

# The Status of Internally Displaced Kurds in Turkey: Return and Compensation Rights - An Update



Fact-Finding Mission Report

Kurdish Human Rights Project  
**KIHRP**  
Established 1992

**Bar Human  
Rights  
Committee**  
OF ENGLAND AND WALES







THE STATUS OF INTERNALLY DISPLACED KURDS  
IN TURKEY: RETURN AND COMPENSATION  
RIGHTS - AN UPDATE

FACT FINDING MISSION REPORT

DECEMBER 2006

KURDISH HUMAN RIGHTS PROJECT  
BAR HUMAN RIGHTS COMMITTEE OF ENGLAND AND WALES

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Kurdish Human Rights Project



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Kurdish Human Rights Project (KHRP) is an independent, non-political, non-governmental human rights organisation founded and based in London, England. KHRP is a registered charity and is committed to the promotion and protection of the human rights of all persons living within the Kurdish regions, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its supporters include both Kurdish and non-Kurdish people.



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# Contents

List of Abbreviations	9
Executive Summary	11
Background: Turkey's International Obligations to Provide Redress To Idps	13
<i>Introduction: The Situation of IDPS in South-East Turkey</i>	13
1. <i>Universal Declaration of Human Rights</i>	14
2. <i>International Covenant on Civil and Political Rights</i>	15
3. <i>UN Guiding Principles</i>	16
4. <i>European Convention for the Protection of Human Rights and Fundamental Freedoms</i>	17
5. <i>EU Accession</i>	18
Section 1: Return to Village and Rehabilitation Project	21
<i>Introduction: Aims and Objectives</i>	21
1. <i>Obstacles to Return</i>	23
2. <i>Problems with the Project</i>	27
Section 2: Law on Compensation for Damage Arising From Terror	31
<i>Introduction: Aims and Objectives</i>	31
1. <i>Overview of the Machinery of the Compensation Law</i>	32
2. <i>Lack of Independence of Assessment Commissions</i>	34
3. <i>Exclusion from Compensation</i>	36

4. <i>Provision of Acceptable Forms of Evidence</i>	38
5. <i>Lack of Compensation for Suffering and Distress</i>	40
6. <i>Failure to Provide Legal Aid for Applicants</i>	41
7. <i>Delay in Processing Claims</i>	41
8. <i>Approval Needed for Large Claims</i>	43
9. <i>Arbitrary Calculations and Low Awards</i>	43
10. <i>Failure to Meet International Standards of Redress</i>	45
Conclusion	47
1. <i>Return to Village and Rehabilitation Project</i>	47
2. <i>Law 5233</i>	47
Recommendations	49
Annex 1 – Law 5233	51
Annex 2 – Law 5442	59
Annex 3	63

## List of Abbreviations

AKP	<i>Adalet ve Kalkınma Partisi</i> (Justice and Development Party)
BHRC	Bar Human Rights Committee of England and Wales
CHP	<i>Cumhuriyet Halk Partisi</i> (Republican People's Party)
DPT	<i>Devlet Planlama Teşkilatı</i> (State Planning Organisation)
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
FFM	Fact Finding Mission
<i>Göç-Der</i>	Migrants' Social Solidarity and Culture Association
ICCPR	International Covenant on Civil and Political Rights
IDP	Internally Displaced Person
İHD	<i>İnsan Hakları Derneği</i> (Human Rights Association of Turkey)
KHRP	Kurdish Human Rights Project
NGO	Non-governmental organisation
PKK	The Kurdish Workers' Party
TESEV	<i>Türkiye Ekonomik ve Sosyal Etüdler Vakfı</i> (Turkish Economic and Social Studies Foundation)
UNGA	United Nations General Assembly
UDHR	Universal Declaration of Human Rights
VAKAD	<i>Van Kadın Derneği</i> (Van Women's Association)
YTL	New Turkish Lira



## Executive Summary

In an ostensible effort to combat the Kurdish Workers' Party (PKK) insurgency during the 1980s and 1990s, state security forces forcibly displaced thousands of rural communities in the Kurdish regions of Turkey. Some 3,500 towns and villages were destroyed during this time. Illegal detention, torture and extra-judicial execution by both state forces and village guards also took place. Today, the majority of these villages remains demolished and there are no plans for their reconstruction. Between 3 and 4 million villagers were forced from their homes<sup>1</sup> and are still not allowed to return. Most internally displaced people (IDPs) are unable to return to their homelands because of obstruction by village guards, landmines and poor socio-economic conditions.

The return of persons displaced during the armed conflict in east and south-east Turkey to their homes is one of the most pressing issues that Turkey will encounter. The European Commission's 2004 and 2005 Progress Reports on Turkey's accession to the EU both described the situation of IDPs as 'critical'. The steps taken by the Government to address the problem are so far limited to the Return to Villages and Rehabilitation Project, which intends to secure the economic infrastructure for return, and the Law on Compensation for Damage Arising from Terror (Law 5233). It is generally felt that these measures are not sufficient to solve the problem, since the village guard system, the landmines, the region's economic underdevelopment and the danger of renewed armed conflict all continue to present significant obstacles to return which fail to be addressed by the Government. This report summarises the results of a fact-finding mission to Van, south-east Turkey, and Ankara, in July 2006 to investigate the operation and effect of the above two programmes in practice.

The main aim of the fact-finding mission was to obtain a solid understanding of Turkey's policy and practice with regard to the situation of IDPs within the Kurdish

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1 The Ministry of Interior counts 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. US Committee for Refugees and Immigrants at <<http://www.refugees.org/countryreports.aspx?id=1336>> (last accessed 22 November 2006)

regions. The European Court of Human Rights (ECtHR) has recently concluded that Law 5233 provides an effective mechanism of redress and therefore applicants' claims before that court are being declared inadmissible and referred back to the Compensation Commissions established under that Law.<sup>2</sup> As a result, there is a need to investigate the ECtHR's decision and approach, and to collect evidence to challenge the court's decision if necessary. Similarly, the current status of IDPs in the Kurdish regions of Turkey to some extent impacts on the situation of the Kurds in Turkey, and provides an indication of Turkey's commitment to the EU accession and reform processes. Further, there was a need to investigate the actual working of the Law 5233 in practice, a year after KHRP's previous fact-finding mission in June 2005.<sup>3</sup>

In conducting its research, the mission met with and interviewed a number of groups including NGOs, members of political parties, MPs and Government representatives in Van and Ankara. The mission also conducted a site visit to two villages in the Gürpınar region of Van whose populations were evicted in the early 1990s and to which some inhabitants have returned, and met with a number of IDP families displaced in the 1990s who have not been able to return and live in the Bostaniçi region of Van. Details of all interviews are contained in footnotes: for example, 'FFM Interview with Göç-Der Van branch, 4 July 2006' indicates information received during a mission interview with the Van branch of Göç-Der on 4 July 2006.

The mission concluded that both Law 5233 and the Return to Village and Rehabilitation Project fall far short of the requisite international standards of redress. Although KHRP and BHRC welcome any attempt to ameliorate the situation of Turkey's huge IDP population, they conclude that both programmes require substantial overhaul and amendment, together with Government dissemination of accurate information regarding their implementation in order that progress can be monitored.

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2 See decision *İçyer v Turkey* (1888/02) dated 12 January 2006

3 See KHRP FFM Report, *The Status of Internally Displaced Kurds in Turkey and Compensation Rights*, KHRP, London, September 2005

## Background: Turkey's International Obligations to Provide Redress to IDPs

### Introduction: The Situation of IDPs in South-East Turkey

IDPs who live in the cities suffer from unemployment, lack of housing, little access to education and health services, and issues of social adaptation. Those who lived in the villages are not accustomed to urban living and they find it hard to adapt without any social or economic assistance. They are used to farming the land and surviving from livestock. Since the 1990s, the major cities in the south east have been inundated with villagers from the regions, with a consequential effect on the city's original inhabitants.

Van currently has 380,000 citizens of Turkish nationality, of which 200,000 are IDPs. In Bostaniçi district, official figures show that 14,000 people – 90 per cent of the inhabitants - are IDPs. In fact it is believed that the figure is actually closer to 18,000. The mission interviewed a number of families living in Bostaniçi, whose testimony can be found at Annex 3.

Mesut Değer, an MP for *Cumhuriyet Halk Partisi* (Republican People's Party, CHP) and a member of the Human Rights Commission, informed the mission<sup>4</sup> that, prior to forced evacuations, the population of Diyarbakır was 350,000. Today, it is 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 figure is in fact 60 per cent. The lower official figure reflects the fact that IDPs do not register with the relevant municipal authorities. As a result of the increased unemployment, there is a parallel increase in robberies and prostitution, whilst the number of suicides of young women has increased due to early marriages and feelings of depression caused by unemployment.

Migration brings infrastructure problems, since the water and sewage facilities are inadequate to cope with the increased population. In addition, there are problems with health and education: IDPs live in poverty and therefore do not have the

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4 FFM Interview, 6 July 2006

funds to pay for the necessary health services. Further, in relation to education, the mission was told that class numbers are very high (up to 90 in some schools) which has a detrimental effect on the standard of education received in the affected areas.

In spite of all these hardships, of course, not all IDPs want to return to their villages. IDPs in south-east Turkey can generally be divided into three groups – those who want to stay in the city, those who want to return to their villages permanently and those who want to return just in the summer, due to harsh winter weather conditions.

In light of the above, it was clear to the mission that severe action needs to be taken – both domestically and internationally – to improve the plight of Turkey’s IDPs. Although the Turkish authorities have instituted some mechanisms which aim to provide redress to its victims of internal displacement, the mission found that these fail to meet the requisite standards, as will be explained and elaborated in the following sections.

In addition to Turkey’s commitments under EU Accession standards, Turkey is party to many international declarations, conventions and treaties, the majority of which are legally binding. The most significant obligations regarding the rights to enjoyment of property, home and freedom of person, as well as safety of persons in armed conflict, are the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the United Nations Guiding Principles on Internal Displacement, and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

## 1. Universal Declaration of Human Rights

The General Assembly of the United Nations (UNGA) adopted the Universal Declaration of Human Rights (UDHR) on December 10, 1948.<sup>5</sup> 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 man is not ‘compelled to have recourse, as a last resort, to rebellion against tyranny and oppression.’<sup>6</sup> Some of the articles in the UDHR that pertain to the internal displacement of the Kurds from the Southeast include Article 2: which seeks to prevent discrimination on any grounds; Article 3: the right to life; Article 7: equality before the law; Article 8: the right to an effective remedy; Article 12: right to privacy, family and home life; and Article 17: right to property.

5 Universal Declaration of Human Rights. Adopted by the UN General Assembly, Dec. 10, 1948, G.A. Res. 217A, UN GAOR, 3<sup>rd</sup> Sess., Pt. I, Resolutions, at 71, UN Doc. A/810.

6 *Id.* preamble, para 3.



Although the UDHR is not a binding convention and there are no signatories, Turkey was one of the 48 member states that voted to approve and abide by it. In this sense, it has the force of customary international law.

## 2. International Covenant on Civil and Political Rights

The ICCPR is the Covenant which 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.<sup>7</sup> Turkey signed on to the Covenant on 15 August 2000 and ratified it on 23 September 2003.<sup>8</sup> However, when Turkey ratified the ICCPR, it made a reservation in connection to Article 27. In this regard, Turkey stated:

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.<sup>9</sup>

According to Article 27,

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.

Turkey's reservation to Article 27 demonstrates Turkey's intention to comply with the Covenant only to the extent that its principles are recognized by Turkey's Constitution. This means that the protections of the ICCPR may only pertain to non-Muslim minorities (Jews, Greek Orthodox and Armenians) that are recognised under the Lausanne Treaty and the Constitution of the Republic of Turkey.<sup>10</sup>

The ICCPR guarantees every human being the inherent right to life (Article 6); freedom from torture and cruel, inhuman or degrading treatment (Article 7);

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7 **International Covenant on Civil and Political Rights.** Concluded at New York, Dec. 16, 1966. Entered into force, Mar. 23, 1976. 999 U.N.T.S. 171.

8 **ICCPR: Ratifications and Reservations.** Last updated 29 June 2005, at <<http://www.ohchr.org/english/countries/ratification/4.htm>> (last accessed 22 November 2006).

9 **ICCPR, Declarations and Reservations,** at <[http://www.ohchr.org/english/countries/ratification/4\\_1.htm](http://www.ohchr.org/english/countries/ratification/4_1.htm)> (last accessed 22 November 2006).

10 **Camille Overson Hensler & Mark Muller,** *Freedom of Expression and of Association in Turkey*, KHRP, Bar Human Rights Committee of England and Wales 27, 2005

the right to liberty and security of person (Article 9); 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).<sup>11</sup>

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.<sup>12</sup> 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.<sup>13</sup>

### 3. UN Guiding Principles

In 1992, the UN appointed a Special Representative on Internally Displaced Persons, who set about developing the 'UN Guiding Principles on Internal Displacement', a document whose purpose is to address the specific needs to IDPs worldwide by identifying rights and guarantees relevant to their protection.<sup>14</sup> The Guiding Principles reflect and are consistent with international human rights law and international humanitarian law. They provide guidance to states when faced with the phenomenon of displacement, to authorities, groups and persons in their relations with IDPs, and to intergovernmental and non-governmental organisations addressing internal displacement.

In addition to setting out principles which states should follow to protect against arbitrary displacement and standards which should be met during actual periods of displacement, the Guiding Principles also address the return, resettlement and reintegration of displaced persons. Principle 28 provides

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally

11 ICCPR, *supra* note 157.

12 *Id.* Article 4, para 2.

13 Hensler, et al, *supra* note 115, at 28.

14 Guiding Principles on Internal Displacement, Introductory Note, UN Doc e/cn.4/1998/53/Add.2 (1998), noted in Comm. Hum. Rts. Res. 1998/50

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. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.

2. 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 considered to be binding on Governments, they reflect international human rights and humanitarian legal obligations and therefore set standards which Turkey should respect in providing redress for IDPs.

#### **4. European Convention for the Protection of Human Rights and Fundamental Freedoms**

Turkey, as a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), has international obligations towards its IDPs under Articles 2 (the right to life), 3 (prohibition on torture), 8 (right to home, privacy and family life), 13 (right to an effective remedy) and Article 1 Protocol 1 (protection of property). Over the last ten years, Turkey has been held in violation of these rights in a stream of cases brought by mainly Kurdish IDP applicants before the ECtHR<sup>15</sup>. In each case, 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, killing or being responsible for the disappearance of their relatives. Although the Government usually denied the allegations, asserting that the PKK was responsible instead, the Court has increasingly found Turkey responsible for these serious violations and ordered them to pay the applicants pecuniary and non-pecuniary damages, which reflect both the damage to their property and the 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 ECHR, and under Articles 2 and 3 ECHR where an allegation exists of a killing,

15 *Inter alia*, *İpek v Turkey*, ECtHR Application No 25760/94; *Akdıvar and Others v Turkey*, Application No 99/1995/605/693; *Menteş v Turkey*, Application No 23186/94; *Selçuk and Asker v Turkey*, Application Nos 23184/95 and 23185/95; *Bilgin v Turkey*, Application No 23819/94; *Dulaş v Turkey*, Application No 25801/94; *Orhan v Turkey*, Application No 25656/94; *Yöyler v Turkey*, Application No 26973/95; *Toğcu v Turkey*, Application No 27601/95; *Akdeniz v Turkey*, Application No 25165/94

disappearance or the use of torture.<sup>16</sup> 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. It is clear that a serious need existed to provide redress for the victims of forcible displacement.

However, although restitution and compensation are established remedies under international law, the European Court has never, in the case of Kurds of south-east Turkey, ordered the applicants property to be returned to them. The Court, in ordering that compensation should be awarded, is respecting the principle of *restitutio in integrum*: that the Respondent State should 'make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach'. Where, due to the ongoing security situation, it is not possible to order Turkey to allow IDP applicants to return, the Court cannot order that such steps are taken. However, in *Akdivar v Turkey*,<sup>17</sup> the Court hinted 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. Since the lifting of the state of emergency in the region in 2002, applicants before the European Court were hopeful that they might be afforded the opportunity to return to their villages and start rebuilding their lives. Yet, as highlighted by this report, the mission has found that obstacles still remain.

## 5. EU Accession

Turkey became a candidate for EU membership in 1999, and a set of requirements was mandated by the European Commission as a condition for the opening of accession talks. These became known as the 'Copenhagen Criteria', and involve 'the stability of institutions guaranteeing democracy, the rule of law, human rights and respect of and protection of minorities'.<sup>18</sup> Following the European Commission's finding that Turkey sufficiently met the Copenhagen Criteria to begin the process of accession; negotiations were officially opened on 3 October 2005, provided that Turkey brought into force specific pieces of outstanding legislation. In particular, the European Commission's 2005 Proposal for a Council Decision on the Principles, Priorities and Conditions contained in the Accession Partnership with Turkey suggest that the village guard system in southeast Turkey be abolished; that measures be pursued to facilitate the return of IDPs to their original settlements in line with the recommendations of the UN Secretary General's Special Representative for Displaced Persons; and that fair and speedy compensation be given to those who

16 *Aksoy v Turkey* Application No 21987/93

17 I Eur. Ct. HR 137 (1996)

18 Copenhagen European Council, European Parliament, 21-22 June 1993

have suffered loss and damage as a result of the security situation in the south-east. A major problem with the claim that Turkey has sufficiently met the Copenhagen Criteria relates to the outstanding problems of the huge number of displaced Kurds from southeast Turkey. As recognised by the European Commission in its November 2005 Progress Report, the situation of IDPs ‘remains critical, with many living in precarious conditions.’<sup>19</sup>

The extent of forced displacement in Turkey as a result of the persecution and oppression inflicted in the southeast region has never been fully documented. The Government initiated a survey by Hacettepe University in December 2004, which aimed to establish both the scale of the original displacement and the current needs of the displaced and, although this was finished in September 2005 and passed to the *Devlet Planlama Teşkilatı* (State Planning Organisation, DPT), the results have not yet been released. The DPT criticised and attempted to discredit the survey, claiming that as one of the researchers, Turgay Ünalın, was also a member of the NGO *Türkiye Ekonomik ve Sosyal Etüdler Vakfı* (Turkish and Economic Social Studies Foundation, TESEV), confidentiality had been breached. The mission understands that the DPT had known this fact throughout the survey. Although there were no specific instances of Mr Ünalın breaching confidentiality, he was dismissed from the survey and an investigation has been launched, which has delayed the release of the results.<sup>20</sup> The mission asked Cavit Torun, MP for *Adalet ve Kalkınma Partisi* (Justice and Development Party, AKP) about the Hacettepe Survey<sup>21</sup> but he knew nothing about the project.

The following sections will investigate the extent to which two of the programmes instigated by the Turkish Government to address the situation of IDPs meet these international obligations.

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19 Turkey 2005 Progress Report, SEC (20050 1425, Brussels, 9 November 2005), page 38

20 Reported by Firat News Agency, 11 July 2006 at <http://www.firatnews.com/modules.php?name=News&file=article&sid=11500> (last accessed 22 November 2006)

21 FFM Interview, 6 July 2006



## Section 1: Return to Village and Rehabilitation Project

### **Introduction: Aims and Objectives**

The Return to Village and Rehabilitation Project (the 'Project') was launched in March 1999 by then Prime Minister Bülent Ecevit. Its aim is '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 infrastructures'<sup>22</sup>. The Project includes in its aims the instigation of resettlement studies, the identification of families who wish to return to their villages, the completion of the necessary infrastructure and facilities within the abandoned and ruined villages, housing development, the completion of social facilities, including health and education services, and endeavours to support activities such as agriculture, husbandry, beekeeping and handicrafts so that the returning families can support themselves and earn a living. The Project covers the 14 south-eastern provinces of Adıyaman, Ağrı, Batman, Bingöl, Bitlis, Diyarbakır, Elazığ, Hakkari, Mardin, Muş, Siirt, Şırnak, Tunceli and Van.

Since 2000, the Project's administration has been managed by the Ministry of the Interior and the relevant local governorships, for the purpose of enlarging the Project's scope and to facilitate implementation. There are two types of assistance available to IDPs under the Project. Firstly, individual households may be provided with building materials and some farm animals when they apply to a governorship to return their village: funds are provided from a government-allotted budget for the Project. Secondly, governorships rebuild public infrastructure in some resettled villages, which is funded from individual governorships' 'Special Provincial Administration Budget'.

However, since its inception, the Project has been heavily 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 'Although the Government had pursued return programmes, including the Return to Village and Rehabilitation

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

Project, overall progress has been slow and many problems remain to be solved.<sup>23</sup> This is a result of both the limited financial and social assistance provided in practice by the Government through the governorships, and security threats to those attempting to return, as will be examined in more detail in the next section.

The Project also included a plan to ‘centralise’ the villages, under which families from different villages are grouped together and resettled in a new, centralised housing project instead of returning to their own villages or hamlets. The Government claims this will afford them better living standards. However, according to *İnsan Hakları Derneği* (Human Rights Association of Turkey, İHD), Van branch, the reason for combining the villages is not for better security and/or social rehabilitation, or indeed to afford them better economic and social living standards, but is an attempt to control and assimilate the villagers, thus preventing them from joining or assisting the armed opposition groups.<sup>24</sup> In fact, the mission learnt that there have been many problems with this initiative, as identified in ‘Problems with the Project’, page 27

Faced with much international criticism regarding the implementation of the project, on 17 August 2005 the Council of Ministers issued a framework document 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, but 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 UN Guiding Principles, a key concern is that NGOs were not sufficiently informed or consulted regarding the policy in order to be able to comment on its content.<sup>25</sup> The mission believes that it contains encouraging developments, such as swift handling of complaints about village guards and transparency in policy implementation. However, it also found that that the proposed reforms do not yet appear to have been implemented and therefore concluded that this document may be nothing more than a series of empty promises.

When interviewed by the mission, the Government provided the following figures regarding people who have returned to their villages under the Project:<sup>26</sup>

- Muş – 1,371 people have returned, receiving 3,215,282 new Turkish Lira

23 General Assembly, Sixtieth Session, ‘Protection of and assistance to internally displaced persons, Note by the Secretary General’, A/60/338, 7 September 2005, § 33

24 FFM Interview, 3 July 2006

25 TESEV and Norwegian Refugee Council ‘Overcoming a Legacy of Mistrust: Towards Reconciliation Between the State and the Displaced’, Norwegian Refugee Council, May 2006, page 14

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



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

According to the above figures, a total of 51,403,426 YTL was handed out to 93,451 people who have returned. The mission could not ascertain the precise definition of ‘in kind’: 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. Although the mission cannot verify these figures, if they are accurate they equate to just 550 YTL per returnee - just over £200. The mission does not consider this amount to be even marginally satisfactory to meet the needs of those returning. The mission was also concerned about the lack of clarity and transparency regarding the implementation of the Project. 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.<sup>27</sup>

## **1. Obstacles to Return**

In spite of the establishment of the Project, there are still many obstacles which hamper the return of IDPs to their villages, including the continued relative economic underdevelopment of east and south-east Turkey, the absence of basic infrastructure, the lack of capital, limited employment opportunities and the security

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<sup>27</sup> *Ibid*

situation, specifically landmines and village guards<sup>28</sup>. The latter are discussed in more detail below.

### a. Security situation

As far as the mission believes, security forces do not specifically prevent IDPs from returning on the grounds of lack of safety. Yet security forces still maintain a strong presence in the south-east, charged with protecting national security, rather than protecting the IDPs. As a result, many IDPs cite the escalation of armed activity in the region since 2004 as the main factor which hinders them from returning. Further, the actions of both security forces and armed opposition groups have caused casualties among the military, civilians and opposition. This has resulted in a real risk that those who have managed to return to their villages may be re-evacuated.<sup>29</sup>

According to the Van branch of Göç-Der, 10 days prior to the mission's visit to the region, two villages were evacuated by security forces in Tunceli and Batman. The forest near one of the villages, close to Silopi, was burnt for alleged security reasons, and the fire continued for around 20 days. When some villagers tried to extinguish the fire, they were warned off with cannon fire.<sup>30</sup>

Further, those who do return often face intimidation from the security forces, in particular those who have returned voluntarily and not through the Project. İHD Van branch reported to the mission that a returned villager in Gürpınar region, Van province, received a threatening letter from the village of Hatay, which appeared to be signed by the PKK. When he showed this letter to the military commanders, they simply took it from him and did not open an investigation, leading him and İHD to conclude that the letter was likely to have been written by the military in an effort to discourage villagers returning.<sup>31</sup> The mission heard similar evidence from an IDP family who had been evacuated from the village of Cadlıca, Çatak district in 1991, and currently live in the Bostaniçi district of Van. Last year, one member of the family 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.<sup>32</sup> The mission was particularly concerned to hear reports of such behaviour by the state security forces, since this is aimed at - and to some extent successful in - not only hindering and discouraging others from returning but also instilling fear in those

28 Turkey 2005 Progress Report, SEC (20050 1425, Brussels, 9 November 2005), page 39

29 FFM Interview with İHD Van branch, 3 July 2006

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

31 FFM Interview, 3 July 2006

32 FFM Interview, 4 July 2006, name of interviewee withheld

who have returned.

## b. Landmines

Landmines still pose a serious problem to those who have returned or who wish to return to their villages. The exact numbers and locations of landmines in Turkey are unknown. Although Turkey has committed to address ‘problems caused by landmines laid by the terrorist organisations in the context of returns’<sup>33</sup> and 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, landmines continue to be used by both armed opposition groups and security forces.



Landmine damage on the way to Taşnacak, July 2006

Indeed, the mission visited several returned villages in the Gürpınar region of Van, and witnessed the damage caused by a landmine which had exploded just two days earlier.<sup>34</sup> Although fortunately nobody had been injured on that occasion, the mine had exploded in the middle of the road and had the potential to cause much damage. Further, when passing through a checkpoint, the mission was discouraged by the military from visiting the region due to the presence of landmines. Although the mission believes that the real motivation behind this statement was to deter their visit rather than to protect them from the landmines, it was confused why the military had not been taking steps to clear the landmines and to educate local occupants about the associated hazards, as they were clearly aware of their presence.

33 Measures on the Issue of Internally Displaced Persons and the Return to Village and Rehabilitation Project in Turkey, 17 August 2005, Principle B

34 FFM visit to Taşnacak and Özlüce villages, 4 July 2006

### c. Village guards

The village guard system was created on 26 March 1985 by a clause added by Law no 3175 to the 1924 Village Law (Law no 442). The system is currently operating in 22 provinces of south-east and eastern Turkey. Little is known about the principles by which village guards are appointed or dismissed, or indeed what their duties entail precisely, since the Implementing Regulation on Law 3175 is classified on grounds of ‘national security’.<sup>35</sup>

According to the Ministry of the Interior, as of 7 April 2006, there were 57,714 village guards in the region. There are also voluntary village guards: civilians who volunteer to become guards with the ostensible purpose of protecting themselves and their families against armed opposition groups. Although the hiring of all village guards should have been discontinued in accordance with a government decree of 2000, a local news report has reported that 650 voluntary village guards have recently been hired in the Sason district of Batman<sup>36</sup>. The mission was concerned to learn that those villagers who agree to become village guards are more likely to be offered the opportunity to return to their village and similarly granted rehabilitation assistance under the Project.<sup>37</sup>

There is much evidence of violence and other criminal activities on the part of the village guards. In 2003, seven villagers went back to their village in the region of Muş and were killed by the village guards<sup>38</sup>. According to the Ministry of Interior, between 1985 and 2006, over 5,000 crimes by village guards were reported. Approximately half of these were ‘terror related’, whilst the remainder concerned crimes against property, crimes against individuals including murder and attempted murder, and smuggling of forestry products and arms.<sup>39</sup> The mission suspects that the actual number of such incidents is in fact much higher, as a result of both the Turkish Government’s frequent failure to record and investigate complaints against village guards, and the reluctance of victims to report such events, for fear of recrimination. These issues have been recognised by the ECtHR, notably in a recent and damning judgment against the Turkish Government, which found it in violation of Articles 2 and 13 ECHR in relation to the killing of Mehmet Bilgin and the failure of the local authorities to adequately investigate the incident and prosecute the perpetrators.<sup>40</sup> Mr Bilgin was shot and killed by village guards in August 1994. He had been

35 TESEV and Norwegian Refugee Council ‘Overcoming a Legacy of Mistrust: Towards Reconciliation Between the State and the Displaced’, Norwegian Refugee Council, May 2006, page 20

36 See ‘Sason’da 2 bin 259 Korucu’, *Batman Gazetesi* 16 June 2005, available at [www.bianet.org](http://www.bianet.org)

37 FFM Interview with Van branch of İHD, 3 July 2006

38 FFM Interview with Van branch of Göç-Der, 3 July 2006

39 Article in *Radikal*, 27 July 2006

40 *Bilgin v Turkey*, Application No 40073/98

forcibly evicted in 1992 from his village of Datvaran, Batman province, to the centre of Batman, and, unable to adapt to his new environment, frequently wandered on the roads between the surrounding villages.

## 2. Problems with the Project

The mission identified a number of problems with the Project, which it found fails to meet the necessary international standards of redress. These include the failure to provide adequate resources, making return reliant on various conditions, and intimidation by state security forces, as explained further below.

### a. Failure to provide adequate and consistent resources

The implementation of the Project has not been sufficiently transparent, as identified at page 23 above, and the authority to allocate payments rests with the governorship and sub-provincial governorships, which have created inconsistencies in the allocation of financial assistance for returns in the different provinces.<sup>41</sup> Moreover, villagers who wish to return to their villages – or have no choice to return due to lack of funds and extremely harsh living conditions in the cities - are seldom provided with adequate building materials and/or health and education services to support the number of people in the villages.



Ruined Buildings in Taşnacak, July 2006

The mission visited the hamlet of Taşnacak<sup>42</sup> in Gürpınar province<sup>43</sup>. Here, the

41 FFM Interview with Göç-Der, 3 July 2006

42 Xirabedar in Kurdish

43 4 July 2006

population of approximately 150 people had entirely abandoned their homes in 1994, due to opposing pressures from both sides to the conflict – the military and the armed opposition - in relation to becoming village guards. Taşnacak was then burnt and the majority destroyed by the security forces. In 2001, the first villagers started to return and rebuild their homes, 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 mission learnt that, despite applying under the Project, the inhabitants of Taşnacak did not receive any state assistance. It took the villagers around six months' hard work to reconstruct the hamlet to its current state, although it is still not finished. 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 km 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.

The mission also visited a returned village, Özlüce, which had been offered some assistance under the Project. Özlüce had been 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. While the mission encourages and welcomes the assistance provided, it was clear that help was still needed – for example, through the provision of the necessary infrastructure. The entire village obtained water from one of two taps, and there was no health clinic or services of any kind. Further, not enough assistance had been provided to allow the whole village to return, leaving the remainder to continue living under difficult conditions in Van.

## **b. Conditional return**

Some of those who have returned have been forced to accept re-housing in a centralised village (as explained at page 22 above). This has created problems as the

villagers lack adequate resources. According to İHD Van, some of the inhabitants of several villages from the Özalp district of Van were combined and returned to Dorutay, Özalp. However, these rehabilitation efforts are not satisfactory to the villagers – for example, they have not been provided with soil to resume farming.<sup>44</sup> In this and many other instances where villages have been combined, there is frequently a problem with access to adequate land, which villagers who are subsistence farmers require to support themselves as there is no other source of income. Where the number of households in a village is increased from 50 to 500, there is insufficient arable land to divide between the families and they cannot support themselves. Further, animosities emerged during the course of the armed conflict between the different social and cultural groups and consequently, many families do not want to be re-housed in centralised settlements. İHD informed the mission that it would be a far more suitable solution for the IDPs to return to their original village and make use of their previous land, since they are accustomed to it.<sup>45</sup>

### **c. Perceived security threat and intimidation**

The mission learnt of allegations that villagers who were, and still are, believed by state authorities to support armed opposition groups, will not only be denied assistance under the Project but will also be intimidated by state security forces if they return. The mission understood that it is usually the security forces' suspicions that links exist between certain villagers and armed opposition groups that provide the fuel for this intimidation: yet such suspicions will often be arbitrary and without sufficient basis. The hamlet of Taşnacak, for example, had not been offered any assistance under the Project, yet a village nearby, Özlüce, had been offered resources. It was suggested to the mission that the reason for this was Taşnacak's perceived links to the PKK.<sup>46</sup>

Further, villagers in Taşnacak reported regular intimidation on the part of the military. During the mission's visit, members could clearly see soldiers observing their actions from a nearby hilltop and it was clear that the mission had been followed from the military checkpoint. The villagers also reported that they received regular visits from the soldiers between three and four times per week.<sup>47</sup> The villagers believed these visits resulted from other villagers and village guards making complaints to the soldiers, which were motivated by feudal jealousy. The villagers also expressed concern that the mission's visit might stir up further interest

44 FFM Interview, 3 July 2006

45 FFM Interview, 3 July 2006

46 FFM Interview with Göç-Der, 4 July 2006

47 FFM visit to Taşnacak, 4 July 2006

and intimidation from the military upon its departure.

Similarly, despite prior agreement to the mission's visit, several of the villagers at Özlüce became visibly upset at the mission's presence there, fearing future intimidation and recrimination from the security forces.<sup>48</sup> Having witnessed the military interest in its visit to Taşnacak, the mission immediately complied with the villagers' requests and left the village.

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48 FFM visit to Özlüce, 4 July 2006



## Section 2: Law on Compensation for Damage Arising From Terror

### Introduction: Aims and Objectives

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.' On 17 July 2004, Turkey passed the Law on Compensation for Damage Arising from Terror (Law No.5233), which came into effect on 27 July 2004<sup>49</sup>. This offers displaced villagers from south-east Turkey the possibility of receiving compensation for material losses, including land, homes and possessions, in the context of displacements that happened between 19 July 1987 and 17 July 2004.

Law 5233 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 provincial commissions are comprised of a deputy provincial governor and six other members: five civil servants and a board member of the local bar association. After assessing each claim, they 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.

In terms of payment, the compensation law offers two levels of opportunity. Firstly, the assessment commissions may make reasonable offers to the displaced persons, which would provide an early injection of cash or materials which the villagers can use to re-establish themselves in their former homes. However, if the commission's offers are too low and do not adequately compensate the level of loss, the villagers can go to court to improve the offer.

By 3 May 2006, 195,463 people had applied to the Compensation Commissions, yet

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49 *Resmi Gazete*, no 25535, 27 July 2004

only 27,011 (13.8 per cent) had been decided, and only 11,899 of those applications were successful (44 per cent).<sup>50</sup> The following sections examine why these figures are so low and identify a number of barriers to redress for IDPs in south-east Turkey.

## 1. Overview of the Machinery of the Compensation Law

The main provisions of Law 5233 are as follows:

**Article 1** lays out the aim of the law, which is to grant compensation for pecuniary damages suffered due to terrorist acts or during the operations combating terrorism.

Under **Article 2**, Law 5233 offers displaced villagers from south-east Turkey the possibility of full compensation for material losses, including land, homes and possessions in the context of displacements which happened between 19 July 1987 and 17 July 2004. There must be a direct causal connection between the fight against terror and the damage.

Regulations for implementing the law were published in the *Official Gazette* on 20 October 2004. The deadline for applications to be submitted for compensation for material loss was 27 July 2005, and the provincial loss-assessment commissions are to complete their work of assessments and compensation offers to villagers by January 2006 or April 2006 at the latest (a three month time extension is allowed). However, in January 2006, under the Law on the Amendment of Law on Compensation for Damage Arising from Terror (Law No 5442),<sup>51</sup> the deadline for applications was extended to 3 January 2007, although claims must be decided within six months of the date of application (with a potential extension of three months by the Governor's office).

Law 5233 is not designed to compensate for non-pecuniary damages and the restricted application of the law in regard to 'reasons of terror' or 'combating terror' appears to be contradictory to the general aim of the law. Damage assessment commissions are established on a provincial level to investigate deaths, physical injury, damage to property and stock, and loss of income arising from the inability of the owner to access their property. These assessment commissions will propose a figure for compensation on each complaint on the basis of principles laid down in tables of compensation levels and, for damage to property, levels established in laws

<sup>50</sup> ANF news agency, Ankara, 21 July 2006

<sup>51</sup> Passed by Parliament on 28 December 2005 and came into effect on 3 January 2006, published in Resmi Gazete, no 26042, 3 January 2006; interview with Cevat Aktaş, Bar Association member of Van Compensation Commission, 3 July 2006

on compulsory purchase.

**Article 2** also sets out the damages that are excluded from the law and which are not going to be compensated by the State, as follows:

- a) Damages that were previously compensated by the Government with the allocation of land or house or by other means;
- b) Damages that were compensated in accordance with a court judgment;
- c) Compensation previously paid in accordance with a judgment or friendly settlement decision of the European Court of Human Rights;
- d) Damages which occurred as a result of economic and social migration, rather than terrorism, or as a result of voluntarily migration which was not motivated by security concerns;
- e) Losses that were incurred through the intentional acts of the individuals;
- f) Losses suffered by those who were convicted under the scope of Articles 1, 3 and 4 of the Anti-terror Law and sentenced for aiding and abetting the PKK.

According to **Article 4**, the commissions were to be set up to review applications within ten days of passing Law 5233. Regional governors have the task of appointing the heads of the commissions. Each commission is comprised of a deputy provincial governor, five civil servants responsible for finance, housing, village affairs, health and commerce, and a board member from the local bar association. According to Article 1 of Law 5442, the Chair and Commission members are paid a fee for their attendance, however this is limited to a maximum of 6 sessions per month at a rate of 22 YTL per session.

**Article 6** provides that the commissions must decide claims within six months of being lodged, with a possible extension of three months if necessary.

Under **Article 8**, the damage will be determined according to the statement of the applicant together with information and evidence from the judicial, administrative and military authorities.

**Article 9** sets out the amount of compensation that can be awarded in situations of injury, death, and infringement of life. However, it is particularly concerning that pecuniary compensation is less when compared to the Pecuniary Compensation Law, Law number 2330, which relates to compensation to state agents – including village guards - subjected to damage when protecting security and public peace.

**Article 13** states that the losses shall be paid from the fund set out in the Interior Ministry budget, on the approval of the governor. The Interior Ministry must approve any payment over 20,000 YTL. Law 5442 raised this figure to 50,000 YTL.

Under **Article 17**, a regulation setting out details of the implementation of Law 5233 is to be drafted by the Interior Ministry and issued by the Council of Ministers within 2 months of the law coming into force, that is, by 27 September 2004. Applicants must apply to the governors for compensation and they have one year in which to do this (this deadline was extended by Law 5442 to 3 January 2007).

## 2. Lack of Independence of Assessment Commissions

Each claim for compensation under Law 5233 is assessed by the local Compensation Commission, which is composed of six civil servants and one independent member, a lawyer appointed from the local bar association. A KHRP/BHRC fact-finding mission in 2005 voiced concerns that the commissions' constitution invites conflict of interest and threatens to undermine their impartiality and independence. It will come as no surprise that government-appointed civil servants are more likely to be motivated by their own employment-related concerns – including job security and promotion prospects – when determining compensation claims, than the one independent member. Now that compensation claims are starting to be decided, the mission learnt that these concerns are proving to be true.

The recent inclusion of a seventh independent member within the commissions was the result of a request by Mesut Değer, an MP for CHP and a member of the Human Rights Commission, when the law was being debated in Parliament<sup>52</sup>. Although this development should be welcomed, the mission learnt that 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<sup>53</sup>. The Government, however, only accepted the inclusion of the first. Similarly, the Van branch of Göç-Der commented that the inclusion of representatives from local civil society organisation and/or of sociologists and psychologists would have been a welcome development.<sup>54</sup> The mission believes that not only would the inclusion of more balanced, evenly-matched commission members potentially help to achieve accurate and consistent calculations of the compensation claims, it would also assist with the appearance of impartiality and neutrality towards IDP applicants, thereby potentially assisting in reducing the

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

53 *Ibid*

54 FFM Interview, 3 July 2006

tension between the state and the individual.

The mission heard significant evidence to support its fears regarding the commissions' lack of impartiality and independence. Cevat Aktaş, the bar association member appointed to Van Compensation Commission, stated that 'his only competence is to sign' [the compensation agreements or *sulhname*].<sup>55</sup> According to Mr Aktaş, the members of the commission 'are people very close to the state'. The mission was further concerned to hear allegations that, in fact, it is not the commissions who reach the decisions but, instead, members of the provincial special administration. '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.'<sup>56</sup> 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 police men, the lawyer of the special provincial administration, two other lawyers who report to the other lawyer, and one or two other civil servants.<sup>57</sup> 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 yet responded to these or taken any action to resolve the situation.<sup>58</sup>

Where a claim is accepted, the commission will appoint 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, who has attended some of these surveys in Van province, the surveys are usually very accurate and record the correct measurements. It is therefore the commissions, rather than the experts, who are responsible for the reduced awards, since it is the commissions who subsequently reduce the payments: the authority of the expert surveyors is limited in this respect.<sup>59</sup>

In addition to the concerns regarding independence and impartiality, the mission identified a practical problem regarding the working of the commissions. The members' appointments to the commissions are in addition to their regular employment, which often causes conflicts, since they are unable to give full

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55 FFM Interview, Cevat Aktaş, 3 July 2006

56 *Ibid*

57 FFM Interview, Cevat Aktaş, 3 July 2006

58 *Ibid*

59 FFM Interview, 4 July 2006

commitment and attention to their duties as commission members. Cevat Aktaş stated that commission members, including himself, are often unable to attend commission meetings due to the requirements of their daily work – in his case, he often has to attend court when the commission meetings take place.<sup>60</sup> Not only does this place an additional burden on the already vast workload of the commission members, it is also bound to decrease the productivity of the commissions and, as a result, the commission decisions rely to some extent on the goodwill of members. Since the introduction of Law 5442, commission members are now paid monthly wages of up to 132 YTL per month<sup>61</sup> - Article 1 provides that commission members should be paid 22 YTL per session up to a maximum of six sessions per month, an introduction to be welcomed. However, the mission believes that the appointment of full time commission members would be more appropriate and effective.

### 3. Exclusion from Compensation

The KHRP/BHRC 2005 fact-finding mission identified a number of affected individuals who are automatically excluded from applying to the commissions for compensation, either because they have already been compensated, because they are ‘voluntary’ evacuees or because they had been convicted under the Anti-Terror Law. These concerns have been borne true: out of 27,011 applications considered by the commissions before 3 May 2006, 15,112 were rejected.<sup>62</sup> Of these, 4,980 were considered ‘outside of the scope’ of Law 5233, and 1213 were rejected for lack of information and documents.

Now that the Compensation Commissions have started to review and assess the compensation claims, the results clearly show that, in addition to the above problems, various other applicants are excluded. This may explain why, out of the 27,011 applications decided by 3 May 2006, only 11,899 – 44 per cent - were awarded compensation.<sup>63</sup>

#### a. Access to pasture

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 have been unable to

60 FFM Interview, Cevat Aktaş, 3 July 2006

61 *Ibid*

62 ANF News Agency, Ankara, 21 July 2006

63 ANF News Agency, Ankara, 21 July 2006

successfully claim compensation for this loss, in spite of providing documentation from the village *mukhtar* (village elder) confirming that gendarmes prevented the villagers from accessing certain areas.<sup>64</sup>

#### **b. Houses built on treasury land**

Villagers who have built houses on treasury land are unlikely to be able to receive compensation for the loss of their property. The mission heard of a number of villagers from Özalp district of Van province who had been affected in this way. According to Cevat Aktaş, only those who possess title deeds for their land will receive compensation.<sup>65</sup>

#### **c. Damage caused by armed opposition groups**

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.<sup>66</sup> Göç-Der raised concerns 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.

#### **d. Other barriers**

The mission heard of other seemingly spurious reasons why the compensation claims have not been granted, many of which are set out in the following section, 'Provision of Acceptable Forms of Evidence'. For example, Mesut Değer informed them of a family from Bingöl whose house had been burnt and they 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. The mission fears that this is not the only such example where IDPs are denied access to compensation for apparently arbitrary reasons.

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64 FFM interview with Cevat Aktaş, Bar Association Member of Van Compensation Commission, 3 July 2006

65 FFM Interview, 3 July 2006

66 FFM Interview with IDP applicant to Şırnak Compensation Commission, 3 July 2006

#### 4. Provision of Acceptable Forms of Evidence

Law 5233 provides compensation to those who suffered material damage, or whose relatives were killed or injured as a result of damage, inflicted by both state security forces and armed opposition groups. However, requirement placed on each applicant to document the evictions, most of which were carried out by state security forces or village guards, places an undue burden of proof on the applicants which it is often impossible to meet. As a result, compensation claims are frequently inconsistently determined. The mission learnt of other evidentiary issues hampering villagers' access to compensation. These are detailed below.

##### a. Gendarme evidence

The official decision to evacuate a village will have been made by the Ministry of Interior. The majority of the related documentation is kept in the offices relating to the state of emergency – to which only gendarmes, not ordinary individuals, have access. The gendarmes will only hand over these documents when requested by the commissions. As most of the villages were not subject to an official evacuation and, because the state does not wish to implicate itself in alleged violent action, often villages are denied compensation for lack of evidence.<sup>67</sup> Further, Cevat Aktaş reported to the mission that, in the case of a death where a gendarme possesses a report on the incident, it is more likely that the compensation claim will be accepted.<sup>68</sup> This raises understandable obstacles for those who have no such report, which is frequently the case. The mission believes that allowance should be made for those applicants who do not have supporting police documentation, given the usual circumstances of the deaths.

##### b. Proof of ownership

The mission confirmed the concerns of the 2005 mission - that those who have no title deeds often find it difficult to prove ownership of the land.<sup>69</sup> Cadastral surveys are conducted on a periodic basis since the establishment of the Republic in 1923, but not all the land has been included within these surveys. As a result, some of the land on which villagers built their properties, farmed crops and grazed their animals is *zilyet*, or traditional land which has not been registered. For example, the mission met with an IDP whose village, Beytüşşebap in Şırnak province, was

67 FFM Interview with Cevat Aktaş & Mehmet Nuri Yıldız, Van Bar Association member, 3 July 2006

68 FFM Interview, 3 July 2006

69 *Ibid*



bombed, burnt and forcibly evacuated in 1994.<sup>70</sup> He, his family and fellow villagers - a total of 250 applicants - had applied to Şırnak commission for compensation over a year ago. However, the evidential requirements imposed by the commissions 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.

Where proof of ownership cannot be shown, it is possible to rely on other evidence, such as eye witness statements. However, this can have further problems, as identified below.

### **c. Reason for evacuation**

Villagers must prove 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 some instances within Van province, the villagers were informed by the security forces that they could not provide for their security, causing the villagers to seriously fear for their safety and to abandon their village. In many such cases, they have been unable to claim compensation.<sup>71</sup> The IDP interviewed above stated that he had also been required to produce a document proving that it was the military who had burned the village – but the military had refused to provide this.

### **d. Eye witness evidence**

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. The mission has learnt of several individuals originally from Yeşilyazı village, Ovacık, Tunceli province, who had applied for compensation but, because other villagers did not want to provide supporting witness evidence, they were not able to support their claim and it failed.<sup>72</sup>

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70 FFM Interview with Göç-Der, 3 July 2006; name of IDP withheld

71 FFM Interview with Cevat Aktaş and Mehmet Nuri Yıldız, 3 July 2006

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

### e. Evidence of owning animals

The mission spoke to an applicant to the Van Compensation Commission who stated that he had tried to include within his compensation claim the cattle and sheep lost or killed when his village was destroyed. The commission had requested invoices to prove that he had owned these animals. However, he and his family possessed no such documents, 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.<sup>73</sup>

The mission raised their concerns regarding the above excluded evidence with the Government.<sup>74</sup> In response, the mission was disturbed to hear the Government raise allegations of applicants making ‘fraudulent’ claims and applicants using ‘false’ documentation to claim losses that they did not suffer, for example, in relation to property not actually owned by applicants or lack of proof of the ownership of animals. Although the mission accepts that there may be some instances where compensation claims are dishonest, the mission found the Government’s suggestions disingenuous at the very least and, moreover, deliberately obstructive to its pledge to afford redress to the internally displaced. The mission believes that the control on evidence needs to be realistic to reflect the fact that the true version of events is little documented.

## 5. Lack of Compensation for Suffering and Distress

It is unsurprising that the majority of IDPs in Turkey have suffered some form of psychological trauma. Having been forced to leave their homes and only means of supporting themselves as a result of intimidation and frequently as a result of use of force, fearing for their lives, witnessing the destruction of their homes and in some cases the killing or injury of friends and relatives, it is inevitable that many will suffer post-traumatic stress disorder, psychological depression and mental illness.

However, Law 5233 makes no provision for suffering and trauma, it compensates material losses alone. Not only does this fail to meet international standards of redress, it is unfair and insufficient. The ECtHR has previously ordered non-pecuniary damages as well as pecuniary compensation for the suffering and distress of IDPs<sup>75</sup>. Yet, the Government does not appear to accept that IDPs have suffered

<sup>73</sup> FFM Interview with Göç-Der and others, 3 July 2006

<sup>74</sup> FFM Interview with Cavit Torun

<sup>75</sup> *İlhan v Turkey*, Application No 22494/93, in which €14,500 was awarded to the applicant in non pecuniary damages; *Menteşe and Others v. Turkey*, Application no 36217/97, in which four applicants were awarded €15,000 in respect of non-pecuniary damage

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.’<sup>76</sup> This demonstrates, at best, a crucial lack of awareness or, at worst, wilful ignorance of the fate of the majority of IDPs.

## 6. Failure to Provide Legal Aid for Applicants

Law 5233 contains no provision for legal aid to assist applicant IDPs in preparing their claims. This has not changed since Law 5442 came into effect.

Lawyers assisting IDP applicants therefore usually make an agreement to take a proportion – usually 10 per cent - of the compensation eventually received,<sup>77</sup> if any: leaving the applicants with even less of the minimal compensation amount that they receive.

In addition, lawyers are inundated with client applicants. Mehmet Nuri Yıldız, for example, a lawyer and board member of Van Bar Association, has represented applicants in over 1,000 claims pending before the Van Compensation Commission.<sup>78</sup> He stated that approximately 50 of the 130 lawyers in Van have represented applicants before the two Van Compensation Commissions.<sup>79</sup> Although he did not seem overly concerned that this placed an unnecessary burden on him and his colleagues, the mission was concerned to learn that this workload only permits Mr Nuri Yıldız to spend 20-30 minutes per file, which would appear insufficient time for such important cases.

## 7. Delay in Processing Claims

Since their establishment, the Compensation Commissions have been overwhelmed with applications. By 3 May 2006, 195,463 applications had been lodged: with just 92 commissions established in 79 provinces<sup>80</sup>, they cannot process them quickly enough.<sup>81</sup> Only 27,011 – 13.8 per cent - of the full number of applications have been

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

77 FFM Interview with Applicant before Şırnak Compensation Commission

78 FFM Interview 3 July 2006

79 There are approximately 12,000 applications before the Van Compensation Commission, but the mission was not clear how many of these were pleaded with legal assistance, as opposed to by the applicants themselves

80 TESEV and Norwegian Refugee Council ‘Overcoming a Legacy of Mistrust’ page 34.

81 ANF News Agency, 21 July 2006

considered and assessed. With so many cases to consider, any assessment is going to be cursory at best.

In Batman, 11,000 applications have been lodged with the Compensation Commissions, yet only 1,000 of these have been considered so far, and only 600 were offered compensation.<sup>82</sup> By 28 April 2006, the 4 commissions of Diyarbakir (Diyarbakır) had only managed to consider 3,797 (10 per cent) of its 35,569 pending applications. Further, by 31 January 2006, Hakkari's two commissions had assessed just 1,325 (6 per cent) of the 21,597 applications.

Applications must be decided within 6 months of the date of application, with a potential extension by the Governor's office of three months [see Article 3 of Annex 2, Law 5442], and therefore the mission is concerned that the current rate of progress will fall foul of these rules. Mesut Değer was of the opinion that many cases will fail to meet the two year deadline, after which applicants can open a case against the Governor. He believes there will be many complaints about the commissions in the future.<sup>83</sup>

According to İHD Van branch and Göç-Der,<sup>84</sup> there have been approximately 12,000 applications to the two Van Compensation Commissions since the law was implemented in July 2004 – yet only approximately 300-350 have been compensated so far, and these concern the deaths or injury of a person or the death of livestock, rather than damage to property. These 300 odd applications have taken 18 months alone, and therefore it is hard to believe that the remainder will be decided soon or indeed within the 2 year deadline. The mission was concerned to learn that 'at this rate, it will take six years to decide all the claims'.<sup>85</sup> A total of 2,000 applications were examined but, according to Göç-Der, the remainder were not granted compensation.<sup>86</sup>

Not only is the mission concerned about these unacceptable delays, it also fears 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.'<sup>87</sup> İHD

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82 ANF News Agency, 20 July 2006

83 FFM Interview, 6 July 2006

84 FFM Interviews, 3 July 2006

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

86 FFM Interview, 3 July 2006

87 FFM Interview, 3 July 2006

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 *sulhname* and accept the money.’<sup>88</sup>

## 8. Approval Needed for Large Claims

Under Article 5 of Law 5442, the maximum compensation which can be paid without Ministry of Interior approval was increased from 20,000 YTL to 50,000 YTL.

Although this development is to be welcomed, the mission is concerned that most of the awards do not reach this amount: even the award for a death is just 15,000 YTL.<sup>89</sup> Further, capacity still exists for civil servants to reduce awards (see further ‘Lack of Independence of Assessment Commissions’, page 34).

## 9. Arbitrary Calculations and Low Awards

Now that the Compensation Commissions have started to assess the compensation claims, it was clear to the mission that not only do the awards fail to adequately reflect the suffering and material loss suffered by the applicants, they also appear to 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 lack of consistency between the figures chosen by different commissions. The mission was also concerned to learn that not all of the agreed awards have been paid.

According to Mehmet Nuri Yıldız, lawyer for applicants before the Van Compensation Commission, ‘the compensation the applicants receive is ridiculous’. The highest amount that has so far been granted by 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.<sup>90</sup> He informed the 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. This figure was supported by Tahir Bey of Mazlum-Der, who added that sheds and stores are afforded 40-50 YTL per square metre.<sup>91</sup> Although there should not be an upper limit on the amount that can be awarded, the commissions appear

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88 FFM Interview, 3 July 2006

89 ANF News Agency, 20 July 2006

90 FFM Interview, 3 July 2006

91 FFM Interview, 4 July 2006

to have decided upon one themselves.

According to İHD Van branch,<sup>92</sup> in Diyarbakır an arbitrary price has been paid in some cases for the loss of walnut trees, which does not reflect the true value of the loss. The trees have been compensated at the rate of 20 YTL each – yet a kilo of walnuts alone is worth 7 YTL. Similarly, Tahir Bey of Mazlum-Der stated that the price of a sheep in Van is between 160 and 200 YTL,<sup>93</sup> yet Van Compensation Commission only awards 125 YTL. For an applicant who has lost 1,000 or 2,000 sheep – as is the case in Van region, particularly Gürpınar region where sheep farming was the primary method of survival - the difference of up to 75 YTL per sheep is significant. On 2 July 2006, Özgür Gündem reported that one family in Siirt was awarded just 630 YTL for the loss of their property – equal to just €336.<sup>94</sup> Similarly, the 350 applicants whose claims have been decided by the Van Compensation Commissions reportedly were only awarded 3,000 YTL each.<sup>95</sup> Further, as one applicant to the Şırnak Compensation Commission 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.<sup>96</sup>

Often, the amount that the expert proposes is significantly reduced by the commission. 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 decided 95,000 YTL – yet the commission reduced this to just 35,000 YTL as that was all they could ‘afford to pay’.<sup>97</sup> Similarly, the mission learnt that the whole village of Çatak – 170 people - was offered just 1.5 million YTL: which equates to just under 9,000 YTL per family (4,800€). In Batman, the amount awarded for a death is just 15,000 YTL (8,000€).<sup>98</sup>

Tahir Bey of Mazlum-Der commented to the mission that the compensation paid to applicants is very low. On average, the damage caused to an average 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 severely need any money. Further, the villagers do not all understand that this is compensation, perceiving it as assistance such as a grant or donation. If the state gives them money, they will happily accept it: they cannot believe that the state will offer compensation for acts that it committed in

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92 FFM Interview, 3 July 2006

93 FFM Interview, 4 July 2006

94 FFM Interview with İHD, 3 July 2006

95 *Ibid*

96 FFM Interview, 3 July 2006

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

98 ANF News Agency, 20 July 2006.

the first place.<sup>99</sup>

Given that 195,000 applications have been made to Compensation Commissions, it is easy to understand why the compensation figures are low: to pay 30,000 YTL to every applicant would amount to a total of YTL 5,850,000,000 or more (over €300 million). Yet the villagers are not requesting an unreasonable amount; they are simply asking for compensation for damage to their property, since Law 5233 does not award compensation for suffering and trauma, nor indeed for the years of lost income during which they could not farm their land. The Government's response to the mission's concerns regarding the low figures was 'the state is not a charity.'<sup>100</sup>

The mission has further learnt that, in spite of agreeing some of the compensation awards, not all the monies have been paid. In Diyarbakır, *sullhname* to the total of 39,200,051 YTL had been signed by 28 April 2006 – yet, only 18,601,972 had been paid to the applicants.<sup>101</sup> The mission sees this delay as overly burdensome and wholly unacceptable.

## 10. Failure to Meet International Standards of Redress

In addition to the above issues with Law 5233, the compensation mechanism fails to provide a remedy for the actual violations which have occurred, which is a requirement under Article 13 of ECHR.

Firstly, the failure to investigate and punish the perpetrators of the forcible evacuations, violence and destruction, creates a climate of impunity, which does little to deter security forces and armed opposition groups from further intimidating IDPs or those who have returned, or indeed to prevent the current conflict from escalating.

In addition, the failure to physically return IDPs to their villages under Law 5233 and instead to award them an often arbitrarily calculated sum of money, does not provide them with a remedy for the actual violation suffered.

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99 FFM Interview, 4 July 2006

100 FFM Interview, 6 July 2006

101 ANF News agency, 21 July 2006





# Conclusion

## 1. Return to Village and Rehabilitation Project

Any project which aims to afford redress to Turkey's vast IDP population should be encouraged. To some extent, the Return to Village and Rehabilitation Project is a welcome introduction, as it attempts to offer displaced villagers the chance to return and rebuild their lives. However, it is clear that the Project is not effective in granting the redress necessary to improve the severe situation of IDPs. The social and financial assistance afforded is limited and in some circumstances is conditional on villagers denying state culpability for their displacement or on whether or not the state perceives links between the IDPs and armed opposition groups. There are still a number of serious obstacles preventing return, including the security situation, landmines and village guards. This issue is exacerbated by a dramatic failure on the part of the state to investigate and prosecute the perpetrators of the violence. Further, a lack of information and transparency and failures in its implementation leave NGOs and other bodies struggling to determine the Project's effectiveness.

## 2. Law 5233

In common with the Return to Village and Rehabilitation Project, Law 5233 has the potential to provide adequate and effective reparation for those who suffered as a result of being displaced during the 1990s. Yet, in practice, the compensation awards are frequently delayed, minimised and/or denied. In the words of Cevat Aktaş, Law 5233 is being used not only 'to abolish direct applications to ECtHR' and therefore improve Turkey's appalling human rights record before that institution, but also to persuade the European Commission that Turkey is instituting the reforms necessary for the EU accession process. In fact, Law 5233 is a paper reform which fails to meet the applicable international standards.



## Recommendations

KHRP and BHRC have the following recommendations regarding the Return to Village and Rehabilitation Project and Law 5233:

### **We urge the Turkish Government:**

- To address the issues highlighted within this report, including the introduction of necessary legal reforms, in particular the provision of non-pecuniary damage for suffering and trauma;
- Within this legislative drafting process, to consult local NGOs, human rights organisations and civil society groups, and invite their input into the reforms;
- To release the data collected by the Hacettepe survey so that accurate information regarding the actual situation of IDPs is imparted to NGOs and other bodies, in order for their living conditions to be improved and appropriately addressed;
- To adequately investigate and punish the perpetrators of the violence towards IDPs, both in the past and on an ongoing basis;
- To abolish the village guard system and initiate an anti-landmine campaign, to include the safe removal and disposal of landmines and an educational programme about their dangers for the local community;
- To create viable conditions for IDPs to return to their villages and rehabilitate themselves.

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

- To request that the Turkish Government engage with civil society organisations and lawyers to improve the situation of IDPs, including in the context of legislative reform;

- To place pressure on the Turkish Government to comply with the above recommendations.

**We urge the international community:**

- To monitor the operation and working methods of both of Turkey's IDP programmes: this applies in particular the UN Special Representative on the Rights of Displaced Persons;
- To produce regular reports on the ongoing situation and to continue to place pressure on the Turkish Government to introduce the necessary reforms;
- To enter into dialogue with the Turkish Government regarding the potential of international actors to address the situation of IDPs, and further to encourage Turkey to engage in this respect.

**We request the European Commission:**

- In relation to the European Commission Delegation to Ankara, to monitor the working methods of the two programmes detailed in this report and to provide a concrete and accurate evaluation for inclusion in the next regular report on Turkey;
- Given that the return and resettlement of Turkey's vast number of IDPs may be too large a logistical and financial burden for the Turkish Government to bear alone, we urge the EU to enter into dialogue with the Turkish Government regarding its potential to address the situation of IDPs, and further to encourage Turkey to engage in this respect;
- To make Turkey's EU accession conditional upon the Turkish Government's acceptance of the involvement of EU and other international actors in the return and resettlement of Turkey's IDPs, through the provision of reconstructive, logistical and financial assistance rebuild their villages and livelihoods.

## Annex 1 – Law 5233

### **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 Consultant'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.

## Annex 2 – Law 5442

### **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.





## Annex 3

### Testimonies of IDP Families Living in the Bostanici District of Van<sup>102</sup>

The mission visited the homes of several IDP families in the Bostanici district of Van, where it learnt of the conditions suffered by the forcibly displaced. One family that the mission spoke to told how they had moved to Van in 1990 from the village of Çadlıca, in Çatak district, as a result of pressure to become village guards. All of their animals were killed and they lost all of their belongings. They are unable to return to their village because the village guards continue to inhabit their village. For several years after they were forced to leave their village, they lived in a tent. During this time they built a basic three room house, despite not having the title deeds to the land on which the house is built. Several of the sons have been killed during the conflict between armed opposition groups and the military. The family applied for assistance under the Return to Village and Rehabilitation Project but were not successful. This deterred them from applying to the Compensation Commissions and as a result they did not make a claim.

Another family, who moved from a hamlet in the same district in 1991, were evacuated from their village by security forces who threatened to kill them if they did not leave. Their village was bombed and burned after they left. They lost all their belongings and some of their animals. They brought their remaining animals with them to Van where they were forced to sell them for half their value. Like the first family that the mission spoke to, they also survived in a makeshift tent whilst they built the house where they now live. This house is composed of four rooms and accommodates 17 people. Despite leaving their village, they continue to be intimidated. They told the mission that their house was raided by security forces on a regular basis. They also informed the mission that the men of the family were detained and tortured many times, being accused of aiding and abetting the PKK. One family member had been imprisoned for ten years. They are not permitted to return to their village. To illustrate this they told the mission that, in 2005, one member of the family attempted to return to their village but as a result of this he was detained by the security forces and threatened with death should he attempt

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102 FFM interviews with families, names withheld, 4 July 2006

again.

The family had applied for compensation to the Compensation Commission one year prior to the mission's visit but had not yet received a response. They had also applied to the Return to Village and Rehabilitation Project two years previously but had not been successful. The family believed the reason for this lack of success was twofold: firstly, the Turkish authorities had claimed that the village was burned by the PKK and not by Turkish state officials and, secondly, the family was asked to prove that they owned animals and property in the village but were unable to do so as they lacked the necessary documentation. All of the members of the family are supported by one of the younger sons, who earns 150-200 YTL per month. Despite their limited resources, the family do not have access to a 'green card', which would entitle them to free access to outpatient and inpatient care at the state and some university hospitals, and cover their inpatient medical drug expenses.



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