00340050.pdf> (last accessed 4 September 2007). ('Council Decision of 23 January 2006').

103 Council Decision of 23 January 2006.

obligations in the accession process. Similarly, Yusuf Alataş, president of the Human Rights Association (İHD) believes that after the opening of entry negotiations, the rest of the accession process is simply technical with even partial fulfilment of the Copenhagen Criteria being considered sufficient to move negotiations forward.[104]

Ratification of protocols has remained a top priority in the Accession Partnership as several protocols relating to prohibitions against torture and against discrimination by public authorities were still awaiting approval in November 2006.[105] Since the November 2006 Progress Report was released, Turkey has ratified the First Optional Protocol to the ICCPR.[106] However, there are several relevant protocols to the ECHR that Turkey has not yet ratified, along with the Optional Protocol to the Convention against Torture. Nevertheless, the first phase of the accession process, the analytical examination of the *acquis communautaire* was completed in October 2006.[107] The fact that the accession process is proceeding, despite one of the top accession priorities being only partially satisfied may be indicative of undue flexibility on the part of the EU in considering accession criteria relating to human rights.

B. The Hacettepe Survey

The extent of internal displacement in Turkey has never been fully documented and has been in continual dispute. The lack of reliable statistics and information has functioned to support Turkey's denial of the existence of an IDP problem throughout the 20th century. However, over the past decade several international actors have made reliable estimates as to the extent of internal displacement, thus exposing Turkey to international and domestic pressure to address the situation of IDPs and the Kurds more generally. The United Nations High Commissioner for Refugees (UNHCR) stated that as of 1995 there were 2 million internally displaced persons in Turkey.[108] The Honourable Christopher Smith, chair of the United States Helsinki Commission, concluded in 1996 that the number of displaced villagers exceeded 3 million. By 1999 it was generally acknowledged that 3,500 villages had been evacuated and up to 3 million Kurds had been displaced. Yet Turkey still failed to acknowledge the fact and consequences of displacement.

104 "İHD draws gloomy picture of human rights situation", 28 February 2007, Zaman Newspaper, Istanbul <http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=104081> (last accessed March 2007)

105 Commission of the European Communities 2006 Regular Report p 11.

106 Office of the High Commissioner for Human Rights Optional Protocol to the ICCPR Ratifications and Reservations (updated 20 July 2007) <http://www.ohchr.org/english/countries/ratification/5.htm> (last accessed 4 September 2007).

107 Commission of the European Communities 2006 Regular Report p 4.

108 UNHCR, 'Significant Populations of Internally Displaced Persons – 1995,' Refugees, No. 103, I – 1996, p 9.

A critical first step towards addressing the situation of IDPs was official recognition of the issue, which did not occur until 2002. As noted above, the European Council's decision of January 2006 stated that measures should be pursued to facilitate the return of IDPs to their original settlements in accordance with the recommendations of the UN Secretary General's Special Representative for Displaced Persons. One of those recommendations was that the Turkish Government should undertake a comprehensive survey of the displaced population to better inform the efforts being made to meet their needs and facilitate return and resettlement. In accordance with that recommendation the Turkish Government commissioned the Institute of Demographic Studies at Hacettepe University's Institute of Population Studies to conduct a field study on IDPs. The study aimed to establish both the scale of the original displacement and the current needs of the displaced persons originating from the eastern and south-eastern Anatolian regions over the last 20 years. The survey also aimed at determining IDPs' socioeconomic characteristics before and after migration, and reasons for migration and expectations.

The survey was completed in September 2005 and passed to the State Planning Organisation (DPT). However, the DPT criticised and attempted to discredit the survey. They claimed that as one of the researchers, Turgay Ünalan, was also a member of an NGO, Turkish and Economic Social Studies Foundation (TESEV), confidentiality had been breached. It is understood that the DPT had known this fact throughout the survey. Although there were no specific instances of Mr Ünalan breaching confidentiality, he was dismissed from the survey and an investigation was launched, which delayed the release of the results.[109]

Upon the 2007 release, the results confirmed suspicions that the Turkish Government severely underestimates the number of IDPs. The findings almost triple the original figures provided to the international community by the Ministry of Interior Affairs.[110] The Government had originally suggested that there were just 357,000 people displaced by the end of 2005[111] and almost one third of these had already returned.[112] Yet the Hacettepe survey estimates the IDP population to be between 953,680 - 1,201,200, which is still considered to be an extremely

109 'Devletin raporuna devlet sansürü' (State censor on its own report) Firat News Agency, 11 July 2006 <http://www.firatnews.com/modules.php?name=News&file=article&sid=11500> (last accessed 31 August 2007).

110 Emine Kart, "Survey: IDP numbers triple those acknowledged by state." Turkish Daily News, Ankara (07.12.06) <http://www.turkishdailynews.com.tr/article.php?enewsid=61133> (last accessed February 2007).

111 These amounts pertain to the 12 provinces: Batman, Bingöl, Bitlis, Diyarbakır, Elazığ, Hakkari, Mardin, Muş, Siirt, Şırnak, Tunceli ve Van.

112 The interior ministry says that 358,335 people were displaced from 945 villages and 2,021 hamlets during 1984-1999 and that 137,636 of them have returned to their homes since 1998. See TESEV, Norwegian Refugee Council and Internal Displacement Monitoring Centre Overcoming a Legacy of Mistrust p 12.

conservative estimate.. However, observers say this new population data provides a solid baseline to assist in the reformulation of aid and development programs for IDPs. It also presents a clearer indication of the current situation of IDPs. For example, the survey found that 55 per cent of those still internally displaced want to return to their homes. However, it found that 50 per cent were not aware of the RVRP and 46 per cent were not aware of the Compensation Law.[113] This information should provide the Government with an indication of how it may improve its efforts to address the problem.

Ultimately, the utility of these figures depends on the Government's willingness to take action and adapt its programmes and policies based on progressive information updates. Although the deadline for applications under the Compensation Law was extended for a further year on 23 May 2007 the evidence continues to support the conclusion that the Compensation Law and the RVRP are inadequate. Many hope that this newly acquired information will foster concrete Government initiatives to publicise the extent of the problem and implement the programmes and policies necessary to address the situation.

It was recognised by the European Commission in its November 2005 Progress Report that the situation of IDPs 'remains critical, with many living in precarious conditions.'[114] The same concerns are again echoed in the 2006 Progress Report, citing that little advancement has been made and the policy developments aimed at providing solutions for the IDPs are said to have made 'no further progress.'[115] It must be asked to what extent Turkey has achieved 'stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities' if its government and institutions are failing to make any significant progress in addressing the dire circumstances in which many IDPs subsist. With this in mind, Turkey's accession to the EU must be carefully considered in the context of its obligations towards IDPs.

113 Hacettepe University Institute of Population Studies Turkey Migration and internally Displaced Population Survey, Untitled (Press release, 6 December 2006) <http://www.hips.hacettepe.edu.tr/tgyona/press_release.pdf> (last accessed 29 August 2007).

114 Commission of the European Communities, Regular Report on Turkey's Progress Towards Accession (2005) European Commission p 38 <http://ec.europa.eu/enlargement/archives/pdf/key_documents/2005/package/sec_1426_final_progress_report_tr_en.pdf> (last accessed 4 September 2007).

115 Commission of the European Communities 2006 Regular Report p 23.

PART FIVE – TURKISH PROGRAMMES OF RETURN AND RESETTLEMENT

Since the early 1990s the Turkish Government has developed numerous concepts, plans and programmes in its attempts to facilitate the resettlement or return of IDPs to their villages. However, these various attempts have failed to address either the immediate problems faced by IDPs in Turkey or the underlying causes of their displacement. Since 1995, Turkey has half-heartedly implemented the Centralised Village Project, the Return to Village Project of the Southeast Restoration Project, the RVRP, and the East and Southeast Anatolia Action Plan. As will be discussed below, all of these programs were ill-conceived and under-funded, suggesting that they lacked any serious political backing and were intended mainly to deflect criticism rather than to meet the needs of the internally displaced. Only a small number of IDPs have benefited, compared to the many people who desperately need assistance. Many people have lost all faith in the Turkish Government and believe that the main obstacle between IDPs and justice is the intransigence of Government itself.

Occasionally there are reports of change on the part of the Government. For example, during 2004 the Government reportedly began a dialogue with the United Nations, the World Bank, and European Commission representatives with a view to identifying areas of cooperation for the return of IDPs. Accordingly, in 2004 Turkey embarked upon a new strategy for IDPs that was to be more efficient in addressing the identified problems of the displaced. A new government agency was to be created to coordinate IDP policies and to formalise the RVRP. Its duties were to define eligibility and disbursement criteria, principles, rules and participating institutions.[116] The agency was also to develop a new national framework to coordinate this integrated strategy in accordance with the Guiding Principles, and develop a policy for demobilising the village guard corps.[117] However, nothing has materialised following the Turkish Government's acknowledgment of these various shortcomings.

A significant factor in the Turkish Government's failure to make any real progress in addressing the situation of internally displaced Kurds in Turkey is the restriction on

116 HRW, Still Critical: Prospects in 2005 for Internally Displaced Kurds in Turkey, vol. 17 No. 2(D) March 2005, p 25 <http://www.hrw.org/reports/2005/turkey0305/turkey0305text.pdf> (last accessed 4 September 2007). ('Still Critical: Prospects in 2005').

117 HRW, Still Critical: Prospects in 2005 p 25.

the flow of information relating to IDPs. Firstly, the Turkish Government's return programs have lacked transparency and adequate consultation with the displaced population and other related bodies in the planning stages. Secondly, once programmes have been established, the dissemination of information that would enable IDPs to derive the greatest possible benefit from the programme is severely lacking. Programmes are poorly publicised and rarely involve awareness-raising or measures to facilitate the support of IDPs in engaging with the programme. As a result, there is confusion surrounding the programmes and support mechanisms currently available to IDPs wishing to return to their villages. The Government's failure to establish the conditions necessary for IDPs to participate fully in resettlement and return programmes could be construed as a deliberate strategy of obstruction.

A. Centralised Villages Project

The first major plan in which Turkey recognised the situation of internally displaced Kurds focused not on returning people to their original homes, but relocating them selectively to more controllable centralised villages near large population centres. In November 1994 Prime Minister Tansu Çiller called this a first step in which the Government would create secure areas in south-east Turkey for 12,000 displaced families. The Government claimed the programme was designed to consolidate some of the abandoned hamlets in order to make it easier to deliver infrastructure and services and attract jobs and provide better living standards.[118]

To fund the Centralised Villages Project, Turkey applied for 10 trillion Turkish liras (U.S. $275 million) from the Council of Europe. In its application, the Government vowed that the program would be entirely voluntary, promising to establish resettlement sites in the provinces of Batman and Diyarbakır. Turkey's application was rejected with the Council of Europe expressing concern that the funds might be used to coerce people to resettle. Consequently, the project ceased to exist in any permanent form.[119]

Despite this setback, various Turkish Governments have continued the attempt to create centralised villages in order to manage settlements next to towns and cities in the Southeast as a solution for the displaced Kurds. Visiting the Başağaç central village project in June 2001, Prime Minister Bülent Ecevit found that the State did not have enough resources to develop villages dispersed throughout the region and

118 John Ward Anderson, Kurdish Scar Unhealed in Turkey, Washington Post, pA03, 8 November 2000.

119 Esra Yener, Özer Çiller in çiftlik tutkusu, (Özer Çiller's Interest in Farms), Cumhuriyet, Istanbul, 10 October 1995; see also HRW, Turkey's Failed Policy to aid the Forcibly Displaced in the South-east, Vol. 8 No. 9(D), June 1996, p 5 <http://hrw.org/reports/1996/Turkey2.htm> (last accessed 4 September 2007). ('Turkey's Failed Policy').

stated that 'it might be necessary to unite spread out [sic] villages and form central villages in areas which are still under the threat of terrorism.'[120] The Prime Minister described the centralised village concept as a step towards the modernisation of south-east Turkey, which would enable the villagers to take advantage of the educational and economic opportunities formerly available only to city dwellers.

In a statement addressed to the OSCE Human Dimension Implementation Meeting in Warsaw in October 2000, the Government said that since the PKK's influence in the Southeast had diminished, the administration was preparing plans for the return of Kurds to newly established villages in the region where economic, social and cultural life would flourish.[121] Some centralised villages were indeed created. By November 2000 the Government had spent U.S. $100,000 on a pilot project to rebuild Cetinkol, a village located outside the provincial capital of Siirt. Other centralised villages were established at Başağaç, Konalga and Bayraklı. By June 2001 the Government had established a system of satellite settlements organised around the larger urban centres of south-east Turkey. However, the lack of reliable statistics in Turkey means that it is not possible to ascertain the true extent of voluntary resettlement among Kurdish IDPs deriving from the Centralised Villages Project.

Criticisms of the Centralised Villages Project

The Centralised Village Project was criticised as inappropriate for the region and neglectful of its people's culture, skills or desires.[122] Further, the project was apparently poorly publicised and lacked a basis in planning and public consultation, having been prepared in its entirety within 9 weeks, including field research.[123] *Göç-Der* has stated that almost 40 per cent of the IDPs had never heard of the Centralised Village Project. Among those who were aware of the law, only 6 per cent agreed to cooperate and go to the city-village in the event they could not return to their original villages.

Lack of serious planning in the creation of new centralised villages had the potential to cause a range of problems within the Kurdish communities. The centralised villages involved mixing different tribes and communities that were unaccustomed to living together. Given the social and cultural structure in the region and animosities between groups which emerged in the course of the armed conflict,

120 Editorial, Ecevit in Şırnak: Return to Villages, Anatolia, 3 June 2001.

121 OSCE, Session 11 - Human Dimension Implementation Meeting, Warsaw, 17-27 October 2000, p 2.

122 Salih Yıldırım, Return to Vacated villages at Turtle-Speed, Turkish Daily News, 25 May 2000. (Mr. Yildrim is the Şirnak Deputy and Deputy Chairman of the right-of-centre Motherland Party (ANAP)).

123 Prof. Dr. Gürol Ergin, Chairman of the Chamber of Agricultural Engineers quoted in Human Rights Foundation of Turkey Monthly Report (February 2001) p 12.

many families may simply not want to live in centralised settlements.[124] Further, centralised villages offered an urban way of life for an essentially rural population, making it difficult for inhabitants to support themselves through agriculture. This also made disputes over rights to arable land likely.

The involvement of village guards was problematic at several levels. In some cases, it was the village guards that moved into these settlements rather than displaced persons.[125] Further, some felt that IDPs should be provided with money and materials with which to build their own homes, instead of offering lucrative contracts to construction companies to build housing, which often failed to benefit IDPs. The village guards also represented an obstacle to return, as they often used the land and property of displaced people in their absence and therefore represented a threat to those returning.

B. Return to Village Project of the Southeast Restoration Project

In 1995, the Government proposed the Return to the Village Project of the Southeast Restoration Project. Responsibility for planning of the project was allocated to four ministers at the time: the Deputy Prime Minister, the Interior Minister, the State Minister for Human Rights and one other State Minister.[126] The Return to the Village Project was designed to resettle the displaced population in stages in order to relieve pressure on the cities. The first stage, to be achieved with funding of one trillion Turkish lira (approximately US $22 million), was to encourage traditional agrarian occupations such as bee keeping, animal husbandry and weaving, in order to mitigate the economic burden on the IDPs. In these initial stages there were signs that the four-member committee was determined to achieve substantial outcomes through the project in a relatively short timeframe. For example, State Minister for Human Rights, Algan Hacaloğlu stated:

> We should stop making fake, artificial attempts just to convince the European Parliament....We cannot provide regional security by establishing exaggerated security concepts. We have seen so far that this does not work. If we cannot actualize the Return to Villages Project we cannot stop the detrimental urbanization in big cities.[127]

124 TESEV, Norwegian Refugee Council and Internal Displacement Monitoring Centre Overcoming a Legacy of Mistrust p 31.

125 Human Rights Foundation of Turkey, Monthly Report (January 2001) p 8.

126 Ayşe Sayın, "Köylere `güvenli dönüş' arayışı" ("Search for a Secure Return to Villages,") Cumhuriyet, (İstanbul), July 7, 1995, p 4 cited in HRW Turkey's Failed Policy p 7.

127 Ayşe Sayın, "Köylere `güvenli dönüş' arayışı" ("Search for a Secure Return to Villages,") Cumhuriyet, (İstanbul), July 7, 1995, p 4 cited in HRW Turkey's Failed Policy p 7.

Further, Deputy Prime Minister Hikmet Çetin asserted that the issue of making evacuated villages habitable again had been dealt with in meetings with other ministers.[128]

Despite these initially positive signs, the project committee failed to make any significant progress. Tensions and competing interests between the security forces, regional State of Emergency officials and various state ministries were apparently part of the reason for the slow progress. In July 1995 Emergency Rule Governor Ünal Erkan claimed that the project posed serious security risks and suggested that the displaced should stay where they had moved to.[129] In stark contrast, the Prime Minister at the time, Tansu Çiller stated that progress had been made in identifying villages to which displaced villagers could return.[130]

In August 1995, Algan Hacaloğlu noted that a month had passed without any concrete step being taken towards implementing the project. He cited, in particular, a lack of cooperation from the security forces and the commanders of the armed forces and a lack of publicity for the project among the provincial governors.[131] In October 1995 it was announced that after provincial governors had carried out feasibility studies, there would be no bar in terms of security to the opening of 450 villages for rehabilitation.[132] However, Algan Hacaloğlu stated that he had sent a total of 750 inquiries from those wishing to return to villages to the governors of the south-east provinces, the Interior Minister, the Deputy Prime Minister, and a State Minister and had received only one response.[133]

In November 1995, it was announced that village return projects were to be suspended in view of the upcoming parliamentary elections. Little, if anything, was achieved in the following six months. The failure of the committee to achieve any substantive progress in relation to the project was asserted by Doğan Hatipoğlu: 'No matter how regrettable, from that day [of the announcement of the project] to

128 "Güneydoğu Onarım Projesi yaşama geçiyor" ("The Southeast Restoration Project is being Enacted"), Cumhuriyet, (İstanbul), July 12, 1995, p 5 cited in HRW Turkey's Failed Policy p 7.

129 HRW Turkey's Failed Policy p 7.

130 "Çiller: Köyünüze dönün" ("Çiller says, `Return to your Villages'"), Cumhuriyet, İstanbul, July 16, 1995; "Devletin Göç Açmazı," ("Government's Dilemma on Migration,") Cumhuriyet, July 16, 1995 cited in HRW Turkey's Failed Policy p 7.

131 "Güneydoğu ile ilgili ciddi bir adım yok," ("No Serious Steps Connected With the Southeast,") Cumhuriyet, August 11, 1995, p. 5 cited in HRW Turkey's Failed Policy p 7.

132 Uğur Şefkat, "450 köy tekrar yerleşime açılıyor," ("450 villages to be Opened for Habitation,") Yeni Yüzyıl, (İstanbul), October 9, 1995 cited HRW Turkey's Failed Policy p 7. The Turkish general staff would still have to give its final approval for a return to any of these villages.

133 "Göç projesi Rafta," ("Migration Project Shelved,") Cumhuriyet, October 2, 1995 cited in HRW Turkey's Failed Policy p 8.

today nothing has been done and the project remains on paper only.'[134] In May 1996 Emergency Rule Governor Necati Bilican announced that most individuals would not be able to return to their villages.

C. Return to Village and Rehabilitation Project

The RVRP was launched by Prime Minister Bülent Ecevit in March 1999. This plan was prepared

> to ensure that those who left their villages for security reasons could return to their villages or settle in other suitable places to create sustainable life conditions by constructing necessary social and economic infrastructure.[135]

According to Ecevit, the fundamental objective of the RVRP was not only to resettle the citizens, but also 'to revitalize settlement patterns and to distribute public investments and services more rationally. One of its other objectives is to support the development of central villages.'[136] This project also aims to instigate resettlement studies and encourage the revitalisation of activities such as agriculture, husbandry, and handicrafts in line with participatory planning principles so that returning families can support themselves and earn a living.

Under the RVRP, families wishing to return to their villages were to be identified, the necessary infrastructure and facilities within the abandoned and ruined villages were to be completed and social services, including health and education facilities were to be implemented. Housing developments were to be built with the labour of families, and necessary infrastructure and social facilities would be designed and built to increase the standard of living of the local people. The RVRP covers the 14 south-eastern provinces of Adıyaman, Ağrı, Batman, Bingöl, Bitlis, Diyarbakır, Elazığ, Hakkari, Mardin, Muş, Siirt, Şırnak, Tunceli and Van. However, fears remained among the Government and the military that returning the Kurds to their own villages or mountain regions would result in a return to the armed struggle of the Öcalan era.[137]

Since 2000, the administration of the RVRP has been managed by the Ministry of the Interior and the relevant local governorships, for the purpose of enlarging the

134 Oya Ayman Büber, "Köye Dönüş projesi Fiyasko," ("Return to the Village Scheme a Fiasco,") Yeni Yázy2l, April 16, 1996, p. 5 cited in HRW Turkey's Failed Policy p 8.

135 Press release issued by the Office of the Prime Minister, March 1999.

136 Press release issued by the Office of the Prime Minister, March 1999.

137 Governor Gökhan Aydıner was quoted in the summer of 2000 as saying that sending everyone back to the mountains would be "to return to square one," that is, to unleash another armed struggle. Institut Kurde Information and Liaison Bulletin, No. 184-185, July-August 2000.

Project's scope and to facilitate implementation. There are two types of assistance available to IDPs under the RVRP. Firstly, individual households may be provided with building materials and some farm animals when they apply to a governorship to return to their village, in which case funds are provided from a government-allotted budget for the project. Secondly, governorships rebuild public infrastructure in some resettled villages, with funding from individual governorships' Special Provincial Administration Budget.

Criticisms of the Return to Village and Rehabilitation Project

Following the initiation of the RVRP and after the 1999 ceasefire declared by the PKK, the villagers who applied to the administrative authorities for compensation often had their claims denied. They were required to sign specially printed forms, and indicate the reason for their original migration. Options available on the form ranged from 'employment' or 'health' to 'our village was burnt by the PKK' and 'I evacuated the village on my own free will.'[138] There was no option for intimidation or forced evacuation by state forces, excluding the experience of many IDPs. Consequently, many Kurdish IDPs resisted signing this form, and some were again threatened, beaten, and denied access to their villages.[139]

In an interview with KHRP and BHRC in July 2006, the Turkish Government provided the following figures regarding people who have returned to their villages under the Project:[140]

- Muş – 1,371 people have returned, receiving 3,215,282 YTL in kind;
- Tunceli – 4,827 people have returned, receiving 5,452,341 YTL in kind and 31,000 YTL in cash;
- Van – 8,216 people have returned, receiving 1,735,849 YTL in kind and 801,245 YTL in cash
- Batman – 6,217 people have returned, equal to 973 households, receiving 3,602,911 YTL in kind and 1,709,828 YTL in cash;

138 HRW, Displaced and Disregarded: Turkey's Failing Village Return Program, Vol 14 No. 7(D), October 2002, p 35 <http://hrw.org/reports/2002/turkey/index.htm#TopOfPage> (last accessed 4 September 2007). ('Displaced and Disregarded').

139 HRW Displaced and Disregarded pp 35 – 37.

140 FFM Interview with Cavit Torun, AKP MP and member of Human Rights Commission, 6 July 2006.

- Diyarbakır – 19,806 people have returned, receiving 3,205,987 YTL in kind and 14,495,872 YTL in cash;

- Mardin – 15,547 people have returned, receiving 1,742,228 YTL in kind;

- Siirt – 18,565 people have returned, receiving 10,662,043 YTL in kind and 306,545 YTL in cash; and

- Şırnak – 18,902 people have returned, receiving 89,984 YTL in kind and 4,352,311 in cash.

Statistics supplied by the Government on returns in the context of the RVRP have been met with scepticism from NGOs, who find them insufficiently detailed. According to the above figures, a total of 51,403,426 YTL was handed out to 93,451 people who have returned. The precise definition of 'in kind' is unclear: whether it was the mere provision of bricks, of labour to assist with rebuilding houses, or indeed the provision of infrastructure such as water or electricity. Further, although these figures cannot be positively verified, if they are accurate they equate to just 550 YTL per returnee - just over £200. A 2006 KHRP-BHRC fact-finding mission was of the opinion that this amount was not even marginally adequate to meet the needs of those returning. A recent update affirmed that IDPs consider RVRP aid, which is often in the form of construction materials, to be insufficient for rebuilding a house, covering the costs of moving back and starting agricultural activities.[141]

There is a lack of clarity and transparency regarding the implementation of the RVRP. Even when asked directly for more comprehensive information, the Government failed to provide exact figures detailing the number of villagers who have returned with specific Government assistance, the details of that assistance and the dates.[142] Some IDPs claimed that the governorships of Tunceli and Van proposed that their families settle in places other than their original places of residence through the RVRP and that they lost the opportunity to benefit from the RVRP when they refused this offer. At a more general level, the RVRP leaves IDPs vulnerable to discrimination, as the criteria for eligibility are not clear. Therefore, IDPs who wish to apply for assistance through the RVRP lack the information they require to ensure that they are not wrongfully excluded.

141 TESEV, Norwegian Refugee Council and Internal Displacement Monitoring Centre Overcoming a Legacy of Mistrust p 31.

142 FFM Interview with Cavit Torun, AKP MP and member of Human Rights Commission, 6 July 2006.

Until 2003 the RVRP yielded nothing more than an unpublished feasibility study for return to twelve model villages.[143] Further, the 2006 mission identified a number of problems with the project, finding that it fails to meet the necessary international standards of redress. In the hamlet of Taşnacak[144] in Gürpinar province, the population of approximately 150 people had entirely abandoned their homes in 1994, due to pressure from more than one side of the conflict. Tasnaçak was burnt and the majority destroyed by the security forces. The first villagers started to return and rebuild their homes in 2001, and the hamlet is now occupied by approximately 100 people, although some return to Van during the winter due to the harsh weather conditions.

The 2006 fact-finding mission established that the inhabitants of Taşnacak, like countless other returnees, received no state assistance once they returned. It took the villagers around six months' hard work to reconstruct the hamlet, although it was still not finished in December 2006. There is one tap to support the whole village, and there is no safe drinking water. The village was, however, connected to electricity in 2006. There is no school or health clinic: the nearest hospital is 50 kilometres away and the nearest school is an hour's walk. The houses are very basic, with just one or two rooms housing families of up to fifteen people; each one has an underground bread oven at the front. One family, lacking the finances to build themselves a home, lived in a makeshift tent. They could not afford to pay rent in Van and therefore had no choice but to return home with their fellow villagers. The inhabitants complained of health problems as a result of malnutrition and poor sanitation, particularly in the case of the women and children. Since returning to the village, seven children all under the age of three had died, and one male had died, being unable to support himself or his family.

On the other hand, KHRP's 2006 fact-finding mission learned that the village of Özlüce had been offered some assistance under the Project. Özlüce was evacuated and then burnt by state security forces in 1996, after which it remained abandoned until 2001. Prior to evacuation, there had been 60 houses accommodating around 500 people. Of these former inhabitants, 27 families, totalling 200 people, had returned. The state authorities had provided them with some bricks to rebuild the houses, had built a school and a mosque, and provided approximately 13 sheep to each family. However, it was clear that help was still needed, for example, through the provision of basic infrastructure. The entire village obtains water from one of two taps, and there are no health clinics or services of any kind. Further, insufficient assistance had been provided to allow the whole village to return, leaving the remainder to continue living under difficult conditions in Van.

143 Jonathan Sugden, speech at the Commission on Security and Cooperation in Europe, 10 June 2003.

144 Xirabedar in Kurdish

It has been reported that one of the conditions for benefiting from the RVRP is that the Applicant may not have had any relations with the PKK. Persons found or suspected of supporting the stated aims of armed opposition groups face intimidation by state security forces if they return. This intimidation is usually fuelled by the suspicions of security forces that links exist between certain villagers and armed opposition groups, yet such suspicions are often arbitrary and without sufficient basis. It was suggested to the KHRP-BHRC fact-finding mission in July 2006 that the reason for the apparent discrimination between Tasnaçak and Özlüce was that people in Tasnaçak were perceived to have links to the PKK.[145]

In addition to restoring the infrastructure, the RVRP was supposed to provide income support to returnees.[146] However, the support has been sporadic and insufficient. In the village of Koçbaba, for example, returning residents arrived without livestock since they sold their farm animals at the time of displacement in 1991 to pay for housing costs and food. They found that their orchards had been burned repeatedly until the crops died at the roots.[147] These villagers could not afford to purchase any new livestock.[148] In 2003 the gendarmerie had distributed five kilos each of oil, sugar, and rice to each family and in 2004 the local governor distributed 150 YTL (approximately U.S. $113) to each family. Residents from the village of Koçbaba were grateful for the assistance, but found that it was simply too little to be of much help. Ultimately, inhabitants that have benefited from income support grants are scarce throughout the region, although several villagers were aware of other communities who had received assistance in the form of livestock or sapling trees.[149]

In 2001 and 2002, Interior Ministry officials said that the Government would expand and formalise assistance to returning IDPs once a survey had been completed and a returns model established. The survey was finished in 2002, but no model for return was forthcoming. Governors continued to dole out meagre assistance through the project on an ad hoc basis. The results have been consistently disappointing with few substantive improvements for the internally displaced Kurds in Turkey.

The RVRP has been widely criticised by leading international organisations for its poor performance. In his 2002 assessment of the situation, the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin, said that:

145 FFM Interview with Göç-Der, 4 July 2006.

146 HRW, Still Critical: Prospects in 2005 p 23.

147 HRW, Still Critical: Prospects in 2005 p 23.

148 HRW, Still Critical: Prospects in 2005 p 23 citing interviews in Koçbaba, Hazro, Diyarbakır, 18 November 2004, names withheld.

149 HRW, Still Critical: Prospects in 2005 p 23.

> although the government had pursued return programmes, including the Return to Village and Rehabilitation Project, with considerable success in some areas, overall progress has been slow and many problems remained to be solved.[150]

The Turkish Government has shown signs that it recognises its failures and its need to reform the RVRP, if not abandon it altogether. The Government has stated on record that it intends to make every effort to improve its efforts to make it easier for IDPs to return and claim their lands. Faced with much international criticism regarding the implementation of the project, the Council of Ministers issued a framework document on 17 August 2005 entitled 'Measures on the Issue of Internally Displaced Persons and the Return to Village and Rehabilitation Project in Turkey.' NGOs and other bodies had high expectations that this would set out a detailed action plan by the Government; however, they were disappointed as it merely lays down the principles which will shape the final strategy to be adopted. Although it is considered to be in line with the Guiding Principles, a key concern is that NGOs and IDPs were not sufficiently informed or consulted regarding the policy in order to be able to comment on its content. The framework document contains encouraging developments, such as swift handling of complaints about village guards and transparency in policy implementation. However, as these proposed reforms do not yet appear to have been implemented, the document may amount to a series of empty promises.

The 2006 Progress Report of the European Commission clearly criticised the fact that there has been no further progress on the establishment of a new governmental body responsible for implementing the RVRP and that general efforts towards reform have slowed down.[151] These observations are not consistent with a serious commitment to the Government's proclaimed hope for reconciliation. Clearly, the RVRP has so far failed to resolve the many problems facing internally displaced Kurds in Turkey. The project is under-funded and there are no clear guidelines to manage a community or a particular villager's expectations. Assistance has been provided in an arbitrary and inconsistent manner and work in repairing infrastructure has not kept up with the existing slow rate of return. Between 1999 and 2002, the Turkish Government reportedly allocated approximately U.S. $19 million to the scheme, but Human Rights Watch (HRW) reported that in the villages they visited there was not much to show for the expenditure.[152]

150 Protection of and assistance to internally displaced persons: Note by the Secretary General [33] UN Doc A/60/338 (2005).

151 Commission of the European Communities 2006 Regular Report p 26.

152 HRW, Still Critical: Prospects in 2005 p 22.

D. East and Southeast Anatolia Action Plan

The East and Southeast Anatolia Action Plan began in May 2000 and was linked to the RVRP. It was designed to provide assistance and support to hundreds of thousands of IDPs enabling them to return to villages or relocate to new, centralised villages.[153] From June to October 2000, financial and other assistance, including the provision of young trees, animals, beehives and looms, was provided to over 14,000 persons in 96 villages and 87 hamlets.[154] In November 2001, Interior Minister Rüştü Kazım Yücelen announced that programs relating to health, education, social, economic and cultural fields were underway within the framework of the East and Southeast Anatolia Action Plan. However, the plan was apparently severely under-funded. According to the mayor of Diyarbakır, 700 trillion Turkish liras were needed to address the problem, however the Government had only allocated 7.5 trillion Turkish lira.[155]

Other assistance programs missed their targets. Farmers were eligible for agricultural assistance from the Ministry of Village and Agricultural Affairs based on the area of their arable land. In Şeren village, however, agricultural support for the entire village was stopped because some villagers had made claims relating to non-arable areas. The village *muhtar* (the government representative elected in all villages) pointed out that these areas were arable fields that had returned to scrub because for a decade the villagers had been prevented from accessing the area to farm the land. Other villagers in the province reported that once they had been forced off their lands, inhabitants of neighbouring villages had illegitimately claimed agricultural support in respect of the lands left vacant. In a number of cases before the ECtHR, the Court has found that the prevention of access to one's lands amounted to a violation of their property rights. For example, in *Doğan and Others v. Turkey* the ECtHR concluded that the property rights of the Applicants had been violated because they were unable to access their property and had been deprived of income from it for nine years.[156]

The schemes outlined above have shared a number of major deficiencies. They have been consistently under-funded, lacking in baseline information, poorly planned and deficient in public consultation. They have also been poorly publicised, lacked

153 Turkish Daily News, 31 May 2000.

154 John Connor Humanitarian Situation of the displaced Kurdish population in Turkey (report presented to Council of Europe, Parliamentary Assembly, Committee on Migration, Refugees and Demography, 22 March 2002) see #41. <http://assembly.coe.int/Documents/WorkingDocs/Doc02/EDOC9391.htm> (last accessed 4 September 2007).

155 Serdar Alyamaç, Heading home to an Economic Wasteland, Turkish Daily News, 31 May 2000.

156 TOHAV, The Problem of Turkey's Displaced Persons: An Action Plan for Their Return and Compensation, (Istanbul: TOHAV) 2006 p 11 <http://www.minorityrights.org/?lid=1080> (last accessed 4 September 2007). ('The Problem of Turkey's Displaced Persons').

integration with the justice system in Turkey and failed to incorporate measures to facilitate the involvement of IDPs who are often destitute, poorly educated and excluded from mainstream society as a result of language and cultural barriers. With that extensive list of deficiencies, it is difficult to avoid the conclusion that the Government's motive in establishing these various programmes is to gain time and wear the villagers down to the point of resignation.

PART SIX - OVERVIEW AND ASSESSMENT OF THE COMPENSATION LAW

In May 2003, the EU's Accession Partnership with Turkey required that the return of internally displaced persons to their original settlements should be supported and speeded up. As a result, Turkey established a further mechanism which attempts to compensate the displaced Kurds, and to appease the EU at the same time: the Compensation Law. This Law was passed by the Turkish Parliament on 17 July 2004 despite criticisms and concerns raised by NGOs while the law was still in draft form.[157] It purports to offer villagers from south-east Turkey full compensation for material losses, including land, homes and possessions in the context of displacement which happened between 19 July 1987 and 27 July 2004.

The Compensation Law compensates for material damage inflicted by armed opposition groups and security forces combating those groups. It provides for the establishment of provincial damage assessment commissions, which will investigate deaths, physical injury, damage to property and livestock, and loss of income arising from the inability of the owner to access their property between the applicable dates. The commissions consist of seven members. A deputy governor (appointed by the governor) is the commission chairman. Five civil servants, experts in (1) finance, (2) public works, (3) agriculture and village affairs, (4) health, and (5) industry and trade are appointed by the governor, and an independent member of the local bar association serves as the 7th member.[158] After assessing each claim, the commissions propose a figure for compensation based on principles set out in tables of compensation levels and, for damage to property, levels established in laws on compulsory purchases.

The compensation programme offers two options for compensation. First, the assessment commissions may make reasonable offers to the claimant, which will provide an early injection of cash or materials, which can be used to re-establish themselves—hopefully in their former homes.[159] Second, if the commissions' offers do not bear a reasonable relation to the level of loss then the claimants may appeal to the municipal administrative court to appeal in the attempt to improve the offer.

157 TOHAV The Problem of Turkey's Displaced Persons p 12.

158 The bar associations insisted that they be represented on the commissions so there would at least be one disinterested party.

159 This is debatable because the Compensation Law does not provide for the return to the homeland from which the IDPs were forcibly ejected.

A. The Compensation Mechanism

The Compensation Law compensates for losses incurred as a result of acts mentioned in Articles 1, 3, and 4 of the Anti-Terror Law No. 3713 (relating to aiding and abetting the PKK). According to Article 1 the purpose of the Compensation Law is 'to define the principles and procedures pertaining to the paying of compensation to persons suffering losses caused by terrorist actions or activities carried out in the struggle against terrorism.' Individuals subject to losses during the armed conflict in the Southeast must apply to provincial commissions established in the relevant provinces (where the damage was done or incident of loss took place) to determine the payment of pecuniary damages.[160]

Damages that are excluded from the Law and which are not to be compensated by the State include:

- Damages that were previously compensated by the Government with the allocation of land or a house or by other means;
- Damages that were compensated in accordance with a court judgment;
- Compensation previously paid in accordance with a judgment or as a result of a friendly settlement envisaged by the ECHR;
- Damages occurring as a result of economic and social causes other than terrorism, and losses incurred by those who left their homes voluntarily and not for security reasons;
- Damages resulting from persons' own activities; and
- Damages suffered by convicted offenders and those convicted of assisting and harbouring terrorists.[161]

The commissions were to be set up within ten days of receiving applications within the scope of the law.[162] In January 2006, under the Law on the Amendment of the Law on Compensation for Damage Arising from Terror (Law No 5442), the deadline for applications was extended to 3 January 2007.[163] That deadline was extended for a

160 Law 5442, Article 6.

161 Law 5233, Article 2, para 2.

162 Law 5233, Article 4, para 1.

163 Interview with Cevat Aktaş, Bar Association member of Van Compensation Commission, 3 July 2006

further year on 23 May 2007.[164] Applications are to be made to the governors within 60 days, or at the most one year, of the incident being discovered.[165] Claims must be decided within six months of the date of application, with a potential extension of three months by the Governor's office.[166] The Chair and Commission members are paid a fee for their attendance at a rate of 22 YTL per session, limited to a maximum of 6 sessions per month.[167]

According to Article 8 of the Compensation Law, the applicant's damage will be determined taking into consideration their statement together with evidence from the judicial, administrative and military authorities. Precautions taken by the person suffering loss, and any contributory neglect on their part are also taken into consideration. Article 9 of The Compensation Law sets out the formula for determining the amount of compensation in situations of injury, death, and disability and provides that the Council of Ministers is authorised to increase the indicator for payment by up to 30 per cent or reduce it to the legal minimum. It is of particular concern that pecuniary compensation for IDPs is much less than that offered to state agents subjected to damage when protecting security and public peace, including village guards, under the Pecuniary Compensation Law (Law 2330). Further, Provisional Article 2 under Article 17 of the Compensation Law indicates that public servants who suffered losses 'while on duty in the struggle against terrorism' during this same time period may receive more than internally displaced civilians. If a public servant received lesser compensation, in accordance with the relevant legislation in the past, than that envisaged under the Compensation Law, they are entitled to receive the difference including legal interest.[168] However, if the amount received is more than envisaged under the Compensation Law, no demand for repayment will be made.

Under Article 12 the Applicant or their authorised representative has twenty days in which to accept the award. Otherwise the Applicant will be deemed to have refused the award, although their legal right to redress is reserved. The applicant has the choice to accept or reject the proposal without the option of amendments.[169] When counter-proposals are suggested, the Commission treats these as a de facto rejection and the file may then be subject to delays and postponements.[170] If the award is

164 Law 5662, Article 1.

165 Law 5233, Article 6 para 1. It is unclear how this requirement is to be met considering that the Compensation plan covers acts from 1987 through to 2004.

166 Law 5233, Article 6 para 2.

167 Law 5442, Article 1.

168 According to the Pecuniary Compensation Law (No. 2330), compensation to State agents subjected to damage when protecting security and public peace is higher than that paid to IDPs under Law 5233.

169 TOHAV The Problem of Turkey's Displaced Persons p 11.

170 TOHAV The Problem of Turkey's Displaced Persons p 11.

accepted, it must be signed by the Applicant and the chairman of the commission to reach a *sulhname*, or compensation agreement. Article 13 (as amended by Law 5442) provides that payments in kind or of a pecuniary nature over 50,000 YTL may require approval by the Minister of the Interior.

B. Criticisms of the Compensation Law

Concerns about the Compensation Law have intensified, as the ECtHR has recently concluded that the Compensation Law provides an effective mechanism of redress. Therefore applicants' claims before that court are being declared inadmissible and referred back to the Compensation Commissions despite recognition by the ECtHR of continuing corruption and other problems in the commissions' methods. KHRP's 2006 fact-finding mission found that this law, which will govern cases remitted back to domestic courts, falls far short of requisite international standards of redress. A number of the major practical difficulties and legal deficiencies that can be identified with the Compensation Law are discussed below.

1. Exclusion from Compensation

A significant issue to be considered in assessing the Compensation Law is the fact that many applicants are excluded from receiving compensation and a further body of potential claims is prevented from being made in the first place. For example, KHRP has identified a number of individuals who have been automatically excluded from applying to the commissions for compensation, either because they have already received some minimal compensation, because they are 'voluntary' evacuees or because they had been convicted under the Anti-Terror Law. Many IDPs have not yet filed claims and many more are unaware of the law. Further, unless the ECtHR suspends the applications it has received so far on the grounds of an existing remedy, the villagers with applications before the Court are unlikely to seek domestic remedies within the set time limit and lose their right to do so.

As of the end of 2005, 8,826 out of 177,416 applications were rejected for the following reasons: 1,650 for falling outside the substantive scope of the law; 5,144 for having received compensation earlier; 474 for falling outside the time period covered by the law; 634 for lack of proper information and documents; and 924 for 'other' reasons. Among these the ground of 'lack of information and documents' is of particular concern. As of December 2006 the Interior Ministry reported that 255,339 applications had been received, of which 48,723 (19%) had been processed. There have been 25,628 (53%) approvals, 16,837 applications rejected and rulings that compensation had already been provided were given in 6,258 cases.[171] According to

171 U.S. Department of State Country Report on Human Rights Practices (2007) <http://www.state.gov/g/drl/rls/hrrpt/2006/78844.htm> (last accessed 4 September 2007).

government statistics, 61,436 applications from 12 provinces have been concluded so far, involving payment of 267,488 YTL and a further 116,000 YTL waiting to be paid. These statistics indicate that in addition to the official exclusion of applicants, many more are being excluded in practice as a result of the slow rate at which claims are being decided.

Exclusion of damages that were previously compensated

Immediately prior to the 1999 general election, the Government gave small symbolic amounts of compensation such as 50 million Turkish liras ($36) or a few packages of cement to displaced persons from south-east Turkey. These people are excluded from claiming compensation under The Compensation Law. Clearly, the negligible level of compensation offered in 1999 makes their exclusion unfair and manifestly unreasonable. The ECtHR has said in many cases that it will grant a 'margin of appreciation' to state authorities in determining the level of compensation as States are in a better position to give an opinion on the necessity of a restriction.[172] The Court has stated that it will not interfere unless the award is manifestly unreasonable.[173] If the recipients of such nominal compensation are excluded from filing claims under the current Compensation Law and the amount of compensation they received is manifestly unreasonable compared to what the compensation commissions are offering today, this may constitute a violation of Article 13 of the ECHR as the applicants will be, to all intents and purposes, denied an effective remedy.

The temporal scope of the law has also emerged as a significant obstacle to obtaining compensation. The law only indemnifies damages occurring after 1987 although the conflict began in 1984. Any damages inflicted during this three year timeframe are excluded.[174] One interior ministry official was asked about this discrepancy since some government documents recognise that the conflict began in 1984. He reasoned that those suffering damage during that period have already had an opportunity to bring court proceedings. He further stated that the purpose of the law was to provide a remedy for those who could not bring a claim in the courts during the state of emergency, when government policies were exempt from judicial review. Yet, the region was under martial law between 1984 and 1987 so immediate legal action was not practically possible for many and may have been even more difficult than it was under the state of emergency, given that both the political and

172 See Philip Leach Taking a Case to the European Court of Human Rights: 2nd edition (London: Oxford University Press) 2005 pp 163, 284.

173 See for example KHRP Case, ECtHR, Appl. No. No 21893/93, Akdivar and Others v Turkey, judgment of 16 September 1996, para. 4.

174 TOHAV The Problem of Turkey's Displaced Persons p 10.

judicial processes were under army control.[175] The restriction of the temporal scope of the law in order to prevent unjust enrichment lacks any justification in fact and operates as a barrier to legitimate claims for compensation being made.

Exclusion of Compensation for 'Voluntary' Evacuees

The Compensation Law does not cover those who were forced to migrate for security reasons if the commission interprets their leaving as voluntary under Article 2(d). For example, those who wanted to apply for assistance under the RVRP from 1999 were often required to sign pre-printed forms with a limited range of alternative reasons for leaving their homes. Those who signed such forms are now excluded from the application of the Compensation Law.

Similarly, some villagers chose to become village guards during the conflict of the 1980s and 1990s while those who refused were forced to leave their villages. Yet, it has been suggested that persons applying for damages under the Compensation Law on the basis of security reasons in such circumstances are very likely to receive a response that if some villagers could remain in the village and become village guards, the others did not have to leave. This leads to the unjustified conclusion that villagers who chose not to join the village guards left voluntarily. Compensation Commissions must be thorough in ascertaining the true reasons for IDPs evacuating the villages and not rely on past documents with forced signatures or inappropriate assumptions about the security situation as an excuse to deny compensation claims.

Exclusion of Those Sentenced Under the Anti-terror Law

Those IDPs who were convicted under Articles 1, 3, and 4 of the Anti-Terror Law for aiding and abetting the PKK are also excluded from claiming under the Compensation Law. This is contradictory to Article 10 of Turkey's Constitution, which relates to equality before the law. Further, the exclusion of this group of IDPs from the benefit of the Compensation Law effectively places such claimants under double jeopardy by punishing them twice for their conviction under the Anti-Terror Law. The exclusion of those convicted under the Anti-Terror Law may also contravene Article 14 and Protocol 12 of the ECHR, both of which relate to the prohibition of discrimination including on the grounds of political opinions or association with a national minority, although Turkey has not yet ratified Protocol 12. The objective of the Compensation Law is to compensate displaced people for damages due to *displacement*, not to punish IDPs or to deny them an effective remedy depending on which side of the conflict they were on. This aspect of the

175 TESEV, Norwegian Refugee Council and Internal Displacement Monitoring Centre Overcoming a Legacy of Mistrust p 34.

Compensation Law deserves further attention and may provide a basis for claims to be made to the ECtHR for denial of the right to an effective remedy under Article 13 of the ECHR.

It is also important to note that many of the Turkish courts' findings in relation to the Anti-Terror Law were the result of unfair court procedures. The ECtHR has frequently found that Turkish courts have denied people the right to a fair trial, violating the standard of an independent and impartial tribunal established by law as required by Article 6 of the ECHR. Many of these decisions relate to the application of the Anti-Terror Law. In 2005 the European Commission noted that the Turkish Government needs to work on its judicial independence if it is to meet human rights and judicial standards in administering justice to its citizens. Therefore, the possibility of past failures in the administration of justice should be taken into consideration in deciding claims.

Exclusion for Other Reasons and Exclusion without Reason

In addition to the reasons discussed above, a range of other reasons have been given for the rejection of applications. For example, prior to evacuation, many villagers used the pasture within the highlands to graze their animals. However, they were subsequently prevented from doing so by the gendarmes, on grounds of security. Having lost the main method of feeding their animals, they were forced to sell them at a low price – yet they have so far been unsuccessful in claiming compensation for this loss. This is despite having provided documentation from the village *muhtar* confirming that gendarmes prevented the villagers from accessing certain areas.[176] Similarly, villagers who have built houses on treasury land are unlikely to be able to receive compensation for the loss of their property. A number of villagers from Özalp district of Van province have been affected in this way. It has been suggested that only those who possess title deeds for their land will receive compensation.[177]

It has been asserted that those IDP applicants who state that the damage and their loss was caused by actions of the armed opposition groups, as opposed to the state security forces, are generally more likely to receive the compensation.[178] Concerns have been raised that this information will be used by the Government to claim an inaccurately high level of armed opposition responsibility, rather than their own, for the village evacuation and destruction.

176 FFM Interview with Cevat Aktaş, Bar Association Member of Van Compensation Commission, 3 July 2006.

177 FFM Interview with Cevat Aktaş, Bar Association member of Van Compensation Commission, 3 July 2006.

178 FFM Interview with IDP applicant to Şirnak Compensation Commission, 3 July 2006.

Further, some applications have been rejected without any apparent justification. For example, a family from Bingöl whose house had been burnt down had been forced to migrate to Diyarbakır in 1990. In 1992, they had a child. The commission refused to pay the compensation as the child had been born in Diyarbakır.[179] KHRP's 2006 fact-finding mission feared that this is not the only such example where IDPs are denied access to compensation without reasonable justification.

2. Unrealistic Demands for Evidence and Other Evidentiary Issues

The compensation programme is designed to compensate not only for damages resulting from armed opposition groups but also for material damage inflicted by State security forces. However, the compensation commissions are demanding a documentary trail for their assessments with which it is often practically impossible for the applicants to comply, imposing an unwarranted burden of proof upon many applicants. KHRP's 2006 fact-finding mission observed that these requirements were resulting in inconsistencies in the determination of claims. The imposition of evidentiary requirements that fail to reflect the reality of the situation of conflict, and do not take into account the wealth of documentation demonstrating the atrocities that have occurred in Turkey, may constitute a contravention of requirements of equality before the law in Turkey's Constitution and in the ECHR. The 2006 fact-finding mission learnt of a range of other evidentiary issues that are preventing some villagers from accessing compensation, as discussed below.

A significant barrier to the gathering of the requisite evidence is the fact that the official decision to evacuate a village will have been made by the Ministry of Interior and the majority of the related documentation is kept in the offices relating to the state of emergency. Only gendarmes, not ordinary individuals, have access to these offices. The gendarmes will only hand over such documents when requested by the commissions, exposing the compensation process to delays and potential obstruction. As most of the villages were not subject to an official evacuation and as the state does not wish to implicate itself in alleged violent action, applicants are often denied compensation for lack of evidence.[180] Further, Cevat Aktas informed the 2006 fact-finding mission that it is more likely that a claim for compensation will be accepted in the case of a death where a gendarme has the report about the incident than when a report is not available.[181] This raises understandable obstacles for those who have no such report, which is frequently the case.

179 FFM Interview with Mesut Değer, CHP MP and member of the Human Rights Commission, 6 July 2006.

180 FFM Interview with Cevat Aktaş and Mehmet Nuri Yıldız, Van Bar Association member, 3 July 2006.

181 FFM Interview with Cevat Aktaş, Bar Association Member of Van Compensation Commission, 3 July 2006.

HRW has reported that:

> [i]t is a curious paradox that for years the displaced farmers, most of whom are only semi-literate, have been diligently petitioning government and judicial authorities in writing, while the state bureaucracy has preferred to do business by word of mouth. Local governors generally give or withhold permission to return verbally, and thereby avoid committing administrative acts that might subsequently be challenged in court.[182]

There have also been frequent observations that, while the damage assessment commissions go to great lengths to acquire documents that challenge the claims of the displaced, they do not show the same diligence in collecting evidence that supports such claims. Judicial remedies have also offered little hope for displaced people because the whole process of displacement has been kept off the record up to the present. Although the use of evidence in the judicial process is clearly an important aspect of maintaining the rule of law, in situations of conflict such as this one it is necessary to ensure that evidentiary requirements are not used as a means of discrimination.

Proof of Ownership of Land

With regard to the evidence required for proof of ownership, those who have no title deeds often find it difficult to prove ownership of their land.[183] Cadastral surveys have been conducted on a periodic basis since the establishment of the Republic in 1923 but not all the land has been included in these surveys. As a result, some of the land on which villagers built their properties, farmed crops and grazed their animals is *zilliyet* or traditional land that has not been registered. Where proof of ownership cannot be demonstrated in this way, other evidence may be used. However, such evidence may be attended with its own difficulties, as discussed throughout this chapter. KHRP's 2006 fact-finding mission met with an internally displaced person whose village, Beytüşşebap in Şırnak province, was bombed, burnt and forcibly evacuated in 1994.[184] He and his family applied along with their fellow villagers to Şırnak Compensation Commission as part of a group of 250 applicants. However, the evidentiary requirements imposed by the commission were making it almost impossible for him to prove the damage. Title deeds had been requested but the land was traditional land so they do not exist. As a result, the application had been further delayed. The interviewee did not believe that he was likely to receive any compensation.

182 HRW Displaced and Disregarded p 5.

183 FFM Interview with Cevat Aktaş and Mehmet Nuri Yıldız, Van Bar Association member, 3 July 2006.

184 FFM Interview with Göç-Der, 3 July 2006. Name of IDP withheld.

Proof of Cause of Damage

Villagers must also prove that they suffered damage as a result of either actions of the security forces or the armed opposition groups. Therefore those who were not physically evacuated by either party but left their homes because they feared for their safety, face evidential obstacles. For example, in Van province some of the villagers were informed by the security forces that they could not provide for their security. This caused the villagers to seriously fear for their safety and to abandon their village. In many such cases, they have been unable to claim compensation.[185]

Proof of Ownership of Animals

An applicant to the Van Compensation Commission had tried to include within his compensation claim the cattle and sheep killed when his village was destroyed. However the commission had requested invoices to prove that he had owned these animals. He and his family have never possessed such invoices, since ear-tagging of animals has only been introduced in the last few years in the region and is certainly not widespread. Therefore he was unable to include the loss of his livestock in his compensation claim.[186]

Eyewitness Evidence

The Compensation Law requires that information regarding the extent of damage should be collected from the declaration of the person who has suffered the loss, and information from judicial, administrative and military bodies.[187] In cases of property damage, assessment commissions will be working on the basis of incident reports describing how the damage occurred and its extent. The eye-witness testimonies of fellow villagers, who may have seen the destruction of property or had their property destroyed along with the Applicant's, may be excluded because this form of evidence is not mentioned in Article 8 as one of the means of establishing losses. On that basis, evidence that could be provided by national and international NGOs, humanitarian organisations and the media including photographs exposing incidents of house destructions and evacuations may also be excluded before the compensation commissions.

The testimony of the local *muhtars*, if permitted, could be critical to these cases if such evidence is admitted. Unfortunately, *muhtars* are often influenced and pressured by the gendarmerie and governors with threats of violence or withdrawal of official

185 FFM Interview with Cevat Aktaş and Mehmet Nuri Yıldız, Van Bar Association member, 3 July 2006.

186 FFM Interview with Göç-Der and others, 3 July 2006.

187 Law 5233, Article 8.

favour and funding if they speak out against the Government. For example, at the time when most of the displacements were taking place, several *muhtars* were murdered. Mehmet Gürkan, *muhtar* of Akçayurt in Diyarbakır province, was forcibly evacuated on 7 July 1994 after holding a press conference in which he had reported that gendarmes had tortured him into telling television journalists that the PKK had destroyed his village, when in reality the security forces had burned Akcayurt. A month later an eye witness saw soldiers detain Gürkan and take him away in a helicopter. He was never seen again. Intimidation of this kind is detrimental to the prospect of full and fair disclosure of evidence.

Another potential obstacle for applicants under the Compensation Law is that on occasions, potential eye witnesses do not want to provide the necessary evidence – either as a result of feudal tension between social groups which was exacerbated during the conflict or because they fear further intimidation. There have been several individuals originally from Yeşilyazı village, Ovacık, Tunceli province, who had applied for compensation yet because other villagers did not want to provide supporting witness evidence they were not able to support their claim and it failed.[188] The fact that a claim was rejected on that basis suggests that the commissions may be manipulating the parameters for acceptable evidence such that where applicants do have eyewitness testimony; the evidence is excluded pursuant to a strict reading of Article 8. On the other hand, where such evidence is not available applications are rejected for a lack of eyewitness testimony.

The reality of the situation is that those who testify or who give evidence may experience reprisals if they implicate security forces or village guards in acts of house destruction and forced evacuation. Even if commissions will accept eyewitness testimony or other evidence than that from the three sources listed in the Compensation Law, the assessment commissions or administrative courts cannot protect these witnesses. It remains to be seen whether the commission has the capability to thoroughly investigate allegations of intimidation. However, one cannot expect witnesses to accept such a risk.

These restrictions on eyewitness evidence may result in a finding that the process does not provide an effective remedy in accordance with Article 13 of the ECHR. Further, disallowing the use of eyewitness testimony may be considered to violate the right to a fair trial pursuant to Article 6 of the ECHR if the assessment commissions

188 FFM Interview with Bilgin Ayata, PhD candidate at John Hopkins University, originally from Tunceli, August 2006.

are considered to be 'courts' or tribunals under European Court standards.[189] For example, in the *Xenides-Arestis* admissibility decision, the ECtHR considered the compensation commissions of Northern Cyprus to be 'unfair' under Article 6 and therefore Xenides was not required to exhaust local remedies.[190] Controls on evidence need to be realistic to reflect the fact that the true version of events is often not officially documented.

3. Lack of Independence and Conflicts of Interest

In many of the internal displacement cases the State security force, under the authority of the Interior Ministry, inflicted the damage. However, the Interior Ministry is responsible for the payment of damages under the Compensation Law. The conflict of interest inherent in this structure raises serious questions as to the fairness and efficacy of the compensation commissions.

Further, the membership of the compensation commissions invite conflicts of interest and threaten to undermine the impartiality and independence required of the commissions as arbiters of justice. There is a clear conflict of interest in appointing civil servants to decide claims that will often involve allegations of state-based atrocities and where successful claims for compensation are paid by the State. Such civil servants are clearly exposed to potential interference and pressure from the authorities and will undoubtedly be aware of the power of the authorities to take actions against them. For example, information regarding the responsibility of the security forces for damage inflicted during the years of displacement could be suppressed.[191] Members may also be motivated to reduce State liability for claims in order to promote their personal interests as employees of the State including future promotions and job security. In *Xenides*, the commissions were not deemed to be effective due to conflicts of interest on the part of members.[192] KHRP's 2006 fact-finding mission learnt that these concerns surrounding the appointment of civil servants as commission members are being borne out in fact. NGOs must be permitted to monitor awards of compensation to ensure the fairness of the process and its outcomes for applicants.

189 Although note that in the admissibility decision in Icyer v Turkey,**Application No. 18888/02,** ECtHR, judgment of 12 January 2006 , the Court did not consider that Article 6 applied for the purpose of considering their composition and independence. 'These bodies do not assume the task of a "tribunal" and do not therefore need to provide adversarial proceedings for the purposes of Article 6 of the Convention,' paragraph 79

190 Xenides-Arestis v. Turkey, Appl. No. 46347/99, declared admissible on 4 July 2005.

191 We have already seen the denial of state responsibility for claims by Kurdish minorities in the local courts as well as the ECtHR; see Celik v Turkey, Bati v Turkey, Elci v Turkey, Colak and Filizer v Turkey, Aksoy v Turkey, Avsar v Turkey, Salmon v Turkey, Mahmut Kaya v Turkey, Yasa v Turkey, and Cakici v Turkey.

192 ECtHR, Xenides-Arestis v. Turkey, Appl. No. 46347/99, declared admissible on 4 July 2005.

The inclusion of a seventh independent member within the commissions was the result of a request by Mesut Değer when the law was being debated in the Turkish Grand National Assembly.[193] Although this development should be welcomed, Mesut Değer had in fact proposed that the commissions be composed of three independent members – a lawyer, a construction engineer and a health professional - in addition to the six civil servants.[194] However, the Government only accepted the inclusion of a lawyer. Similarly, the Van branch of Göç-Der commented that the inclusion of representatives from local civil society organisations and/or of sociologists and psychologists would have been a welcome development.[195] The addition of members with expertise in agriculture, engineering, architecture or trade would also be likely to improve the accuracy and consistency of the assessment of claims and calculation of awards where appropriate. The inclusion of such members would also assist with the appearance of impartiality and neutrality towards IDP applicants, thereby potentially assisting in reducing tensions between the state and the individual.

Cevat Aktaş, the bar association member appointed to Van Compensation Commission, supports KHRP's concerns regarding the commissions' lack of impartiality and independence. He stated that 'his only competence is to sign' [the compensation agreements or '*sulhname*'].[196] According to Mr Aktaş, the members of the commission are people very close to the state and in fact, it is not the commissions who reach the decisions but members of the provincial special administration. He stated:

> I cannot influence the decision of the commission in any way. It is not even possible to give a dissenting opinion. The provincial special administration [which is part of the Governor's office] makes the decisions and all we do is sign them. We would like to contribute to the process and for our views to be considered.[197]

Therefore, it would seem that even the civil servants have little control over the determination of the compensation applications, as the decisions are made by the secretariat. According to Cevat Aktaş, the secretariat of each commission is composed of two policemen, the lawyer of the special provincial administration

193 FFM Interview, Mesut Değer, CHP MP and member of the Human Rights Commission, 6 July 2006.

194 FFM Interview with Mesut Değer, CHP MP and member of the Human Rights Commission, 6 July 2006.

195 FFM Interview with Göç-Der, 3 July 2006.

196 FFM Interview with Cevat Aktaş, Bar Association member of Van Compensation Commission, 3 July 2006.

197 FFM Interview with Cevat Aktaş, Bar Association member of Van Compensation Commission, 3 July 2006.

with two of his subordinate lawyers and one or two other civil servants.[198] This issue has been brought to the attention of the Ministry of Interior and the commission members had been asked to submit written opinions on the same. However, the Government had not, as of July 2006, responded to these submissions or taken any action to resolve the situation.[199]

Where a claim is accepted, the commission appoints surveyors who visit the property and measure it in order to calculate the appropriate amount of compensation and then suggest a compensation figure to the commissions. It would seem that these bodies are efficient and calculate the correct amount of compensation due. According to Tahir Bey of Mazlum-Der,[200] who has attended some of these surveys in Van province, the surveys are usually very accurate and record the correct measurements. It appears, therefore, that the commissions rather than the surveyors are responsible for the reduced awards.[201]

4. Exclusion of Non-pecuniary Damages

It is well-documented that IDPs have suffered psychological trauma. A 1998 medical study carried out on a group of internally displaced Kurds found that 66 per cent were suffering from post-traumatic stress disorder and 29.3 per cent showed profound depression.[202] Another study in 2002 found that 9.5 per cent suffered from mental illness which arose during or after displacement.[203] Post-traumatic stress disorder, psychological depression, and mental illness commonly accompany the forced displacement of refugees.[204] It would seem a travesty of justice if there were no compensation offered for the non-pecuniary damage such as psychological trauma, torture, extrajudicial killing and forced disappearance that has often been the experience of IDPs in Turkey, in addition to their displacement and the destruction of their homes and property.

Article 7 of The Compensation Law provides for compensation for material losses only. It does not permit compensation for suffering and trauma. In this respect, The Compensation Law clearly fails to meet international standards of redress.

198 FFM Interview with Cevat Aktaş, Bar Association member of Van Compensation Commission, 3 July 2006.

199 FFM Interview with Cevat Aktaş, Bar Association member of Van Compensation Commission, 3 July 2006.

200 Organisation for Human Rights & Solidarity for Oppressed People.

201 FFM Interview with Tahir Bey of Mazlum-Der, 4 July 2006.

202 Dr Aytekin Sır et al "A Preliminary Study on PTSD after Forced Migration" Turkish Journal of Psychiatry (1998) pp 173-180.

203 Mehmet Barut, Göç-Der, (Sociological Analysis of the Migration Concept: Migration Movements in Turkey and Their Consequences) (2002) Mersin University, see Table 243.

204 See Dr Aytekin Sır et al "A Preliminary Study on PTSD after Forced Migration" pp 173 – 180.

The ECtHR has ordered non-pecuniary damages for the suffering and distress of applicants and their families whose homes were destroyed. In *Hassan Ilhan v. Turkey*, €14,500 was awarded for non-pecuniary damage in addition to €33,500 for pecuniary damages.[205] In *Çelik and İmret v. Turkey,* Çelik was awarded €10,000, and İmret €5,000 for non-pecuniary damages plus costs and expenses.[206]

Despite the fact that the ECtHR has awarded non-pecuniary damages for suffering and distress in addition to damages for pecuniary losses, the Government does not appear to accept that IDPs have suffered trauma. When questioned, they responded

> It only took one or two hours for them to travel to their nearest town and they didn't have many belongings. Everyone has some contact in the city that they can call on. They were not isolated and were able to travel between the villages and the cities.[207]

This demonstrates, at best, a crucial lack of awareness or at worst, wilful ignorance of the fate of the majority of IDPs.

5. Delay in Processing Claims

As noted above, the compensation commissions have been overwhelmed with applications since their establishment, with only 19% of claims having been processed as at December 2006.[208] According to Article 3 of Law 5442, the Compensation Commissions must complete all of their work in dealing with an application within six months of its lodgement.[209] This deadline may be extended for three months, when absolutely necessary, at the discretion of the Governor. Given that just 19% of claims were decided between July 2004 and December 2006 even a deadline of 9 months is likely to be problematic. With so many cases to consider, there is a risk that any assessment is going to be cursory at best. In addition, the staffing levels of the commissions are gravely disproportionate to the rate at which claims are being received, which leads to the suggestion that many applicants will be exposed to inordinate delays before their claims are decided, assuming that the commissions are permitted to continue deciding applications after their 6 – 9 month deadline has passed.

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205 KHRP Case, ECtHR, Hassan Ilhan v. Turkey, Appl. No. 22494/93, judgment of 9 November 2004.

206 ECtHR, Çelik and İmret v. Turkey, App. No. 44093/98, judgment of 26 October 2004.

207 FFM Interview with Cavit Torun, AKP MP and member of the Human Rights Commission, 6 July 2006.

208 U.S. Department of State *Country Report on Human Rights Practices (*2007) <http://www.state.gov/g/drl/rls/hrrpt/2006/78844.htm> (last accessed 4 September 2007).

209 For the full text of Law 5442 see Appendix 2.

The assessment commissions had already fallen behind in their work within months of the enactment of the law.[210] According to İHD's Van branch and Göç-Der, there were approximately 12,000 applications made to the two compensation commissions in Van between July 2004 and July 2006. Yet only 300 to 350 had been compensated by July 2006 and these concerned the deaths or injury of a person or the death of livestock, rather than damage to property.[211] A total of 2,000 applications were examined but according to Göç-Der the remainder were not granted compensation.[212] The fact that it took 18 months to decide these applications makes it difficult to believe that the remainder will be decided soon. The Van branch of Göç-Der believes that at this rate it will take six years to decide all the claims.[213]

In addition to these unacceptable delays, there are concerns that applicants will be deterred from challenging the amount of compensation awarded, as any challenge will further delay an award of compensation. According to Cevat Aktaş:

> Before the introduction of Law 5233, IDPs had lost hope of receiving any compensation. They suffered damage many years ago and somehow they have managed to survive. Now they believe whatever money they receive is profit. They still live in poverty and will therefore accept whatever they are offered.[214]

İHD Van branch supports this statement:

> These people do not have any hope. Their economic situation is dire and they will take whatever they are offered. For that reason they will sign the *suhlname* and accept the money.[215]

Further, the 2006 Progress Report of the EU stated that the broad discretionary powers and cumbersome procedures of the compensation commissions have resulted in a situation where the payment of amounts due is slow.[216]

210 HRW interview with Abdullah Alakuş, attorney, Bingöl, 22 November 2004 cited in HRW, Still Critical: Prospects in 2005 p 33.

211 FFM Interviews with İHD and Göç-Der, 3 July 2006.

212 FFM Interview with Göç-Der, 3 July 2006.

213 FFM Interview with Göç-Der Van branch, 3 July 2006.

214 FFM Interview with Cevat Aktaş, 3 July 2006.

215 FFM Interview with İHD Van branch, 3 July 2006.

216 Commission of the European Communities 2006 Regular Report p 22.

Lack of Human Resources

The fact that the members' appointments to the commissions are in addition to their regular employment is problematic. Their dual responsibilities often cause conflicts, since they are unable to give full commitment and attention to their duties as commission members. Cevat Aktaş stated that commission members, including him, are often unable to attend commission meetings due to the requirements of their daily work.[217] This further complicates the already heavy workload of the commission members and inevitably decreases the productivity of the commissions. Since the introduction of Law 5442, commission members are now paid 22 YTL per session up to a maximum of six sessions per month.[218] While this is a welcome development, it is certainly not sufficient to overcome the lack of human resources allocated to the commissions, nor the many issues relating to independence and impartiality. KHRP's 2006 fact-finding mission suggested that the appointment of full time commission members would be more appropriate and effective.

6. No Possibility of Return

Although resettlement is clearly beyond the stated purpose of the Compensation Law, the fact that this law is being held out as a complete solution to the problems faced by IDPs makes the absence of any provision for their physical return to their villages a critical concern. The Compensation Law does not mention restoring IDPs to their former lands, farms, orchards and homes. It merely offers them awards of pecuniary compensation for the material losses that they can prove. In light of the many problems associated with the Compensation Law it is likely that applications to the ECtHR may be successful in the future if the domestic courts fail to provide an adequate remedy.

In the past, the European Court has held that a State must first allow people to return to their homes. In *Akdivar*, the Court stated the following:

> A breach imposes on the respondent State a legal obligation to put an end to such breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (*restitutio in integrum*). However, if *restitutio in integrum* is in practice impossible the respondent States are free to choose the means whereby they will comply

217 FFM Interview with Cevat Aktaş, Bar Association member of Van Compensation Commission, 3 July 2006.

218 Law 5442, Article 1.

> with a judgment in which the Court has found a breach, and the Court will not make consequential orders or declaratory statements in this regard.[219]

Therefore, only if it is impossible for those evicted to return to their lands should a state resort to payment of compensation as a form of restitution. In *Akdivar* the Court ordered the payment of compensation and did not specifically require that Turkey must allow the Applicants to return. However, the Court implied that if there was a change in the circumstances, with less conflict in south-east Turkey, it may order the Government to facilitate the return of IDPs, and only if that is impossible to pay compensation.

However, in January 2006 the ECtHR found in *Icyer* that the Compensation Law provides an effective remedy to the extent that the Applicant could today return freely to his village.[220] Given that the Compensation Law does not provide for the physical return of IDPs to their properties and there is no effective plan for return independent of the Compensation Law, it may be suggested that the ECtHR's conclusion on this point fails to take adequate account of the current reality of the situation of IDPs in Turkey. Given the continuing shortcomings with the Compensation Law and the limitations upon return, there is a need to investigate the ECtHR's decisions on the Compensation Law, and to collect evidence to return to the ECtHR if necessary.

7. Inadequate Mechanisms for Appeal in Domestic and International Fora

It is of particular concern that there is no internal appeal procedure within the machinery of the local assessment commissions. If the applicant is not satisfied with the commission's decision, he or she will have to go to the domestic administrative court for a remedy. In order to grant compensation on appeal, the administrative court must be satisfied that the State is criminally liable for the damage suffered, and that the sum proposed by the commission is insufficient to cover that damage. It is unlikely that assessment commissions will find criminal liability on the part of the State. Therefore, villagers will have to prove such liability in the administrative court, as well as demonstrating the need for a higher level of compensation. In effect, there is little prospect of a successful appeal for those people who are unable to obtain evidence that the State inflicted the damage. The concept of independent judicial review as a review of the original decision to ensure that it is legally and procedurally sound is therefore absent from the compensation process. In addition,

219 KHRP Case, ECtHR, Appl. No. No 21893/93, Akdivar and Others v Turkey, judgment of 16 September 1996.

220 Inadmissibility decision in İçyer v Turkey Application No. 18888/02, ECtHR, judgment of 12 January 2006.

the substantial administrative fee to be paid to pursue a court challenge will likely discourage many from pursuing an appeal.

If the domestic process does not provide an adequate remedy, proceedings in the ECtHR may be an option. However, the time and financial impact on the applicant is substantial. Most of the applicants are poverty-stricken and lack the means to pursue even domestic remedies. Without a strong chance that their efforts in appealing will be successful, IDPs may be tempted to settle for what is offered, rather than appealing to the ECtHR in an attempt to recover the full compensation for their material losses promised by the Compensation Law.

According to the 2006 report on Turkey's progress towards accession to the EU, approximately 1,500 cases relating to the possibility of IDPs returning to their villages have been declared inadmissible by the ECtHR following the decision in *Icyer* discussed above.[221] Yet, the same report contains an overwhelming number of problematic observations of Turkey's administrative processes. It cites a number of cases showing the inconsistency of the Turkish judiciary's approach to the interpretation of legislation;[222] outlines a number of structural problems that lead to insufficient oversight of judges and prosecutors;[223] and admits the possibility of excessive executive influence over judicial decisions.[224] The sheer number of violations has taken a large toll on both Turkey and the ECtHR. Turkey has become the highest compensation paying country in the 14 years since 1993[225] and is ranked second in terms of the number of ECtHR applications made against it.[226]

While it is true that domestic remedies must be exhausted before applications are made to the ECtHR, the problem we encounter here is different. At this stage the international community must ensure that the compensation commissions do not merely pay lip service to international standards, given that the compensation commission as a mechanism of justice is in its infancy. The *İçyer* decision may be interpreted as a signal from the international community to the damage assessment commissions that the current flaws in their procedure are acceptable, rather than encouraging efforts to secure both accountability and oversight. Delegating back to

221 Commission of the European Communities 2006 Regular Report p 11.

222 Commission of the European Communities 2006 Regular Report p 9.

223 Commission of the European Communities 2006 Regular Report p 9.

224 Commission of the European Communities 2006 Regular Report p 9.

225 Ercan Yavuz "European Court verdicts place heavy burden on Turkey" Zaman Newspaper 28 February 2007 <http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=104089> (last accessed March 2007)

226 Ercan Yavuz "European Court verdicts place heavy burden on Turkey", Zaman Newspaper 28 February 2007 <http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=104089> (last accessed March 2007)

domestic courts may seem the best option for both the EU and Turkey, yet this may ultimately prolong the violations even further.

The unease sparked by the *İçyer* decision strengthened after it was revealed that in summer 2005 the Foreign Ministry asked the Interior Ministry and the Ministry of Justice in a circular to expedite the assessment of the applications, to be flexible in evidentiary issues and to be generous in awarding damages, warning that around 1,500 cases of evictions were pending in the ECtHR.[227] The Interior Ministry, in what appears to be an obliging response, sent circulars directly to the commissions instructing them along the same lines and urging them to issue settlements that could be presented by the Government as a precedent to the ECtHR.[228] This strategy was apparently successful, given the ECtHR's decision that the compensation commissions are an adequate remedy. Pointing out that these sample decisions were issued under political pressure and that such pressure has reportedly ceased after the decision in *İçyer* lawyers state with great concern that the implementation of the Compensation Law has already slowed down and deteriorated and the amount of compensation awarded has dropped considerably.[229]

These are serious indications that a proper mechanism for appeals must be developed to ensure uniformity in the implementation of the Compensation Law. Further, trends of deterioration in the domestic compensation process should be considered by the ECtHR when deciding cases concerning the compensation commissions in future. Adequate judicial supervision is particularly critical, given that the compensation commissions operate outside the traditional justice system in Turkey.

8. Lack of Legal Assistance for Applicants

Another significant problem is the complete lack of legal aid provided to applicants. The Compensation Law contains no provision for legal aid to assist applicants in preparing their claims, assessing an amount of compensation proposed by a commission or advising of possible violations of Articles 6 and 13 of the ECHR. It expects poorly educated farmers from a region where 35 per cent of the villagers

227 "İstediği Tazminatı Alamayan AİHM'e Başvuruyor", Akşam, 4 August 2005 cited in TESEV, Norwegian Refugee Council and Internal Displacement Monitoring Centre Overcoming a Legacy of Mistrust pp 36-37.

228 TESEV, Norwegian Refugee Council and Internal Displacement Monitoring Centre Overcoming a Legacy of Mistrust pp 36-37.

229 Diyarbakır Bar Association's Migration Coordinator Mahsuni Karaman gave the following examples of the drop in compensation amounts awarded in comparable cases in Diyarbakır: in the case of a quarter of an acre of land, from 85 YTL to 50 YTL ($63 to $37); and in the case of a walnut tree from 35 YTL to 20 YTL ($26 to $15). Phone interview, 25 February 2006 cited in TESEV, Norwegian Refugee Council and Internal Displacement Monitoring Centre Overcoming a Legacy of Mistrust p 37.

are illiterate to assemble comprehensive and complex documentation in order to establish their eligibility for compensation.[230] Unsurprisingly, the standard of applications is often poor. In effect IDPs must, without proper legal training, not only file claims but also assess any decision of the commission and determine their next step of action. Many people have filled out their applications incorrectly, and have consequently had their claims denied. This is indicative of the huge problems facing illiterate and poverty-stricken IDPs who had no help in approaching the commission with their applications.

The lack of legal aid for applicants does not appear to be the result of a lack of resources or any particular legal complication. The legal aid services of bar associations and other groups have the resources to provide aid. However, this is hindered by Government harassment and discouragement of NGO involvement. The Government does not appreciate NGO assistance to Kurdish applicants, and there is even a question as to whether NGO involvement may harm the cause of the applicant.

The failure to provide any effective mechanism for legal aid is likely to give rise to human rights claims under Article 13 of the ECHR, as it has the potential to result in a failure to provide an adequate remedy. Further, rejecting a claim on the basis of a technical error is antithetical to the *Guiding Principles*. Principle 29(2) provides that when the property and possessions of an internally displaced person cannot be recovered, the competent authorities must provide or assist these persons in obtaining appropriate compensation or another form of just reparation. Therefore, in failing to acknowledge and remedy the dysfunction of the legal aid system, the Turkish Government has neglected its obligation to provide assistance to IDPs in obtaining just reparation.

Some villagers have appointed lawyers to handle their claims. Several of the IDPs who KHRP interviewed on the outskirts of Diyarbakır arranged to have lawyers handle their claims on a contingency fee basis, agreeing to take a proportion, typically around 10 per cent, of the compensation eventually received.[231] This leaves the applicants with even less of the minimal amount that they receive. Lawyers from Şirnak reported to KHRP that they were handling claims for those they knew either for no cost at all, or for a small fee.

230 Ruth-Gaby Vermot-Mangolg Humanitarian Situation of the Kurdish Refugees and Displaced Persons in South-east Turkey and North Iraq (report presented to Council of Europe, Parliamentary Assembly, Committee on Migration, Refugees and Demography, 3 June 1998) <http://assembly.coe.int/Documents/WorkingDocs/doc98/edoc8131.htm> (last accessed 5 September 2007).

231 FFM Interview with Applicant before Sirnak Compensation Commission, 3 July 2006.

In addition, lawyers are inundated with client applications. Mehmet Nuriyildiz, a lawyer and board member of Van Bar Association, for example, has represented applicants in over 1,000 claims pending before the Van Compensation Commission.[232] He stated that approximately 50 of the 130 lawyers in Van have represented applicants before the two Van compensation commissions. Although he did not seem overly concerned that this placed an unnecessary burden on him and his colleagues, KHRP's 2006 fact-finding mission was concerned that this workload only permits Mr Nuriyıldız to spend 20-30 minutes per file, which would appear to be insufficient for such important cases.

Other applicants have asked for their applications to be handled by the İHD or *Göç-Der* in spite of official advice given to community leaders to avoid involving NGOs. A group of *muhtars* in the Genç district of Bingöl province claimed that the local sub-governor had called them to a meeting where he suggested that they help villagers to apply on an independent basis rather than with the official assistance of civil society organizations.[233]

It is feared that the commissions will eventually have to resort to a makeshift method of reckoning that will produce inadequate and unjust offers. These offers will be made to thousands of families spread over a huge geographical area and these families will have just twenty days to make their decisions as to whether to accept them. Without legal counsel, each applicant must assess the chances of getting justice by settling, appealing to the administrative court, or attempting to get before the European Court. Clearly, the provision of legal aid will be essential to the achievement of justice for many IDPs.

9. The Question of Payment

Payment under the Compensation Law poses several problems. First, the presidents of the Diyarbakır and Bingöl Bar Associations have both expressed unease that, to their knowledge, the Compensation Law provides no time limit for the Government to settle agreed claims.[234] In Diyarbakır, compensation agreements to a total of 39,200,051 YTL had been signed by 28 April 2006, yet only 18,601,972 YTL had been paid to the Applicants.[235] This delay is overly burdensome upon potential recipients and wholly unacceptable. Secondly, capacity still exists for civil servants to reduce awards made by compensation commissions. Aside from this, the State

232 FFM Interview, 3 July 2006.

233 HRW interviews, Genç, 21 November 2004 (names withheld) cited in HRW, Still Critical: Prospects in 2005 p 32.

234 HRW interviews with Av. Erdal Aydemir, Bingöl, 23 November 2004, and Av. Sezgin Tanrıkulu, Diyarbakır, 26 November 2004 cited in HRW, Still Critical: Prospects in 2005 p 33.

235 ANF News agency, 21 July 2006.

has the power to reverse a decision of the assessment commission. The ECtHR has found that where the state is able to reverse a decision of a commission, that commission is not a properly independent and impartial tribunal under Article 6. The interference of the executive with the judicial process may also constitute the denial of an effective remedy under Article 8.

10. Arbitrary Calculations and Reductions in Awards

As mentioned previously, there appears to be a trend of awards of compensation at levels that do not adequately reflect the suffering and material loss suffered by the Applicants. In addition, it appears that awards may be calculated on an arbitrary basis. Random figures have been introduced which do not take account of individual circumstances and there appear to be discrepancies and a lack of consistency between the figures chosen by different commissions.

According to Mehmet Nuriyıldız, lawyer for Applicants before the Van compensation commission, 'the compensation the Applicants receive is ridiculous.'[236] The highest amount that had so far been granted to Applicants within his district was 7,000 YTL for the loss of a house – although usual amounts ranged between 2,000 and 2,500 YTL, which equated to approximately 70 YTL per square metre. He informed KHRP's 2006 fact-finding mission that this figure appears to have been adopted by both Van and Mersin compensation commissions, following a meeting of the Mersin commissions in June 2006. Tahir Bey of Mazlum-Der added that sheds and stores are afforded 40-50 YTL per square metre.[237] Although the legislation does not mandate an upper limit on awards of compensation, the commissions appear to be implementing such a limit in practice.

According to İHD Van branch the Diyarbakir Compensation Commission has awarded an arbitrary price in some cases for the loss of walnut trees, which does not reflect the true value of the loss.[238] The trees have been compensated at the rate of 20 YTL each, yet one kilo of walnuts is worth 7 YTL. Similarly, Tahir Bey stated that the price of a sheep in Van is between 160 and 200 YTL[239] yet Van compensation commission only awards 125 YTL. For an applicant who has lost 1,000 or 2,000 sheep – as is often the case in the Van region and particularly in the Gurpinar region where sheep farming is the primary method of survival, the difference of up to 75 YTL per sheep is significant. On 2 July 2006, Ozgur Gündem reported that one family in Siirt was awarded just 630 YTL for the loss of their property – equal to

236 FFM Interview, 3 July 2006.

237 FFM Interview, 4 July 2006.

238 FFM Interview, 3 July 2006.

239 FFM Interview, 4 July 2006.

just €336.[240] Similarly, the 350 applicants whose claims have been decided by the Van Compensation Commissions were reportedly only awarded 3,000 YTL each.[241] Further, as one applicant to the Sirnak Compensation Commissions informed the mission, compensation for the lack of ability to farm land for up to 15 years, the primary method by which villagers supported themselves, is not awarded.[242]

The commissions often significantly reduce the amount awarded from that proposed by the surveyor. Enis Gül, a lawyer from Bitlis and a member of Van Bar Association, informed the mission that one of his cases had been concluded and the expert had recommended 95,000 YTL. However, the commission reduced this to just 35,000 YTL as that was all they could 'afford to pay.'[243] Similarly, KHRP's 2006 fact-finding mission was informed that the whole village of Çatak of 170 people was offered just 1.5 million YTL: which equates to less than 9,000 YTL per family (4,800€). In Batman, the amount awarded for a death is just 15,000 YTL (8,000€).[244]

Tahir Bey of Mazlum-Der commented to the mission that the compensation paid to applicants is very low. He stated that on average, the damage caused to each villager is 30-40,000 YTL (€16,000 - €21,350), yet the villagers often accept the amount given even if it is 2-4000 YTL because they badly need the money. Further, the villagers do not all understand that this is compensation. They often perceive it as assistance in the form of a grant or donation. If the state gives them money they will happily accept it as they cannot believe that the state will offer compensation for acts that it committed in the first place.[245] While the lack of consistency in awards will not necessarily be the paramount concern of applicants faced with some compensation rather than none, it is an important consideration for the Turkish Government and others in assessing the Compensation Law.

Given that 195,000 applications have been made to compensation commissions, proper compensation for each eligible applicant would require a substantial financial commitment from the Government. However, the IDPs are not requesting an unreasonable amount and the amount of compensation that the Compensation Law permits is limited by the various exclusions as to what losses may be compensated. There is no indication that the Turkish Government cannot afford to pay adequate compensation. Rather, the issue is the Government's lack of commitment to

240 FFM Interview with İHD, 3 July 2006.

241 FFM Interview with İHD, 3 July 2006.

242 FFM Interview, 3 July 2006.

243 FFM Interview with Mazlum-Der Van branch, 4 July 2006.

244 ANF News Agency, 20 July 2006.

245 FFM Interview with Tahir Bey of Mazlum-Der, 4 July 2006.

providing adequate reparations: one response to concerns voiced by KHRP in July 2006 regarding the low figures was 'the state is not a charity.'[246]

The Compensation Law provides a variety of other means by which the compensation commissions may reduce the amount to be awarded. The Compensation Law is particularly susceptible to manipulation by those who feel that disbursing large sums of State funds to the internally displaced would not be in their best interests. For example, the law prohibits compensation for damages arising from economic or social factors not connected with terrorism.[247] Therefore, the authorities have the power to declare that particular damage arose from a cause unrelated to terrorism, thereby avoiding any requirement of compensation under the Compensation law. It also forbids compensation for those who damaged their own property, an exclusion that is clearly open to abuse given the lack of accurate documentation of such incidents. Similarly, in cases where the gendarmes caused the damage, there is a clear conflict between the position of the gendarmes as perpetrators and their unique power over the records of the state of emergency offices, which enables them to alter, withhold or even destroy information.

There are also loopholes available to Government officials to reduce awards by methods such as rerouting funds back to the Government. For example, in January 2007 the governor of Diyarbakır agreed to create a 'mandatory donation' of 100 YTL which victims receiving compensation under the Compensation Law were forced to pay. These funds were given to the Diyarbakır Football Club, a requirement which is clearly absurd and may constitute the denial of an adequate remedy. The former Chairman of the Diyarbakır Branch of İHD, Selahattin Demirtaş emphasised the unfairness of such a practice, stating that these victims, who have had their losses recognised by the state, have already been forced to sign settlements well below original loss and that many of them have a difficult time obtaining such basic necessities as food.[248]

Having surveyed the various plans and programmes devised by the Turkish Government in response to the IDP problem, the Compensation Law appears to provide a more substantial prospect for IDPs to receive compensation for their material losses than has previously been offered. However, as explored throughout this chapter, IDPs continue to face significant legal and practical difficulties in utilising the Compensation Law. It is of particular concern that the Compensation Law is promoted as a complete solution to the problems facing IDPs. In fact,

246 FFM Interview, with Cavit Torun, AKP MP and member of Human Rights Commission, 6 July 2006.

247 Law 5233, Article 2(d).

248 'Donation towards sport from the compensation of burned villages,' Fırat News Agency 23 January 2007.

the Compensation Law deals with just one aspect of the IDP situation – that is compensation for material losses. The Compensation Law fails to provide reparation for non-pecuniary losses such as trauma; it does not contemplate return as a form of compensation; and it fails to address the significant social, economic, cultural and psychological consequences of displacement.

PART SEVEN - CONDITIONS AND DIFFICULTIES CURRENTLY FACED BY IDPs

As mentioned previously, the ECtHR has recently accepted the Turkish claim that IDPs are now able to return to their villages unhindered. While it is true that security forces no longer prevent returns on the grounds of lack of safety in most areas where original displacement took place, with the notable exception of Hakkâri, this is not to say that there are no obstacles to the return of IDPs. Despite the various efforts of the Turkish Government and other parties to address the situation of IDPs in Turkey, internally displaced Kurds continue to face a wide range of difficulties as a direct result of government inaction and discriminatory practices. Further, there are a range of obstacles to the return of IDPs to their homes, including issues relating to security, access to resources, public services and infrastructure and economic underdevelopment. Women and children are further disadvantaged by their gender and minority. In many cases, current conditions simply do not permit the return of the IDPs 'in safety and with dignity' in accordance with the Guiding Principles.[249]

A. The Security Situation

1. Resurgence in Armed Clashes and Intimidation

Although it appears that security forces no longer prevent IDPs from returning to their villages on the ground of a lack of safety, security forces still maintain a strong presence in the Southeast. As the security forces and the gendarmerie are tasked with protecting national security, a duty which has often operated to the detriment of IDPs in the past, their presence raises concerns as to the safety of the region, both for those currently living in the region and for those considering return as an option. Further, there is a real risk of injury or death for anyone entering into or living in the region, given the resurgence of armed clashes since 2004.

The rise in armed activity by the PKK and the armed forces in the past two years has led many IDPs to fear for their personal safety and develop perceptions of a lack of security in the region. Throughout 2006, there were reports of civilians being fatally shot by security forces as a result of their failure to stop when instructed to do so.[250]

249 Dr Francis Deng Guiding Principles Principle 28(1).

250 Amnesty International 2007 Report <http://thereport.amnesty.org/eng/Regions/Europe-and-Central-Asia/Turkey> (last accessed 20 August 2007).

Further, bomb attacks targeting civilians increased with the Kurdistan Freedom Falcons claiming responsibility for several attacks while the PKK is believed to have been involved in others.[251] A unilateral ceasefire on the part of the PKK, which took effect from 1 October 2006, appeared to result in a decrease in armed clashes. However, there were numerous reports of violent conflicts between the PKK and the armed forces between June and August 2007. Although the security situation may have improved, there remains a real possibility that IDPs who have returned or wish to return to their villages may, once again, be caught in the middle of the conflict between the PKK and the armed forces.

Further, those who return to their villages are often subjected to intimidation by the security forces. This is particularly the case for those who have returned voluntarily, without the assistance of the Government through the RVRP. For example, in July 2006 İHD Van branch reported that a returned villager in Gurpinar region, Van province, had received a threatening letter from the village of Hatay, which appeared to be signed by the PKK. However, when he showed the letter to the military commanders they simply took it from him and failed to open an investigation. This led the villager and İHD to conclude that the letter was likely to have been written by the military in an effort to discourage villagers from returning.[252] KHRP's 2006 fact-finding mission heard a similar report from an IDP family evacuated from Çatlıca, Çatak district. The family was evacuated from Çatak in 1991 and currently lives in Bostaniçi district of Van province. In 2005 one family member had attempted to return to their village but had been detained by the security forces and threatened with death should he attempt to return again.[253]

There is also a possibility that some villages will be re-evacuated. For example, in June 2006 two villages in Tunceli and Batman were evacuated by security forces. The forest near one of the villages close to Silopi was burned for about 20 days, allegedly for security reasons. When some villagers tried to extinguish the fire, they were warned off with cannon fire.[254] In early 2007 six families were given permission to return to their village, Kavaklı, in the Çukurca district of Hakkari province. However, in August 2007 it was reported that they were evicted for security reasons before they could harvest their crops.[255]

251 Amnesty International 2007 Report <http://thereport.amnesty.org/eng/Regions/Europe-and-Central-Asia/Turkey> (last accessed 20 August 2007).

252 FFM Interview with İHD Van branch, 3 July 2006.

253 FFM Interview, name withheld, 4 July 2006.

254 FFM Interview with Göç-Der Van branch, 3 July 2006.

255 'Returning Villagers Sent Back' Bia Net 20 August 2007.

2. The Village Guards

In the mid-1980s Turkey established and funded a paramilitary arrangement known as the village guard system. Although the law establishing the village guards system is publicly available, relatively little is known about the principles governing their appointment and dismissal or their duties, as the implementing regulation is classified on the grounds of national security. The village guards continue to pose a significant threat to villagers in south-east Turkey, as a state-mandated yet largely unregulated armed force and therefore warrant separate consideration. The authorities used tribal loyalties and divisions and the traditional social structures of the region to recruit tens of thousands of Kurds in the 1980s and 1990s.

The village guard system was implemented in 1985 as a temporary measure through an amendment to Law 422.[256] The law provides that where there is a state of emergency, the Governor of the region may request that the Interior Minister permits the organisation of village guards for the region. However, the definition of 'state of emergency' in this context is not the legal definition commonly used in modern democratic societies. Rather, the decision to establish a village guard in a particular area required only that there was an emergence of serious signs relating to an act of terrorism in the village or its surroundings or that the circumstances in which attacks threatening the lives or property of villagers have increased.[257] No formal 'declaration of emergency' within a system adhering to the rule of law was required.

The state provides the village guards with weapons, which legally remain state property.[258] According to the law, these weapons are only to be used in specific circumstances including in a state of attack, when the guard needs to defend his life on duty; in the defence of people of their province; when a criminal resists arrest with force; or when an individual fails to obey a stop warning.[259] Without further information about the powers and duties of the village guards, it is impossible to give a proper assessment of the law and its implementation in practice. However, the provision of arms and the permission of their use against civilians without a strict and transparent system of regulation is cause for serious concern.

Village guards are paid by the state and if they are wounded the Government is responsible and will provide compensation and a pension. Further, the law was amended in January 2006 to provide that each village guard has the right to a 'green card' which covers all of the medical expenses of the guard and their family

256 Law 3175, 26 March 1985.

257 Law 422, Article 74.

258 Law 422, Article 75.

259 Law 422, Article 77.

members.[260] Another amendment was made in May 2007, which provides that the head of the village guards in each region is entitled to a salary that is 10% higher than ordinary village guards.[261] According to the Ministry of Interior, as of 7 April 2006 there were 57,714 village guards operating in the region. There are also voluntary village guards who join with the ostensible purpose of protecting themselves and their families from armed opposition groups. Although the hiring of village guards should have ceased after a decree in 2000, a local newspaper reported in June 2005 that 650 voluntary village guards had been recruited in the Sason district of Batman.[262]

Despite being an armed and salaried force under the ultimate control of the state, the village guards are inadequately supervised. Throughout the 1980s and 1990s they became notorious as a result of accusations of theft, beatings and rape. The Ministry of Interior also announced that between the inception of the village guard system and November 2006, 5000 village guards were convicted of crimes ranging from theft to murder. It has been reported that according to figures released by the Ministry of the Interior and court records 2,402 village guards were involved in crimes of terror in the period from March 1985 to November 2006. During that same period, court proceedings were brought against 1,234 village guards for crimes against persons; 936 for crimes against property; and 428 for crimes relating to smuggling.

Considering the evident failure of the Turkish Government to record and investigate complaints against its own forces and the reluctance of some victims to report such events for fear of repercussions, it may be that the real number of incidents is higher. Whether that is the case or not, the pervasiveness of criminal behaviour among the village guards, an entity allegedly empowered to protect villagers' lives and property, supports claims that they pose one of the largest remaining threats to the continued survival and welfare of returning IDPs.[263] These concerns continue to prevent many IDPs from considering return to their original homes. Such concerns appear to be justified in some circumstances, given that there have been publicised instances of guards shooting at families either returning to or harvesting on their lands since 2000. However, the threat is not uniform, since different regions have different numbers of active village guards. TESEV's Working Group interviews with IDPs indicate that village guards continue to use property and land of the displaced including trees, grazing ground, and homes. This represents a potential

260 Law 5673.

261 Law 3816.

262 'Sason'da 2 bin 259 Korucu,' *Batman Gazetesi* 16 June 2005 <http://www.bianet.org/bianet/kategori/insanhaklari/62517/sasonda-2-bin-259-korucu> (last accessed 28 August 2007).

263 'Korucular Suç Makinasi Gibi' (Village Guards Like a Crime Machine) Radikal daily newspaper 27 July 2006.

threat if large groups of displaced villagers return and a potential obstacle to those IDPs contemplating the possibility.[264] The 2006 Progress Report of the EU stated that 'no progress has been made regarding the village guard system [and] no plan has been developed to phase them out.'[265]

3. Landmines

Landmines also pose a serious threat to those who have returned, or wish to return to their villages. The extent of the landmine problem, including the exact number and location of landmines throughout the country, are unknown. The use of antipersonnel mines by the Turkish Armed Forces was banned on 26 January 1998 and there have not been any confirmed instances of their use since that time.[266] However, İHD reported 40 deaths and 138 injuries from landmines and unexploded ordnances in 2006. Turkey has committed to addressing 'problems caused by landmines laid by the terrorist organisations in the context of returns'[267] and it acceded to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction in September 2003. In July 2006 the PKK and its armed wing, the People's Defense Forces (Hezen Parastina Gel, HPG) committed to a total ban on antipersonnel mines by signing the Geneva Call Deed of Commitment.[268] Regardless of the levels of use of landmines in Turkey, their presence will continue to pose a threat for the foreseeable future unless significant funding and resources are dedicated to their removal.

4. Climate of Impunity

The rule of law situation in Turkey has improved in recent years. However, there remains much room for improvement in enforcing the rule of law as a direct means of combating impunity. Flawed investigations into violations by members of the security forces, a lack of access to the mechanisms of justice and dangers attendant upon the reporting of violations of their rights continue to reinforce the disadvantage suffered by Kurdish IDPs in all aspects of their lives. This situation is exacerbated by the harassment and intimidation of NGOs dealing with Kurdish rights.

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264 TESEV, Norwegian Refugee Council and Internal Displacement Monitoring Centre Overcoming a Legacy of Mistrust p 22.

265 Commission of the European Communities 2006 Regular Report p 23.

266 Landmine Monitor, Landmine Monitor Report 2006: Turkey <http://www.icbl.org/lm/2006/turkey.html> (last accessed 20 August 2007).

267 Government of Turkey Measures on the Issue of Internally Displaced Persons and the Return to Village and Rehabilitation Project in Turkey 17 August 2005 (Principle B).

268 Geneva Call 'The Kongra-Gel/HPG pledges to renounce the use of anti-personnel mines' (Press Release 18 July 2006).

The serious obstacles involved in bringing members of the security forces to justice are evident in the case of the Şemdinli bombing. In this case, which is ongoing, two non-commissioned military officers (Ali Kaya and Özcan İldeniz) and a former PKK member turned state informant were indicted for their alleged involvement in the bombing of the Umut bookstore in Şemdinli on 9 November 2005. In an indictment filed in February 2006, the Public Prosecutor alleged that an illegal organisation composed of public servants was responsible for the bombing. The Public Prosecutor further alleged that several top military commanders were implicated in the Şemdinli bombing. However, the Office of the Chief of General Staff decided not to exercise its discretion to institute an investigation against these high-ranking military officials.

On 20 April 2006, following an investigation by the Justice Ministry Inspection Board, the prosecutor responsible for drafting the indictment (Ferhat Sarıkaya) was disbarred for dishonouring the legal profession in a way that was deemed harmful to its public standing. Further, in giving evidence before a Parliamentary Investigative Commission into the bombing the Former Director of the Police Security Intelligence Bureau, Sabri Uzun, implied that Ali Kaya and Özcan İldeniz could not have acted without the knowledge of higher ranking officials.[269] Within one month of giving evidence, Uzun was removed from his post by means of an administrative sanction, a move regarded by many as intimidation of public officials who might be considering providing information to the Commission.

These events raise serious concerns about the ability and willingness of the Government to ensure prompt, thorough and impartial investigations into allegations against state agents. Further, the removal of the Prosecutor highlights serious weaknesses in the independence of the prosecution and the judiciary. While a climate of impunity has obvious detrimental consequences for the entire population of Turkey, the fact that IDPs are subject to frequent and severe violations of their rights gives the climate of impunity particular significance.

In addition, organisational and individual human rights defenders whose activities focus upon the protection of the rights of the Kurds face particular challenges not experienced by human rights defenders in Turkey more generally. As the conflict in the Southeast has been approached for the most part as a terrorist problem requiring a military response by reference to security considerations, a general tendency has developed within the military, judiciary and civil service to perceive any public expression of ethnic difference as tending towards a more militant demand for secession. Although reforms directed towards Turkey's accession to the EU have resulted in some improvements in the human rights situation in the Southeast, there remains a lack of trust between human rights defenders and the authorities.

269 "Is Police Officer Uzun a Scapegoat or Culprit" The New Anatolian 24 March 2006.

The idea that groups and individuals can make legitimate use of peaceful means to advocate for the rights of the Kurds without being implicated in the illegitimate use of violence by militant groups is not yet entrenched in Turkey. As a consequence, individuals and groups advocating for human rights in the Kurdish regions are subjected to greater levels of state surveillance, police intimidation, investigations and prosecutions compared to those elsewhere in the country.[270]

Persecution of human rights defenders in the Kurdish regions is particularly problematic when the topic of the advocacy is contentious, as is the case for those dealing with forced evictions of Kurdish civilians. For example, proceedings were launched against 14 members of GİYAV, an NGO that aims to provide voluntary humanitarian assistance to people who have been subjected to forced evictions, on the basis of their use of the terms Kurdish mother-tongue, multiculturalism, forced migration, and arbitrary practices concerning village guards. Although all 14 were acquitted by an Adana court, this did not prevent the transfer of a case against 7 co-defendants relating to charges of praising a crime being transferred to a court in Mersin.[271] Similarly, Göç-Der and other NGOs dealing with the problem of displacement or the situation of IDPs in general have faced deliberate, state-orchestrated intimidation and harassment including constant police surveillance and repeated raids.

B. Access to Resources, Public Services and Infrastructure

The movement of people as a result of village evacuations and the destruction of villages have resulted in serious difficulties in the provision of basic resources, public services and infrastructure to IDPs. Urban areas were unprepared for an influx of IDPs whereas rural areas were and continue to be largely neglected. Despite the Government's various programs to address the situation of IDPs, there remain very significant barriers to their full participation in society, without even considering the fact of their displacement and consequent losses. In many rural areas, basic infrastructure for the provision of water, electricity and sewage have been destroyed. In major population centres, similar problems have arisen with water and sewage systems inadequate to cope with the increased population.

270 Members of İHD's Batman branch Board of Directors suggested that twice as many cases were opened against associations in the Kurdish regions in comparison with the rest of the country. KHRP interview with İHD Batman branch, 28 July 2005.

271 International Federation for Human Rights 'Trial Against Turkish NGO 'GİYAV" Press release 22 October 2003) <http://www.fidh.org/article.php3?id_article=2147> (last accessed 20 August 2007).

1. Education

IDPs who were forced to migrate to towns and suburbs of major cities have experienced serious problems in accessing healthcare, education, transport, employment and housing.[272] Although primary education is free and compulsory for all children in Turkey[273] there is a noteworthy lack of education and/or completed education among Kurdish children. According to Göç-Der, 75.4% of displaced children are limited in accessing education by poverty, 6.7% are unable to go to school because they are working and 5.4% do not have access to schools.[274] Displaced families are often forced to discontinue their children's education because of economic depravity or because their survival depends on the income of their children. In addition, the numbers of pupils per class is very high (up to 90 in some schools) which has a detrimental effect on the standard of education received in the affected areas. The lack of access to education has led to high levels of unemployment and social exclusion, which has been exacerbated by the language barrier faced by those who are unable to speak Turkish.

2. Poverty

Poverty is a significant problem among IDPs and in the Kurdish regions of the southeast. The mayor of Diyarbakır, and former Deputy President of İHD,[275] Osman Baydemir, notes that the economic rejection of the Southeast 'coupled with the Government's recourse to military warfare to resolve the Kurdish question has resulted in economic loss across the whole populace.'[276] For example, Baydemir reported that 'compulsory village migration…has led Diyarbakır to an economic halt bringing it face to face with poverty and mass unemployment.'[277] A recent UN survey has revealed that the vast majority of families that have migrated to Diyarbakır are living in extremely poor conditions: 69 per cent of the families studied are now in need of urgent help.[278]

These concerns are further echoed by Mesut Değer, an MP for the CHP and member of the Human Rights Commission, who stated that forced evacuations

272 TOHAV The Problem of Turkey's Displaced Persons p 8.

273 Turkey's Addendum Report to the Committee on the Rights of the Child, 7 July 1999 CRC/C/51/Add.4.

274 Göç-Der, Report on Turkey (2002) pp 14-15-III.

275 İnsan Hakları Derneği

276 Osman Baydemir 'The Kurdish Question and Civil Society' (paper presented at International Conference on Turkey, The Kurds and the EU, Brussels, 22-23 November 2004) p 144-145 <http://www.khrp.org/publish/p2005/Turkey,%20the%20Kurds%20and%20the%20EU%20Brussels%20conference.pdf> (last accessed 22 August 2007).

277 Osman Baydemir 'The Kurdish Question and Civil Society' p 147.

278 The New Antolian 7 October 2006.

have caused Diyarbakır's population to rise from 350,000 to more than 1.5 million. Unemployment figures have risen as a result. For example, in Diyarbakır the official unemployment figure is 20 per cent, however the actual is 60 per cent.[279] The lower official figure reflects the fact that IDPs do not register with the relevant municipal authorities. According to UN statistics, 60 per cent of the families that migrated to Diyarbakır in the 1990s from rural areas due to increased armed activity have been unable to find regular jobs since then.[280] Similarly, in Van there are currently 380,000 Turkish citizens, of which 200,000 are IDPs. In Bostaniçi district official figures show that 14,000 people (90 per cent of the inhabitants) are IDPs. It is believed that the figure is actually closer to 18,000.

Although there are social assistance programs intended for those with poverty-related problems, such as the 'green card' system entitling the bearer to free medical care operated by the Social Solidarity and Assistance Foundation, often many individuals are excluded. For example, many IDPs were technically still property owners after they were displaced and were therefore ineligible for a green card. In addition, existing assistance programmes involve once-off payments and are therefore inadequate to deal with the ongoing economic problems facing IDPs. Many IDPs who have moved to urban areas lack the skills to join the urban workforce[281] and are forced to inhabit crowded and sub-standard housing as a result of their indigence.

3. Social Issues

IDPs suffer disproportionately high levels of psychological problems as a result of beatings, torture, the loss of family members and severe social dislocation.[282] Alienation arising from the long process of integration results in mental and physical trauma, which sometimes becomes an endemic condition in the locations to which IDPs have fled.[283] Children are particularly vulnerable. In addition to the severe lack of education among Kurdish children noted previously, there are large numbers of vulnerable, unaccompanied children living on the peripheries of the provincial cities in the Southeast. Many of these children have no choice but to live

279 FFM Interview with Mesut Değer, 6 July 2006.

280 *The New Antolian* Ankara 7 October 2006.

281 Göç-Der, "The Research and Solution Report on the Socio-Economic and Socio-Cultural Conditions of the Kurdish Citizens Living in the Turkish Republic who are Forcibly Displaced due to Armed Conflict and Tension Politics; the Problems they Encountered due to Migration and their Tendencies to Return back to the Villages," (2002).

282 World Organization Against Torture and Human Rights Association 'House Demolitions and Forced Evictions Perpetrated by the Turkish Security Forces: A Form of Cruel, Inhuman or Degrading Punishment against the Kurdish Population.' (Notes presented to the Committee against Torture by OMCT and HRA, May 2003).

283 TOHAV The Problem of Turkey's Displaced Persons p 8-9.

on the streets. The EU reported in 2003 that there were an estimated 10,000 street children in the Diyarbakir area alone.[284]

Concerns have also been raised that the number of suicides among young women in the Kurdish regions of Turkey is increasing, although accurate statistics are difficult to obtain, given the sensitivity of the issue and its connection with honour in Kurdish culture. Further, gender issues are often sidelined, as state violence towards men is considered to be of far greater seriousness and women's concerns are perceived as drawing attention away from political priorities. A range of factors are believed to have contributed to this increase. Many Kurdish women have directly experienced or witnessed sexual and psychological torture, the killing of their relatives, and rape at the hands of the police, security forces and village guards.[285] The position of women in Kurdish society is also problematic, as it is believed that factors such as family pressure including forced marriage, honour killings, polygamy and domestic violence contribute to Kurdish women's decisions to commit suicide. Further, women face economic problems, a lack of education, language barriers and a lack of access to political processes; all of which would provide women with tools to address their situation. In addition, Kurdish women often have difficulty accessing health care and psychological services that might assist in suicide prevention.

Kurds in other parts of Turkey also experience discrimination and are regularly treated with suspicion. They are likely to be the first to be arrested during police raids and are often suspected solely on the basis of ethnicity. Gülistan Gürbey maintains that provocations and attacks range from physical violence, destruction of Kurdish shops and attacks on predominantly Kurdish districts or cities, to various methods of discrimination, such as refusing apartments to Kurds and boycotting the shops run by Kurds.[286]

The steps taken by the Government to address the situation of Turkey's IDPs are entirely inadequate and fail to meet international standards both in terms of redress and in terms of addressing the impacts of displacement. In 2004 the EU reported that the situation of IDPs was critical, with 'many living in precarious conditions' and observed that 'no integrated strategy with a view to reducing regional disparities and addressing the economic, social and cultural needs of the local population has yet

284 Commission of the European Communities, *Regular Report on Turkey's Progress Towards Accession* (2003) European Commission p 40 <http://ec.europa.eu/enlargement/archives/pdf/key_documents/2003/rr_tk_final_en.pdf> (last accessed 5 September 2007).

285 P İlkkaracan Women and sexuality in Muslim societies (Istanbul: Women for Women's Human Rights) 2000.

286 Gülistan Gürbey, "The Kurdish Nationalist Movement in Turkey since the 1980s" in Robert Olson (ed) The Kurdish Nationalist Movement in the 1990s: The Impact on Turkey and the Middle East (Lexington: University Press of Kentucky) 1996, p 17.

been adopted.'[287] No programmes of resource support for the internally displaced have been implemented, and with the exception of the GAP dam-building project, which has *increased* displacement in the region, Turkey has shown no inclination to comprehensively address economic underdevelopment in the Southeast. This brief survey of the conditions and difficulties facing IDPs in Turkey clearly demonstrates that what is required is a comprehensive and holistic solution dealing with all aspects of the Kurdish question.

287 Commission of the European Communities 2004 Regular Report p 55.

PART EIGHT-THE WAY FORWARD

Recent legislative improvements made in preparation for Turkey's accession to the EU are to be encouraged. However, this report has shown that the measures adopted to address the IDP problem to date have not been effective. IDPs in Turkey continue to face a multitude of difficulties: not only are they frequently denied full reparation for their losses, the consequences of their displacement have been ignored in plans that purport to address the IDP situation as a whole. There are also a number of obstacles to be addressed before villagers may return to their villages in safety and with dignity, including the issue of landmines and the threat posed by village guards. The financial and social assistance offered to IDPs is inadequate and is sometimes conditional in the first place upon IDPs denying state culpability for their displacement and its consequences. Patterns of assistance also demonstrate the continuing discrimination experienced by the Kurds in Turkey on the basis of their ethnicity and political opinions. The situation of Kurdish IDPs is exacerbated by the fact that the state continues to neglect its responsibility to investigate and prosecute the perpetrators of violence. Finally, a lack of consultation, information and transparency makes it difficult for NGOs and civil society organisations to address the many problems facing IDPs.

Recommendations to the Turkish Government:

The Turkish Government needs to take the lead in establishing a comprehensive and holistic solution for IDPs in Turkey, drawing on its own resources, the progress to date and the assistance of the national and international communities. Turkey's response to the issue of internal displacement has so far lacked coordination and adequate baseline information. In order to make substantial progress in improving the situation of IDPs, Turkey must address the entirety of the problem, including both the causes and the consequences of their displacement. Turkey must also develop a participatory approach to planning, such that all key stakeholders can contribute to the development of solutions.

In relation to the effectiveness of government activities we urge the Turkish Government:

- To abolish the village guard system;
- To dedicate sufficient resources to addressing the entirety of the situation of IDPs and to seek the support of the international community for

further funding;
- To ensure that IDPs are able to participate fully in all planning activities relating to the causes and consequences of their displacement;

- To encourage NGOs and other bodies to assist in addressing the IDP problem and provide an environment in which these parties can operate without fear; and

- To comply with its international obligations by ensuring that IDPs are afforded an adequate remedy and developing its policies, legislation and practices such that they reflect the *Guiding Principles*.

Although measures to compensate IDPs for their material losses are to be encouraged, such measures are not alone an adequate remedy for displacement and its consequences. Therefore, the Compensation Law should be treated as one component in a holistic solution that addresses the causes of displacement, the fact of displacement and its many social, economic, cultural and psychological consequences. At present, the Compensation Law fails to provide just compensation to IDPs in many cases. There are a range of legal deficiencies to be rectified and IDPs experience many practical difficulties in obtaining compensation under the present Compensation Law mechanisms.

With regard to the Compensation Law, we therefore urge Turkey to:

- Ensure that those who have legitimate claims are not prevented from seeking redress;

- Amend the Compensation Law in such a way that the legal deficiencies identified in this report are removed;

- Enhance the compensation mechanism such that unnecessary practical difficulties in obtaining compensation are removed; and

- Ensure that adequate legal assistance is provided, by way of a separate mechanism to the national legal aid (Adli Yardım) programme if necessary.

With regard to the specific issue of witness protection, we urge Turkey:

- To implement a comprehensive and effective witness protection scheme such that those who may provide evidence are able to do so without fear of repercussions; and

- To ensure that instances of intimidation of or reprisals against witnesses or prospective witnesses are thoroughly investigated and prosecuted.

One of the major deficiencies in the Turkish Government's response to the issue of internal displacement is the failure to provide viable options for the return of IDPs to their villages. Although it is clear that the desire to return is not uniform, there are many IDPs who would return to their villages if they had a reasonable prospect of a sustainable existence upon return. Therefore, measures to address the obstacles to return are a necessary component in a holistic solution to the issue.

With the objective of making return a viable option for those who wish to return to their original homes, we encourage Turkey:

- To develop return as a specific option in the form of specific restitution to be available at the choice of applicants to the compensation commissions;

- To create viable conditions for IDPs who return to their villages (complementing but not replacing the compensation process) and begin the process of rehabilitation by addressing deficiencies in resources, public services and infrastructure and the poverty experienced by IDPs; and

- To address security problems that might constitute obstacles to return, including landmines and the village guard system.

Recommendations to the European Union:

Turkey's accession negotiations with the EU have resulted in significant reforms by the Turkish Government in relation to a number of issues. However, there are indications that many of these reforms have not been implemented in practice. Internally displaced Kurds continue to experience severe violations of their human rights on the basis of their ethnicity and face a strong contingent in Turkey that believes a military solution is the only solution in the Southeast. The continuing evidence of human rights abuses and the Turkish Government's failure to properly address the situation of IDPs has given rise to concerns that the accession process may give some legitimacy to Turkey's mistreatment of IDPs. The EU's evasive approach to the Kurdish issue has the potential to bring a volatile, unresolved conflict situation within its bounds, thus jeopardising the Union's commitment to the much-lauded creation of an area of freedom, security and justice.

We request the European Union:

- To ensure that Turkey is not granted membership of the EU until the country has met the Copenhagen Criteria, including stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;

- Given the significant number of IDPs in Turkey and the necessity of a comprehensive and holistic approach, we urge the EU to maintain dialogue with the Turkish Government to enhance its potential for addressing the situation of IDPs and further to encourage Turkey to engage in this respect.

Recommendations to local NGOs, human rights organisations and civil society groups:

Local NGOs, human rights organisations and civil society groups have played a significant part in bringing the treatment of IDPs in Turkey to the attention of the national and international community. These groups have also been instrumental in establishing the severity of the problem and in maintaining pressure on the Turkish Government to recognise that fact. Further, NGOs, human rights organisations and civil society groups have provided practical and legal assistance to IDPs in a bid to mitigate the effect of the Government's failures. This has frequently exposed such groups and their members to adverse treatment by the Government and authorities.

We encourage local NGOs, human rights organisations and civil society groups:

- To maintain pressure on the Turkish Government to engage with civil society organisations and lawyers in order to address the situation of IDPs, in the context of both legislative and executive reform;

- To continue to assist IDPs by providing both legal and other forms of aid; and

- To continue to provide information to the national and international community regarding the experiences of IDPs in Turkey.

Recommendations to the international community:

International institutions and actors have demonstrated significant potential for the provision of important information and impetus for change in Turkey, through the EU, the UN and the international community more broadly. While the effective

resolution of the problems facing IDPs rests primarily with the Turkish Government, the international community can provide useful advice based on similar situations as well as financial and technical expertise.

We therefore urge the international community:

- To monitor the operation and working methods of Turkey's programmes directed towards addressing the situation of IDPs, including the current Compensation Law and Return to Village and Rehabilitation Project;

- To continue to report on developments in Turkey and exert its influence on the Turkish Government to introduce the necessary reforms;

- To maintain dialogue with the Turkish Government regarding the potential for cooperation in developing comprehensive and holistic measures to address the situation of IDPs and encouraging Turkey to engage with the international community in this respect.

APPENDIX 1

Law pertaining to compensation of damages resulting from terrorism or the struggle to combat terrorism

Law no. 5233 **date of acceptance: 17.7.2004**

Aim

Article 1 – the aim of this law is to define the principles and procedures pertaining to the paying of compensation to persons suffering losses caused by terrorist actions or activities carried out in the struggle against terrorism.

Scope

Article 2 – this law encompasses provisions concerning the principles and procedures pertaining to the peaceful paying of compensation to real persons and legal persons suffering losses as a result of actions within the context of articles 1, 2 and 3 of Anti-Terror Law no. 3713 or activities carried out in the struggle against terrorism.
The following losses are excluded from the scope of this law:

a) Losses met by the state through the allotment of land or house or by other means.
b) Losses met in accordance with a court decision or articles 30 and 31 of Law no. 4353 pertaining to certain amendments made to duties of the Legal 0Consultant's Office of the Treasury, procedures of the pursuance of public cases and permanent positions in central and provincial government.
c) Losses met by order of the European Court of Human Rights on the grounds that article 41 or protocols of the Convention protecting Fundamental Rights had been violated or compensation paid as a result of friendly settlement envisaged by provisions of the Convention.
d) Losses incurred as a result of economic or social causes other than terrorism and losses incurred by those who left their homes of their own accord without security worries.
e) Losses resulting from persons' own activities.
f) Losses suffered by those convicted of offences within the scope of articles 1, 3 and 4 of Law no. 3713 and those convicted of the offence of assisting and harbouring in terrorist incidents as a consequence of these actions.

No action may be taken in accordance with this law regarding ongoing prosecutions opened concerning offences listed in paragraph (f) until their conclusion.

Definitions
Article 3 – Terms used in this law:

a) Commission: Commission establishing damages
b) Ministry: Interior Ministry
c) Minister: Interior Minister

Commission establishing damages

Article 4 – commissions establishing damage shall be set up in provinces within 10 days of receipt of applications within the scope of this law.
The commission shall consist of a chairman and six members. A deputy governor to be appointed by the governor shall be the commission chairman, and one expert working in the public sector in each of the following; finance, public works, agriculture and village affairs, health, industry and trade shall be members determined by the governor, and a lawyer appointed from the Bar administration when such a body is established. The chairman and members of the commission shall be re-established in the first month of each January. Members may be re-appointed. Depending on the volume of work more than one commission may be established in the same province. The commission shall meet on the basis of a quorum and decisions taken with an absolute majority of the total members of the commission. The working principles and procedures of the commission shall be defined by regulation.

Tasks of the commission
Article 5 – the tasks of the commission are as follows:

a) To establish, on application by person suffering loss or his heir, whether the loss comes within the scope of this law.
b) To prepare drafts for the payment of amounts, either pecuniary or in kind, in accordance with articles 9 or 10, taking into account assistance rendered by the Social Assistance and Solidarity Fund, contributions from public sector or professional organisations or compensation from insurance companies or treatment and funeral expenses met by social security institutions.
c) To compile a record in the event of a draft not being accepted or deemed to not be accepted according to paragraph 2 of article 12 and send a copy to those concerned and to the Ministry.
d) To compile a record in the event of it being established that the applicant has incurred no losses within the terms of this law and to send a copy to the person concerned and to the Ministry.

The period, form, examination and concluding of the application

Article 6 – Application shall be made by the person suffering loss, or heir or by their authorised representatives within sixty days, or at the most one year, of the incident being discovered, to the Governor or district governor's office whereupon the necessary procedures shall be commenced. Applications made after these periods have lapsed may not be accepted.

The commission has to complete procedures with regard to applications made by those suffering losses within six months of the application being lodged. When absolutely necessary this period may be extended for a further three months by the Governor.

The commission may appoint an expert from those employed in the public sector and also require all manner of information from public bodies and institutions. The commission may employ or obtain opinions from those experts it considers necessary.
The commission chairman and members may not participate in meetings of the commission regarding their own losses or losses of their spouses, or of relations, including in-laws, to the third degree.

The secretarial services of the commission shall be carried out by the provincial special administration.

Payments shall be made per diem to persons appointed as experts in accordance with indicator no. 500 multiplied by the public servant monthly coefficient. These payments shall not be subject to any tax or deduction apart from the stamp tax.
The expenses of the commission shall be met from the Ministry budget.

Applications made within the time period shall freeze the case lodging period until notification of conclusion of the application.

Losses to be met

Article 7 – The losses to be met in accordance with the provisions of this law are as follows:

a) All manner of damage to livestock, trees, crops and other movable or immovable property.
b) Losses incurred such as injury, disablement and death and treatment and funeral expenses.
c) Financial losses caused by persons being unable to access property on account of activities being carried out within the scope of anti-terror measures.

Establishing losses

Article 8 – the losses defined in article 7 shall be established by the commission, taking into consideration the declaration of the person suffering loss, the information from the judicial, administrative and military authorities, precautions taken by the person suffering loss, taking into account whether there was neglect on the part of the person suffering loss, with the mediation of the expert in harmony with the economic conditions of the day.

As regards establishing losses to immovable property the principles of value outlined in article 11 of law no. 2942 concerning Compulsory Purchase shall be implemented.

Payments to be made in the event of wounding, disabling or death

Article 9 – The amount shall be paid in a pecuniary manner in the event of wounding, disabling or death, multiplying the public servant monthly coefficient according to by indicator no. 7000, as follows:

a) To those who are wounded, not more than six times the sum depending on the degree of injury.
b) To those who lose the ability to work, ascertained by health institutions to the third degree from four times to twenty four times the sum.
c) To those who lose the ability to work, ascertained by health institutions to the second degree from twenty five times to forty eight times the sum.
d) To those who lose the ability to work, ascertained by health institutions to the first degree from forty nine times to seventy two times the sum.
e) To heirs of those who die at fifty times the sum.

The amount to be paid shall be calculated on the basis of the indicators and coefficients valid on the date of the approval received from the governor or minister.

When the pecuniary payment detailed in paragraph (e) is transferred to heirs the provisions of the Turkish Civil Law no. 4721 shall be implemented.

The Council of Ministers is authorised to increase the amount of the indicator for payment by up to thirty per cent or to reduce it to the legal minimum.
Payments made to legal persons on account of losses within the scope of this law cannot be revoked by the state.

The form of pecuniary payment, sum and the principles and procedures of establishing the degree of injury and disablement shall be defined by regulation.

The form of meeting losses

Article 10 – losses mentioned above in paragraphs (a) and (c) of article 7 shall be met in kind or in a pecuniary way. However, as much as possible payment will be carried out in kind. This may be realised within the framework of individual or general projects. The principles and procedures regarding payment in kind shall be defined by regulation.

Amounts to be accounted

Article 11 – Amounts ascertained according to paragraph (b) of article 5 shall be subtracted from the gross total calculated according to articles 8 and 9.
The principles and procedures of calculation of amounts to be accounted shall be defined by regulation.

Draft pertaining to the meeting of losses

Article 12 – The commission, after making its findings, either directly or by means of an expert, shall establish the net amount, of losses in accordance with article 8, the pecuniary amount to be paid in case of wounding, disablement and in the event of death in accordance with article 9, the implementation according to article 10, taking into consideration the amount to be accounted in accordance with article 11. A copy of the draft shall then be notified to the person concerned along with an invitation.

In the invitation it shall be stated that the person concerned or his authorised representative should attend the commission within twenty days in order to sign the draft document, otherwise he will be deemed not to have accepted the draft while his legal right to redress is reserved.

In the event of the person concerned or his legal representative accepting the draft it shall be signed by them and by the chairman of the commission.
In the event of the draft not being accepted or it being deemed to have not been accepted in accordance with paragraph two a record shall be drawn up and copies sent to the person concerned and the Ministry.

The right to legal redress is reserved for those parties that cannot achieve reconciliation.

Meeting losses

Article 13 – losses detailed in the draft shall be paid from the fund placed in the Ministry budget for this purpose on the approval of the governor following the signing of the draft.

The Ministry may decide on payments in kind or of a pecuniary nature of over twenty billion Turkish lira on the approval of the Minister. This sum shall increase every year in accordance with article 298 of the Taxation Procedure Law no. 213.

The state reserves the right to revoke in accordance with general provisions.

Supervision and responsibility

Article 14 – The commissions shall be supervised by the Ministry.
Offences committed against those employed in the ascertaining of losses shall be dealt with as offences against public servants and offences committed by those employed in this task shall be dealt with according to provisions covering public servants.

Exceptions and exemptions

Article 15 – Applications, statements, documentation and official procedures in public offices and notary public and donations produced to use for this purpose shall be exempt from all tax and expenses.

Tax deductions regarding donations made to be utilised for the purposes laid down in this law shall be defined by regulation.

Official notification

Article 16 – The provisions of Notification law no. 7201 shall be implemented regarding notification concerning this law.

Regulation

Article 17 – The principles and procedures of the commission, procedures to be followed during the ascertaining of losses and the establishing of net amount, the form of pecuniary payment and other matters shall be covered in a regulation to be prepared by the Ministry within two months of the publication and implemented by the Committee of Ministers.

Provisional article 1 – The provisions of this law shall be implemented concerning

applications made within a year of this law coming into effect to governors' or district governors' offices regarding losses caused by offences committed between 19.7.1987 and the coming into force of this law within the scope of articles 1, 3 and 4 of the Anti-Terror Law no. 3713 or counter terror activities undertaken to combat terrorism.
Applications made in accordance with this article shall be concluded within two years of application.

Provisional article 2 – Those public servants or their heirs who suffered losses while on duty in the struggle against terrorism between 19.7.1987 and the date this law came into force and received compensation in accordance with the relevant legislation may apply within a year of the publication of this law to the relevant governor or district governor's office. In the event of the compensation they received being less than that envisaged under this law they shall receive the difference including legal interest. If the amount they received is more than envisaged under this law no demand will be made for repayment.

Applications made in accordance with this article shall be concluded within at the latest a year from the date of application.

Validity

Article 18 – This law shall come into force on the date of publication.

Administration

Article 19 - The Council of Ministers shall administer the provisions of this law.

APPENDIX 2

Law pertaining to the amendment of the law concerning the compensation of damages resulting from terrorism or the struggle to combat terrorism

Law no. 5442 Date of acceptance: 28:12.2005

Article 1- The paragraph below has been added to paragraph 4 of article 2 of Law no. 5233 dated 17/7/2004 regarding the compensation of damages arising from terrorism and the struggle to combat terrorism.
The President and members of the Commission shall be paid a fee in accordance with indicator no. 500 multiplied by the public servant monthly coefficient for each meeting, not exceeding six in one month.

Article 2 - The expression 'and to the Ministry' in article 5 of Law no. 5233 has been removed from the text of the article.

Article 3 - Article 6 of Law no. 5233 has been altered as below:

Article 6 - In the event of those suffering loss, or their heirs, or their authorised representatives, within 60 days of learning of the incident; or, at the most, within a year of the incident taking place, applying to the provincial governor's office in the province where the damage occurred or the incident of loss took place, the necessary procedures shall be commenced. Applications made after these periods have elapsed shall not be accepted. In injuries and disablements within the scope of this law the period the injured person spends in hospital from entering until leaving shall not be taken into consideration with regard to the calculation of the application period.

Applications made to other governors' offices, district governors' offices and external representations of the Republic of Turkey, other ministries and public offices shall be forwarded to the relevant Governor's office.
The Commission must complete its work regarding all applications from those suffering losses within six months of being lodged. When absolutely necessary this period may be extended for a further three months by the Governor.

The Commission may appoint public servants as experts and request all manner of information and assistance from relevant public bodies with regard to the application. The Commission may employ, or obtain opinions from, those experts

it considers necessary.
The president and members of the Commission may not attend meetings of the Commission that consider their own losses or those of their spouses, relatives and in-laws up to and including the third degree, or those of persons whom they represent, or are guardians or trustees.
The secretarial work of the Commission shall be carried out by the special provincial administrations.

Public servants appointed as experts shall be paid a fee in accordance with indicator no. 500 multiplied by the public servant monthly coefficient for each file, and others a fee based on indicator no. 1000 that shall not exceed the monthly amount of the public servant coefficient, by decision of the Commission. These payments shall not be subject to any taxation or deduction apart from the stamp duty.

Travel allowances shall be paid to members of the Commission and experts who attend investigations outside of their place of duty in accordance with Law on Travel Allowance no. 6245. In the fixing of the amount of travel allowance to be paid to the lawyer member of the Commission the travel allowance paid to public servants receiving first degree salaries shall be used as a basis. These payments shall not be subject to any taxation or deduction apart from the stamp duty.
Commission members may not be appointed as experts.

The expenses of the Commission shall be met from the budget of the Ministry and/or special provincial administration.
An application made within the period laid down shall halt the commencement of cases in accordance with general provisions until the notification of the final verdict to the person concerned.

Article 4 - The expression '20 days' in paragraph 2 of article 12 of Law no. 5233 has been altered to '30 days' and the words 'to the Ministry' have been removed from paragraph 4 of the same article.

Article 5 - The phrase 'within 3 months' has been added to the first paragraph of article 13 of Law no. 5233 to come after the word 'fund'. The expression 'twenty billion Turkish lira' has been replaced by the phrase 'fifty thousand New Turkish Lira' in paragraph 2 of the same article.

Article 6 - Article 14 of Law no. 5233 has been changed as below:
Commissions shall be supervised by the Ministry and Governors' Offices.

Provisional Article 1 - The provisions of this Law shall be implemented concerning applications made within a year of this law coming into effect to Governors' or district governors' offices regarding losses caused by offences committed between

19/7/1987 and the coming into force of this law within the scope of articles 1, 3 and 4 of Anti-Terror Law no. 3713 or counter terror activities undertaken to combat terrorism between these dates.

Provisional Article 2 – Those public servants or their heirs who suffered losses while on duty in the struggle against terrorism between 19.7.1987 and the date this law came into force and received compensation in accordance with the relevant legislation may apply within a year of the publication of this law to the relevant governor or district governor's office. In the event of the compensation they received being less than that envisaged under this law they shall receive the difference including legal interest. If the amount they received is more than envisaged under this law no demand will be made for repayment.

Article 7 – This law shall come into force on the date of publication.
Administration.

Article 8 - The Council of Ministers shall administer the provisions of this law.