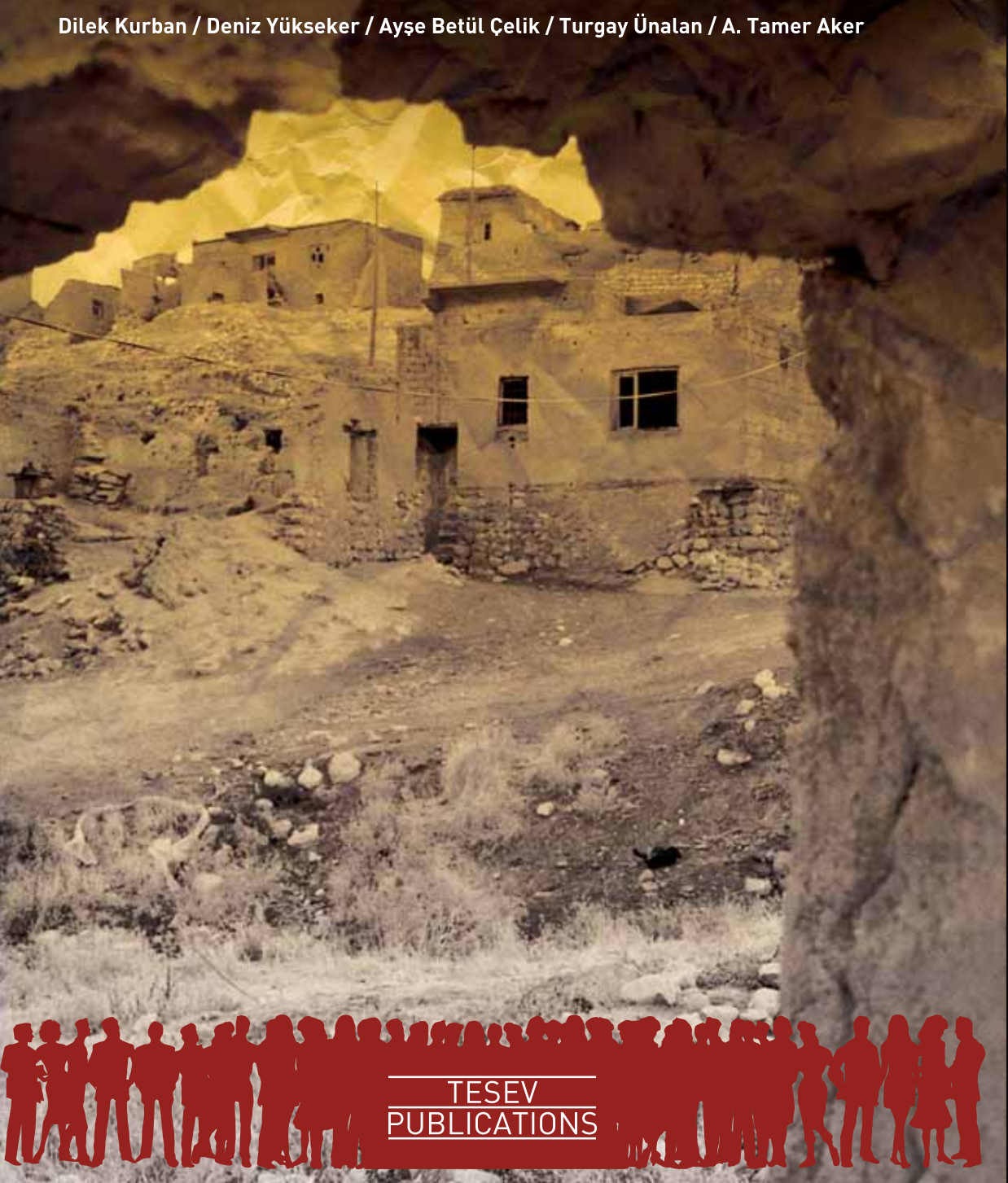


Coming to Terms with Forced Migration:

Post-Displacement Restitution of Citizenship Rights in Turkey

Dilek Kurban / Deniz Yüksekler / Ayşe Betül Çelik / Turgay Ünal / A. Tamer Aker



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**COMING TO TERMS WITH FORCED MIGRATION:
POST-DISPLACEMENT RESTITUTION OF
CITIZENSHIP RIGHTS IN TURKEY**

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POST-DISPLACEMENT RESTITUTION OF
CITIZENSHIP RIGHTS IN TURKEY**

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DENİZ YÜKSEKER
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A. TAMER AKER**

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Foreword to the English Edition

There is in the 2000 millennium report of the United Nations (“UN”) Secretary-General a line well worth recalling: “Every group needs to become convinced that the state belongs to all people.” When ethnic groups experience tolerance and inclusion within societies, it is less likely that conflict will erupt over ethnic divisions. Yet in far too many countries, ethnic minority groups do not feel an integral and accepted part of the state. Many feel dispossessed and abandoned by the national authorities; their beliefs, culture and language insufficiently respected; and their political and economic interests not fully protected by the institutions of their government. In such situations, all too often, extremist elements within the group turn to violence to reverse power imbalances and achieve the group’s aims. Indeed, armed conflicts between governments and ethnic minority groups seeking greater political, economic and cultural autonomy are one of the major causes of forced displacement.

Whereas in genuinely democratic societies, governments tend to see minorities as legitimate members of the state with whom they have to negotiate and reach accommodation, in societies that are less pluralistic and with less developed mechanisms for conflict resolution, governments often respond with force, fearing that minority demands will disrupt the state and lead to its disintegration. Diversity is seen by the state as a threat to the unity of the nation, whereas in the view of Francis Deng, former Representative of the UN Secretary-General on Internally Displaced Persons, “it is rather the denial of diversity that actually threatens the nation.” In the ensuing struggle, hundreds of thousands, even millions, of minority members may become internally displaced either as a byproduct of the conflict or as a deliberate goal of counterinsurgency or ethnic cleansing campaigns. Cut off from their communities and livelihoods and in dire need of material assistance and protection, they often fall into a vacuum of responsibility within the state. Viewed by the authorities as “suspect” for being part of an ethnic, cultural or social group considered threatening, they are denied the elemental protection and assistance owed by a state to its citizens. This phenomenon Deng described as “a crisis of identity” for the state.

Countries torn asunder by conflicts along ethnic, linguistic, religious or racial lines do not mend easily. It is not enough to bring the uprooted populations a modicum of humanitarian relief and development aid and encourage them to return home. Something far more profound is needed to knit communities together and establish long-lasting peace. Ethnic divisions must be healed, trust reestablished, property

and compensation claims honored, human rights violators brought to justice, and more inclusive power-sharing and wealth-sharing arrangements designed together with a broader concept of national and ethnic identity. To achieve this restructuring, a national dialogue becomes essential to address the causes of the conflict, the numbers and conditions of the displaced and the steps that must be taken to ensure successful return or resettlement. A framework recently developed by Walter Kälin, current Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons, demonstrates that ending displacement is “a process” in which the displaced must be able to reintegrate successfully and regain the full exercise of their human rights. Without sufficient attention to rehabilitating the displaced and to redressing the inequalities at the core of the social and political divisions within their societies, countries can easily fall back into conflict.

The large number of civil wars in the world in which ethnic groups are involved has given rise to a growing body of literature about how to rebuild nations so that they do not lapse back into violence. Among these is the well-researched new book by the Turkish Economic and Social Studies Foundation (“TESEV”), *Coming to Terms with Forced Migration: Post-Displacement Restitution of Citizenship Rights in Turkey*. Its five co-authors, Dilek Kurban (TESEV), Deniz Yüksek (Koç University), Ayşe Betül Çelik (Sabancı University), Turgay Ünal (Hacettepe University) and A. Tamer Aker (Kocaeli University) dig deeply into the causes of conflict and displacement in Turkey, seeking to go beyond official versions and to unearth what really occurred in their country and how best to move forward to resolve the political, economic and social divisions. Each of the authors brings a different discipline to the book, together examining displacement from a broad perspective, encompassing the sociological, political, psychological, demographic and legal. Reinforcing their two years of academic research is rigorous field work in the provinces of Diyarbakır, Batman, Istanbul and Hakkâri where they interview municipal leaders, civil society and the people who were forcibly displaced.

Among their major findings is one especially important for the government and the international community to register: that internal displacement in Turkey is not just a security problem confined to a limited number of hamlets in the southeast but a widespread and large-scale phenomenon with impact on “the whole nation.” After all, some one million men, women and children were forcibly uprooted from rural areas in the east and southeast of the country as a result of the armed struggle from 1984 to 1999 between the Kurdistan Workers’ Party (*Partiya Karkerên Kurdistan* - “PKK”) and the Turkish military. Large numbers fled to urban areas all over the country where they have long experienced poverty, poor housing, joblessness, loss of land and property, limited access to physical and mental health care services, and limited educational opportunities for their children. Acknowledging the plight of the displaced in both rural and urban areas and developing effective policies and

programs to help them reintegrate is therefore critical not only for the lives of the displaced but also for the coherence and stability of the country as a whole.

That the displaced are predominantly Kurdish, the authors find, has very much to do with the cause of the conflict, since Kurds have long faced legal, institutional and social obstacles in expressing their identity in Turkey. Indeed, a 1998 Parliamentary commission report, cited in the book, calls for the abolition of impediments that prevent different ethnic groups from expressing their identities, and in particular recommends recognition of “the Kurdish identity” as part of “the richness of Turkey’s cultural mosaic.” At the same time, in calling for “a process of reconciliation” and greater equality for the Kurds, the book acknowledges that the PKK must be disarmed and rehabilitated, together with state-employed village guards, and that reconciliation will “require the PKK to demonstrate a similar will to assume its responsibility for human rights violations it has committed.” Although achieving reconciliation may take a long time, the authors urge the government to initiate a dialogue “between civil society and the government” and to set up a structure to achieve this. In 2006, it is noteworthy that Prime Minister Recep Tayyip Erdoğan publicly referred to the country’s having to address “the Kurdish question” through “more reforms, more democracy, more citizenship law [and] more welfare.”

A good portion of the book focuses on the laws and policies thus far adopted by the government to address the problem of displacement, the extent to which they are sufficient, and the manner and scope of their implementation. The book praises the law enacted in 2004 to compensate the displaced as an important effort to establish rapprochement between the state and its citizens while also pointing out its shortcomings and recommending that it should apply not only to those deliberately uprooted by the PKK and the state security services but also to those who felt obliged to leave because of the effects of armed clashes. It proposes that civil society representatives be added to damage assessment commissions, that the high number of rejections for compensation be reviewed and that damage awards be increased. It further comments on the government’s 2005 policy document on displacement (“Framework Document”); the government’s agreement to data collection through Hacettepe University; its appointment of a small government office to coordinate policies on internal displacement; its undertaking of rural development plans in the east and southeast; its endorsement of the Guiding Principles on Internal Displacement; and its collaboration with the UN and the European Union (“EU”) to address the return and resettlement of the displaced.

While welcoming these steps, the authors point out the gaps between the government’s announcement of laws, policies and plans and their actual implementation. For example, the authors call upon the authorities to promote not only returns but *sustainable* returns, which require safety (eg. removing landmines, abolishing the village guard system), jobs, access to public services, due process,

restitution or compensation for lost property, psychosocial rehabilitation, and efforts at reconciliation. At the same time, the book emphasizes that solutions to internal displacement cannot be limited to returns alone. Those who fled to urban areas and have chosen not to return must also be given assistance with reintegration. Throughout, the authors apply international standards to the Turkish situation. Thus, the series of policy proposals at the end seek to develop, in the words of TESEV's Chair, Can Paker, "effective and democratic responses to internal displacement that are fully in accordance with relevant international standards." These encompass return and resettlement, restitution and compensation, socio-economic development of the southeast, health and psychosocial rehabilitation, and reconciliation.

The book's recommendations should prove a helpful tool to the government, but the way forward will not be easy. As the authors uneasily point out, the government's response to the displaced may be less a result of profound internal change than of external pressure. Ever since Turkey became a candidate for membership in the EU in 1999, it has sought to demonstrate its commitment to democracy and human rights, minority protection, and the successful reintegration of its displaced population. Whatever the motivation, however, change has been occurring in Turkey, with the government seemingly coming around to the view that it is in Turkey's best interest to resolve the tensions and divisions that have led to conflict and displacement. Nonetheless, it remains to be seen how fully the displacement problem will be addressed. Divisions exist within the government, the military and the society capable of undermining policies that are more open and tolerant toward minorities and in particular promote material assistance, protection, reintegration and development aid for uprooted Kurds.

Nothing could have brought home more graphically the sensitivities and resistance to policies of greater diversity than the reception TESEV received at its July 2006 launch of the Turkish edition of this volume. According to newspaper accounts, a group of "ultra nationalists" broke up the meeting after shouting and striking people assembled in the room while the police present stood by and made no arrests. However, when the rescheduled book launch took place the following December, it went off without incident due to the heightened security measures taken by the police and the fact that the meeting was closed to the public. The Prime Minister himself had telephoned the chair of TESEV to express his regret about the July incident and his support for the work of this leading research institution. Newspaper stories about the affair reported widely on TESEV's findings.

Clearly, cooperation and consultation with civil society is the most effective way for the government to achieve success and develop well-founded, well-informed and sustainable policies toward the internally displaced. The international community has reinforced this view. In addressing the Ministry of the Interior in February 2006,

Walter Kälin underscored that “consultation with civil society and the displaced is essential to the success of any program.” TESEV, he noted, had begun to play an important role in policy development for the internally displaced. “Rather than being perceived as opponents of the state,” non-governmental organizations, he said, “should be seen as strengthening and supporting the state.”

The government would be well advised to study the findings and recommendations of this constructive volume. It may not agree with each and every proposal, but it clearly will find ideas and suggestions for moving forward. Government policies and programs should seek to avert further displacement, reintegrate those currently displaced, and isolate those who would use violence. Indeed, continuing hostilities in the southeast of the country should speak to the need to work together with rather than radicalize Turkey’s Kurdish population. The Kurdish issue is an identity question but also a human rights problem that must be addressed within a democratic framework. The country will be on a much more sound and secure footing if its government is able to acknowledge and effectively address the conflicts and divisions that have rent its communities apart and produced so much suffering and displacement. Fully grappling with Turkey’s past is the best way to assure a sounder and more democratic future, one in which every group will feel an integral part of the state.

Roberta Cohen

Non-Resident Senior Fellow at the Brookings Institution, and Co-Founder and former Co-Director of the Brookings-Bern Project on Internal Displacement

Foreword to the Turkish Edition

For anyone who is internally displaced or who is forced to leave his/her place of settlement, a new life is an “obligation.”¹ It is clear that large-scale historical and geographical changes frequently push people to the brink of such decisions as leaving one’s place of settlement for a new life. However, if this “obligation” means the impossibility to pursue the previous way of life for political reasons, rather than the need to start a new life, then the “obligation” stems from the society’s lack of prudence.

In fact, the hundreds of thousands of people who, having lost their property and leaving behind their cultural roots, migrated from Eastern and Southeastern Turkey to the western provinces, point to something more than the existence of a “Kurdish issue;” they hint at the ideological stagnation underlying this problem. The ways of existence that are not embraced by the official definition of citizenship - which is framed within a narrow and pro-state nationalism - result in stagnant state politics that only produce problems, and project their responsibility unto societal heterogeneity. This has also been the case for Turkey.

The Turkish society, who has not condemned and, for decades, overlooked this discriminatory approach, who has interpreted the armed conflict that has emerged out of the Kurdish question as a threat to its comfort rather than trying to understand the issue; bears a large responsibility in what has happened. It is necessary to understand that internal displacement is not an unexpected natural disaster but a discrediting societal failure to which we, the civil society, have contributed.

Today, we are faced with a different civic responsibility which can and should be fulfilled. It is our responsibility to establish an environment of trust which will allow internally displaced persons to embark on a life that they desire in a place of their own choosing. This will, to an extent, compensate the difficulties the state has willingly and unwillingly caused for its citizens and will enable a moral link between different identity groups in Turkey.

¹ In Turkey, internal displacement is widely referred to as “*zorunlu göç*,” the literal translation of which would be “obligatory migration.” Leaving aside the debates around the adoption of international terminology, “*zorla göç*” is proposed by some in Turkey as an alternative that better conveys the meaning of what happened: “forced migration.” This foreword emphasizes the need to criticize the contextualization of internal displacement solely as an obligation arising from concerns for national security, whereas displacement also, and predominantly, resulted by the use of force. The rest of the book uses both the international terminology of “internal displacement” and the term “forced migration.”

Within the scope of its Democratization Program, TESEV works on matters in Turkey that have stagnated and become unsolved problems, and generates projects aimed at societal rehabilitation. With this book, which is a result of diligent work and sacrifice, TESEV proposes to re-conceptualize internal displacement as an issue of societal responsibility. The dominant perception of internal displacement in Turkey has been one interpreted through official state ideology - which has recently acknowledged the phenomenon of internal displacement but refused to accept its responsibility. This “acknowledgement without acceptance” portrays internal displacement as an inevitable outcome of security forces legitimate actions arising from concerns of national security. To the extent that we realize confronting “forced migration” means confronting our mentality and our understandings of identity, citizenship, and democracy - which are the extensions of that mentality - we can hopefully understand that most of the matters we present as “obligatory” are within the scope of our will.

Etyen Mahçupyan

Director of the Democratization Program, TESEV

Acknowledgments for the English Edition

The English edition of this book would not have been possible without Roberta Cohen. When we were about to launch the original Turkish edition of our book, Cohen, then the Co-Director of the Brookings-Bern Project on Internal Displacement, agreed that the Project fund the translation and publication of the English version in order to ensure that this book reaches an international audience. More importantly, she volunteered to write a foreword to support our efforts to raise awareness about Turkey's internal displacement problem. We are truly honored to have the endorsement of this remarkable person, who not only created a new academic discipline on internal displacement in early 1990s but who has also worked tirelessly to keep internally displaced persons on the agenda of national governments and the international community. We are very grateful to Roberta Cohen for her encouragement and support.

We also would like to thank Steven Most and Molly Browning of the Brookings-Bern Project on Internal Displacement for their patience and understanding during the translation and publication of this book. Elizabeth G. Ferris, Cohen's successor at the Project, has already extended her support for TESEV's Internal Displacement Project, and we thank her for that.

Clearly, tremendous effort, time and patience go into the translation and editing of a book. Leyla Tonguç Basmacı has been a meticulous and professional translator. Josee Lavoie has done an outstanding job of editing. We are grateful to both for their patience, dedication and professionalism.

Kathy Stanton contributed a great deal to the final editing of this book during her summer internship at TESEV. We would also like to acknowledge the contributions of TESEV interns Altın Naz Sunay, Fırat Bozçalı, Erol Hınc, Zeynep Baykal and Laurie Freeman to the final editing of the book.

Last but not least, we are grateful to Elif Kalaycıoğlu, TESEV's Internal Displacement Project Assistant, for her exceptional and dedicated work in preparing this book for publication. Elif has put so much of her time and energy to the translation, editing and publication process that she has become the principal architect of the English version of the book. It is not an exaggeration to say that we could not have done it without her. Thank you, Elif.

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The fieldwork we carried out in Batman, Diyarbakır, and Hakkâri in 2005 and the interviews we conducted in Ankara in order to collect information would not have been possible without the help and support of public institutions. We would like to thank the Ministry of Interior’s Research, Planning and Coordination Directorate, the Ministry of Foreign Affairs, the Governorships of Diyarbakır, Hakkâri, and Batman, and the Sub-Provincial Governorship of Sason. We would also like to thank the United Nations Development Programme (“UNDP”) Turkey Office, and the European Commission Delegation to Turkey.

The Metropolitan Municipality of Diyarbakır, the Municipalities of Batman and Hakkâri, the District Municipalities of Beşiri, Hasankeyf, and Sason, the bar associations of Diyarbakır and Batman, lawyers working in Diyarbakır, Batman, and Hakkâri, and non-governmental organizations (“NGOs”) active in these three provincial centers provided us with information during our fieldwork and helped us reach internally displaced persons (“IDPs”). In Istanbul, Abdullah Karatay and İkrâm Doğan of the Beyoğlu Community Center for Children, volunteers from the Life in May Cooperative (*Mayısta Yaşam Kooperatifi*) and members of the Fatih District Branch of the Democratic People’s Party (*Demokratik Halk Partisi* - “DEHAP”) were of great help in contacting internally displaced families. We are very much indebted to these organizations, without whose support we would not have been able to conduct our fieldwork.

The eviction and forced migration of villagers in Eastern and Southeastern Turkey happened more than ten years ago. National human rights organizations worked to make this issue public even under the difficult conditions of those years of

conflict. Later, some international NGOs also prepared reports on Turkey's internal displacement issue. It would have been impossible to prepare this book had it not been for these organizations' research and reports. As mentioned above, some of these organizations provided all possible assistance during the research carried out by the TESEV Working Group members. We would like therefore to thank in particular the Human Rights Association (*İnsan Hakları Derneği* - "İHD"), the Association for Human Rights and Solidarity with the Oppressed (*İnsan Hakları ve Mazlumlar için Dayanışma Derneği* - "MAZLUMDER"), and the Migrants' Association for Social Solidarity and Culture (*Göç Edenler Sosyal Yardımlaşma ve Kültür Derneği* - "Göç-Der").

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The main objective of this book is to raise awareness of IDPs among the public. We therefore owe the biggest thanks to all IDPs in Batman, Diyarbakır, Hakkâri, and Istanbul who welcomed us into their homes and neighborhoods and who shared their experiences, problems, and longings with us.

June 2006

List of Abbreviations

AKP	Justice and Development Party (Adalet ve Kalkınma Partisi)
ANAP	Motherland Party (Anavatan Partisi)
ARIP	Agricultural Reform Implementation Project
ASFADDEL	Interprovincial Displaced Association (Asociación Interprovincial de Desplazados)
BSV	Başak Culture and Arts Foundation (Başak Kültür ve Sanat Vakfı)
CHP	Republican People's Party (Cumhuriyet Halk Partisi)
CIREFCA	International Conference on Refugees in Central America (Conferência Internacional sobre Refugiados da Centroamericanos)
ÇYDD	Association in Support of Contemporary Living (Çağdaş Yaşamı Destekleme Derneği)
DEHAP	Democratic People's Party (Demokratik Halk Partisi)
DGD	Direct Income Support (Doğrudan Gelir Desteği)
DİE	State Statistics Institute (Devlet İstatistik Enstitüsü)
DPT	State Planning Organization (Devlet Planlama Teşkilatı)
DTP	Democratic Society Party (Demokratik Toplum Partisi)
DİKASUM	Diyarbakır Women's Issues Research and Implementation Center (Diyarbakır Kadın Sorunlarını Araştırma ve Uygulama Merkezi)
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECRI	European Commission Against Racism and Intolerance
Eğitim-Sen	Education and Science Employees' Trade Union (Eğitim ve Bilim Emekçileri Sendikası)
EPIDEM	Women's Education and Psychological Counseling Center (Kadın Eğitim ve Psikolojik Danışmanlık Merkezi)
EU	European Union
GAP	Southeastern Anatolia Project (Güneydoğu Anadolu Projesi)
Göç-Der	Migrants' Association for Social Solidarity and Culture (Göç Edenler Sosyal Yardımlaşma ve Kültür Derneği)
HAP	Justice for Everyone Project (Herkes İçin Adalet Projesi)
HIPS	Hacettepe University Institute of Population Studies
HRW	Human Rights Watch
IDMC	Internal Displacement Monitoring Centre
IDP	Internally Displaced Person
İHD	Human Rights Association (İnsan Hakları Derneği)
ILO	International Labor Organization
IOM	International Organization for Migration

JİTEM	Gendarmerie Intelligence and Anti-Terror Unit (Jandarma İstihbarat ve Terörle Mücadele Şubesi)
KA-MER	Women's Center (Kadın Merkezi)
KESK	Confederation of Public Employees' Trade Unions (Kamu Emekçileri Sendikaları Konfederasyonu)
KHRP	Kurdish Human Rights Project
KÖYDES	Village Infrastructure Support Project (Köy Altyapı Destekleme Projesi)
LEDA	Local Economic Development Agency
LTTE	Liberation Tigers of Tamil Eelam
MAZLUMDER	Association for Human Rights and Solidarity with the Oppressed (İnsan Hakları ve Mazlumlar için Dayanışma Derneği)
MP	Member of Parliament
MRTA	Tupac Amaru Revolutionary Movement
NGO	Non-governmental organization
NRC	Norwegian Refugee Council
OCHA	UN Office for the Coordination of Humanitarian Affairs
OSCE	Organization for Security and Cooperation in Europe
PKK	Kurdistan Workers' Party (Partiya Karkerên Kurdistan)
PRODERE	The Development Program for Displaced Persons, Refugees and Returnees (Proyectos Decoraciones y Reformas)
PTSD	Post-traumatic Stress Disorder
RP	Welfare Party (Refah Partisi)
RVRP	Return to Villages and Rehabilitation Project
SES	Health and Social Care Employees' Trade Union (Sağlık ve Sosyal Hizmet Emekçileri Sendikası)
SHÇEK	Social Services and Child Protection Agency (Sosyal Hizmetler ve Çocuk Esirgeme Kurumu)
SRMP	Social Risk Mitigation Project
SSK	Social Security Institution (Sosyal Sigortalar Kurumu)
SYDV	Social Aid and Solidarity Foundation (Sosyal Yardımlaşma ve Dayanışma Vakfı)
TEDAŞ	Electricity Distribution Corporation of Turkey (Türkiye Elektrik Dağıtım Anonim Şirketi)
TEGV	Educational Volunteers Foundation of Turkey (Türkiye Eğitim Gönüllüleri Vakfı)
TEM	Anti-terror Unit (Terörle Mücadele Şubesi)
TESEV	Turkish Economic and Social Studies Foundation (Türkiye Ekonomik ve Sosyal Etüdler Vakfı)
TGYONA	Research on Migration and Displaced Persons in Turkey (Türkiye Göç ve Yerinden Olmuş Nüfus Araştırması)
TİHV	Turkish Human Rights Foundation (Türkiye İnsan Hakları Vakfı)
TMMOB	Turkish Union of Chambers of Engineers and Architects (Türkiye Mimar ve Mühendis Odaları Birliği)
TOHAV	Foundation for Society and Legal Studies (Toplum ve Hukuk Araştırmaları Vakfı)

TRT	Turkish Radio Television Corporation (Türkiye Radyo Televizyon Kurumu)
TSBD	Turkish Social Science Association (Türkiye Sosyal Bilimler Derneği)
TÜM BEL-SEN	All Municipal and Local Administration Employees' Trade Union (Tüm Belediye ve Yerel Yönetim Hizmetleri Emekçileri Sendikası)
UN	United Nations
UNCT	United Nations Country Team
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
USCR	United States Committee for Refugees
UXO	Unexploded Ordnance
WHO	World Health Organization
YÖK	Council of Higher Education (Yüksek Öğrenim Kurumu)
YTL	New Turkish Lira (Yeni Türk Lirası)

CHAPTER I
INTRODUCTION

Introduction to the English Edition

DİLEK KURBAN

This book is the English translation of the original Turkish language edition which was published in June 2006. More than one year has passed since then, during which time there has been a series of significant political, sociological and legal developments concerning the issue of internal displacement in Turkey. In preparing the English translation for publication, relevant sections of the book have been updated in light of recent developments.

2007 has proved to be a very difficult year for Turkey. The reform process, which started with the European Union's ("EU") declaration of Turkey as a candidate for membership in 1999 and gained speed with the election to government of the Justice and Development Party (*Adalet ve Kalkınma Partisi* - "AKP") in 2002, came to a halt after already having slowed down considerably during 2006. This was due not only to increasing opposition in various European countries to Turkey's EU membership, which weakened the position of the reformist AKP government at home, but also to the AKP's declining commitment to the reform process in the interest of attracting the nationalist votes in the parliamentary elections, which were originally scheduled to take place in November 2007.

As the general elections approached, tension escalated between the AKP government on the one hand and the armed forces, the opposition Republican People's Party (*Cumhuriyet Halk Partisi* - "CHP") and the bureaucratic establishment - first and foremost the Council of Higher Education (*Yüksek Öğretim Kurumu* - "YÖK") - on the other hand, particularly around the headscarf debate and the interpretation of the principle of *laicism*. The political controversy eventually turned into a regime crisis when the opposition parties' parliamentarians boycotted the presidential elections in order to preclude the AKP's presidential candidate Foreign Minister Abdullah Gül, whose wife wears a headscarf, from holding the highest office of the state. On 27 April 2007, hours after the parliamentary vote, the Chief of Staff issued a statement on its website, expressing concern about a series of recent incidents allegedly planned or tolerated by the AKP government which the military deemed to be a threat to the laic order. The statement noted that the Chief of Staff is a "party" to the debates on laicism and an "absolute defender" thereof, and will take a clear position "when necessary." This was interpreted by many as a sign of the military's intention to undertake a military coup against the government. On May 1st, a few days after the

military's statement, the Constitutional Court issued a highly controversial ruling, annulling the parliamentary vote on procedural grounds. Within a matter of hours, faced with a political and legal deadlock, the government called for early elections on 22 July 2007.

In the meantime, the security situation in eastern and southeastern Turkey rapidly deteriorated. The armed clashes between the armed forces and the Kurdistan Workers' Party (*Partiya Karkerên Kurdistan* - "PKK") resurfaced, particularly after the expiration in May 2007 of the last of a series of successive ceasefires declared by the PKK. There was a significant increase in military operations against the PKK and in fatal attacks by the PKK against members of the security forces. In the run-up to the critical parliamentary elections, anti-terrorism in the context of the Kurdish question has become the most salient issue among competing parties. As the number of military casualties increased, the AKP government faced growing protests at the funerals of the deceased soldiers. Facing criticism for failing to effectively combat the PKK and under demands by the armed forces and some members of the opposition to authorize a cross-border military intervention into Northern Iraq in the name of "eradicating the PKK," the government took two drastic measures that raised fears of a new state of emergency regime in the region. First, in June 2007, the government declared a "security zone" in an area bordering the provinces of Siirt, Şırnak and Hakkâri in southeast Turkey. No information has been provided to the public as to the nature, implications and timeline of this measure. News reports state that the army prohibited entry to and exit from this region, which is inhabited by Kurdish civilians.

Second, the government reversed an earlier government decision in 2000 to halt the recruitment of provisional village guards. In the original Turkish edition of our book, we drew attention to the fact that in the event that the armed conflict escalates, the state may once again resort to hiring village guards on the basis of "the provision of security." Indeed, with an amendment to the Village Law, which entered into force on 2 June 2007, the parliament authorized the recruitment of up to 60,000 provisional village guards.¹ Pursuant to this amendment, the government may now recruit additional provisional village guards "where serious signs of circumstances requiring the declaration of state of emergency and of acts of violence in villages or their vicinities emerge, or where attacks against the life and property of villagers for any reason increase."² While no steps, to the best of our knowledge, have yet been taken to implement the law, this measure goes against the government's promise both to the Representative of the UN Secretary-General on Internally Displaced Persons ("the Representative") and to the EU to abolish the provisional village guard regime.

1 Official Gazette (2007b).

2 *Ibid.*: Article 1.

While the overall situation with respect to the Kurdish question in general and internal displacement in particular deteriorated significantly in 2006 and 2007, there have been some positive developments to report. On 29 September 2006, the Van Governorship launched an action plan on the integration of the internally displaced persons (“IDPs”) living in that province.³ Prepared through the collaborative efforts of the governorship, the UN Development Programme (“UNDP”) and local civil society groups, the action plan is comprehensive in its scope and innovative in its approach. However, it is not clear how the ambitious goals stated in the plan will be achieved and, most importantly, no funds have yet been allocated for its implementation nearly one year after its launch.

A further positive development that has taken place since the publication of our book in June 2006 is the release on 6 December 2006 of the much awaited IDP survey conducted by Hacettepe University. We referred to some of the basic findings of this study in the relevant sections of the book and readers may find a critical assessment of the survey in the two newspaper articles included as addenda at the end of this book.⁴

Finally, the Hacettepe survey’s finding that nearly half of the IDPs are not aware of the Compensation Law has prompted the government to extend the deadline for applications until 30 May 2008. While this is a positive step, it has not been coupled with an information campaign to reach out to all IDPs as well as to refugees in Europe and Northern Iraq.

According to officials from the Ministry of Interior, there is a draft law which foresees the establishment of a national agency on internal displacement, which will bring together the various disconnected units within the ministry and harmonize the government’s policy on IDPs. There is no public information available on the content of the draft law or on the process of its preparation.

In conclusion, the belated and limited yet positive steps taken by the AKP government since 2002 to address the plight of the IDPs have been overshadowed in the past two years by the deterioration in the overall political climate in Turkey and by a series of drastic legal and political measures such as the declaration of a security zone in the southeast and the decision to recruit additional provisional village guards, which raise concerns about the re-institution of a state of emergency rule in the region. The military’s pressure on the government to engage in a cross-border operation against the PKK in Northern Iraq despite strong protests by Kurdish citizens exacerbates fears of a return to the violent conflict which took place between 1984 and 1999 or even the eruption of a civil war in Turkey. However, there is some reason to hope for a

3 Van Governorship (2006).

4 See Addenda, Kurban: “What the Report Leaves Unsaid” and “Open Letter to the Ministry of Interior” in this book.

different response: the re-election of the AKP after gaining nearly fifty percent of the votes, and the election of a new parliament that includes twenty-three members from the Democratic Society Party (*Demokratik Toplum Partisi* - “DTP”), which claims the political representation of Kurds, as well as a few progressive AKP parliamentarians who advocate a peaceful and democratic solution to the Kurdish question. Much will depend on the government’s ability to stand tall vis-à-vis the military and the nationalist opposition, the EU’s commitment to the promises it has made to Turkey, and the continued efforts of the Representative and the UNDP to press the Turkish Government to address the root causes of internal displacement.

Introduction to the Turkish Edition

**DİLEK KURBAN, DENİZ YÜKSEKER, AYŞE BETÜL ÇELİK,
TURGAY ÜNALAN, A. TAMER AKER**

1. THE PURPOSE OF THIS BOOK

During the armed conflict in the Eastern and Southeastern Anatolian regions of Turkey between 1984 and 1999, a large wave of internal displacement took place. In the mid-1990s, national human rights organizations prepared reports to bring to public attention that hundreds of thousands of people had been evicted from their rural homes. However, at that time the displacement did not attract the attention that it deserved from the media and public opinion in Turkey. Most importantly, public institutions did not take any measures to address the problems of internally displaced persons (“IDPs”). Towards the end of the 1990s, the Turkish Grand National Assembly (“Turkish Parliament”) and a number of non-governmental organizations (“NGOs”) in Turkey, as well as some international human rights organizations - the United Nations (“UN”), the Council of Europe, and the European Union (“EU”) - began drawing attention to and publishing reports on the issue. At the same time, the European Court of Human Rights (“ECtHR”) accepted petitions by IDPs who were evicted from their villages or who were not permitted to return to their villages, and issued a number of rulings ordering Turkey to pay compensation. However, there has been no comprehensive study to date which synthesizes existing research on this matter, examines the Turkish case within the global framework of internal displacement, evaluates the problems of IDPs from legal, political, socio-economic, demographic, and psychological perspectives, and proposes policies to address the problem in light of these analyses. This book is the product of work carried out by a multi-disciplinary group who came together in order to take a first step in filling this gap. Based on an analysis of secondary sources and qualitative fieldwork, this book aims at highlighting various aspects of internal displacement in Turkey and establishing a basis for future research on the issue. As explained below, in order to solve Turkey’s internal displacement problem, it is necessary to assess this phenomenon within a conceptual framework at both national and international levels as well as within the political and socio-economic circumstances specific to Turkey.

2. INTERNAL DISPLACEMENT FROM A GLOBAL PERSPECTIVE

The end of the Cold War has ushered in a new era in which global problems that necessitated the finding of new international solutions have emerged. Nowadays, civil wars and the problems that they bring in their train attract more attention in international public opinion, although they also existed during the Cold War era. In comparison to the Cold War period - when individual requests for asylum were more common in western countries - from the 1990s onwards, hundreds of thousands of people fleeing armed conflicts have crossed borders to take refuge in other countries. As a result, the plight of refugees and asylum seekers has become more visible. The most important events during the 1990s in this respect were the Iraqi Kurdish refugee flow following the first Gulf War and the refugee flows caused by genocides during the wars in former Yugoslavia and Rwanda.

Another related development is that, increasingly, people affected by armed conflicts have remained within nation-state borders rather than crossing them. Over the last decade or so, the number of IDPs has exceeded that of refugees. In contrast to 9 million refugees, there are now an estimated 24 million IDPs worldwide.¹ Because states are either unwilling or unable to provide aid to IDPs, especially in countries where the conflict is related to the problems of ethnic and religious minorities, a need has emerged for international organizations to take urgent measures. The appointment in 1992 of a representative by the UN Secretary-General is one such measure. The duties of the Representative of the UN Secretary-General on Internally Displaced Persons (“the Representative”)² are: meeting with governments and relevant parties regarding the provision of aid and protection for people who have been displaced as a result of wars/armed conflicts, human rights violations or natural disasters but who have remained within their national borders; undertaking efforts to reinforce international aid for IDPs; promoting the dissemination and use of international standards for IDPs.³ The “Guiding Principles on Internal Displacement” (“Guiding Principles”), prepared with this aim and acknowledged by the UN Commission on Human Rights in 1998 and later the General Assembly, were disseminated by the UN for use in countries suffering from displacement problems.⁴ The Guiding Principles are based on international human rights and humanitarian law.⁵

In the Guiding Principles, IDPs are defined as, “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual

1 NRC (2006).

2 The official title of the “Representative of the UN Secretary-General on Internally Displaced Persons” was changed in 2004 to the “Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons.” Hereafter, this office will be referred to as “the Representative.”

3 One should note, however, that the Guiding Principles extend also to displacement caused by development projects.

4 Cohen (2004).

5 UN (1998).

residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”⁶

3. TURKEY’S INTERNAL DISPLACEMENT PROBLEM

This book is about the internal displacement that took place in Eastern and Southeastern Turkey between 1984 and 1999 (particularly in the first half of the 1990s), the problems caused by this displacement, and potential measures that should be taken in order to address these problems.

Internal migration has been one of the most important sociological phenomena in Turkey since the 1950s when the country entered a period of rapid social transformation. However, although the internal displacement discussed in this book is similar in some respects to voluntary economic migration that took place in 1950s through 1970s, its causes and consequences make it a very different social phenomenon.

Eastern and Southeastern regions of Turkey present unique characteristics in terms of their socio-economic indicators - which are lower than other regions of Turkey - and socio-historical structures, as well as because of the armed conflict that took place in these regions between 1984 and 1999. In Eastern and Southeastern Anatolia, where the majority of the population is Kurdish,⁷ some political, socio-economic, and cultural problems have remained unresolved for a long time. As a consequence, these regions are among the most socially fragile regions in Turkey. Some of these problems stem from the inequality in land ownership, the tribal structure, the inadequacy of the economic, educational and healthcare infrastructure, the state’s prioritization of its military presence in the region rather than investments in the economy and social services, and the fact that ethnic identities other than the majority Turkish identity (including the Kurdish identity) have been rejected by the state for too long. In fact, the displacement of the local population in the 1980s and 1990s was not the first of its kind in this region. Although smaller in scope, deportations following the Kurdish rebellions in the 1920s and 1930s and the forced settlements within the framework of the 1934 Law of Settlement were instances of the forced relocation of predominantly Kurdish populations in the early Republican Era.⁸

All of these problems reached greater proportions once the Kurdistan Workers’ Party (*Partiya Karkerên Kurdistan* - “PKK”) started an armed struggle against the state in

6 *Ibid.*, 1.

7 The majority of the population in Eastern and Southeastern Anatolia is Kurdish. For statistical estimates on the ethnic structure of the region’s population, see Mutlu (1996) and Sirkeci (2000).

8 For the forced settlement of various population groups, including the Kurds, since the Ottoman period, see Tekeli (1990). For the relocation of the Kurdish population in accordance with the 1934 “Law of Settlement,” see Çağaptay (2002).

1984, and the Turkish security forces intensified their fight against the PKK within the framework of the State of Emergency declared in 1987. The inhabitants of many rural settlements were evicted during the State of Emergency. The vast majority of the internally displaced population was Kurdish.⁹ Forcing or obliging people to migrate *en masse* did not solve existing problems; moreover, the transfer of these issues from villages to urban centers created new problems. Also, the lack of trust between the state and its citizens - fostered by the military measures through which the state predominantly makes its presence felt in the region - has sharply increased during and following internal displacement. Therefore, internal displacement cannot be thought of independently from the historical, political, ethnic, cultural, and social context of Eastern and Southeastern Anatolia, from the armed conflict between the PKK, or from the Turkish security forces, and more broadly, from the Kurdish question.

Internal displacement is one of Turkey's longest standing rights violations that has affected the largest group of citizens over the last two decades. The report prepared by the parliamentary research commission formed in 1997 to examine internal displacement stated that the eviction of villagers constituted a violation of a number of constitutional rights.¹⁰ The violated articles and the respective provisions of the constitution were the following: the right of all citizens to protect and develop their lives (Article 17), respect for private and family life (Article 20), respect for domicile (Article 21), the right to property (Article 35), the right to the protection of basic rights and freedoms (Article 40), the right to education (Article 42), and the right to just compensation for expropriation of private property (Article 46).¹¹ The parliamentary commission's report also said that the eviction of rural inhabitants of the region constituted violations of the relevant articles of the Universal Declaration of Human Rights and of the European Convention on Human Rights ("ECHR") as well. In its decisions regarding petitions from IDPs in Turkey, the ECtHR ruled that the evictions of villagers have violated the following articles of the ECHR: the right to respect for private and family life (Article 8), the ban on torture, or inhumane or degrading treatment, or punishment (Article 3), the right to apply for effective remedy before a national authority (Article 13), the right to life (Article 2), and the right to property (Article 1 of Protocol No 1).

In addition to being a significant human rights problem in Turkey, internal displacement has international dimensions as well, because when displaced individuals cross international borders, they often become asylum seekers. During the armed conflict in the 1990s, approximately 12,000 Kurds crossed the Turkish

9 Information on ethnicity is not collected in general population censuses in Turkey, and there is no data on the ethnic distribution of IDPs. However, the fieldwork conducted by the TESEV Working and Monitoring Group on Internal Displacement in Turkey, and reports on internal displacement prepared by other organizations, demonstrate that the vast majority of IDPs are Kurds.

10 Turkish Parliament (1998).

11 *Ibid.*, 58.

border into Iraq. Approximately 9,000 of these settled in the Makhmour Refugee Camp; 2,600 of whom returned to Turkey in the following years.¹² On the other hand, many IDPs fled to Europe and sought political asylum in EU countries, although no figures are available for this group. Overall, it is also possible to say that the internal displacement that took place during the armed conflict has contributed to the Kurdish refugee flow from Turkey to European countries, as well as to the Kurdish diaspora in Europe.¹³

The debate about internal displacement entered a new phase after 1999 when the armed conflict subsided and Turkey was declared as a candidate for EU membership. The most important development in this period consisted of the government's acceptance of the expertise and assistance of the UN on this matter. The turning-point occurred when the Turkish government invited Francis Deng, the Representative, to Turkey in 2002. The report that Deng prepared following his visit is an indication that the government acknowledged the existence of this problem.¹⁴ In fact, beginning with the year 2004 the government has taken a series of measures to address internal displacement with the participation of the UN, the EU, and other international organizations. The most important of these measures can be listed as follows: the commissioning of a survey to the Hacettepe University Institute of Population Studies ("HIPS") by the government in order to determine the problems of the IDPs; the enactment of Law No. 5233 entitled "Law on Compensation for Losses Resulting from Terrorism and the Fight against Terrorism" ("Compensation Law") in order to compensate the material damages of IDPs; the government's declaration that returns and other IDP-related activities will be carried out in accordance with the Guiding Principles; and the signing of a cooperation agreement between the United Nations Development Programme ("UNDP") and the Ministry of Foreign Affairs with the aim of addressing the problems of the IDPs, which resulted in the initiation of a pilot project to address the needs of urban IDPs in the province of Van in Eastern Turkey.

4. THE METHODOLOGY OF THIS BOOK

In November 2004, the Turkish Economic and Social Studies Foundation (*Türkiye Ekonomik ve Sosyal Etüdler Vakfı* - "TESEV") formed the "TESEV Working and Monitoring Group on Internal Displacement in Turkey" ("TESEV Working Group") as part of its Democratization Program. The TESEV Working Group carried out research in 2005 about various problems caused by internal displacement in Turkey with the aim of formulating policy proposals on this issue. The group consists of Dilek

12 UNHCR (2004).

13 For a study of the Kurdish refugee flow from Turkey to Germany in the 1990s, and its relationship to the armed conflict as well as to economic migration, see Sirkeci (2003).

14 Deng (2002).

Kurban, a jurist; Deniz Yükseker, a sociologist; Ayşe Betül Çelik, a political scientist and conflict resolution specialist; Turgay Ünalın, a demographer; as well as A. Tamer Aker, a psychiatrist. The TESEV Working Group examined the international scholarship on internal displacement in various disciplines of study and reviewed both the reports on internal displacement in Turkey prepared by local, national, and international bodies and the ECtHR case law. In addition to this, four members of the TESEV Working Group carried out fieldwork in Diyarbakır, Batman, İstanbul and Hakkâri. The fieldwork consisted of in-depth interviews with officials from provincial and sub-provincial governorships, municipality officials, NGO representatives, bar association representatives, lawyers, and IDPs in the provincial centers, the district centers (of Çukurca in Hakkâri and Sason, Gercüş, Beşiri and Hasankeyf in Batman), and in several villages (in Batman). The respondents were selected because they represented the viewpoints and experiences of their public offices or civil society organizations. In the case of IDPs, respondents were reached through snow-ball sampling, i.e. through previous respondents. Both in terms of the selection technique and the number of interviewees, the fieldwork conducted was qualitative rather than quantitative. Furthermore, because statistically representative sampling techniques were not used, the findings of the research are not suitable for making generalizations and estimations for the entire population of IDPs in Turkey. However, the qualitative methodology based on in-depth interviews enabled the collection of rich data.

The TESEV Working Group prepared a preliminary report in October 2005.¹⁵ Some of the group members then conducted additional interviews and surveyed the most recent secondary sources on internal displacement in Spring 2006. In the meantime, as part of the cooperation between TESEV and the Internal Displacement Monitoring Centre (“IDMC”) of the Norwegian Refugee Council (“NRC”), three members of the group prepared a report on the extent to which the Turkish government has fulfilled the recommendations made by Representative Deng.¹⁶ Finally, this book contains a series of original articles by the TESEV Working Group members based on a careful survey of all relevant secondary sources and the fieldwork conducted in four provinces. It also incorporates the findings of the above mentioned two reports.

5. THE OUTLINE OF THE BOOK

Since this book emphasizes the multi-dimensionality of internal displacement, a multi-disciplinary method was employed to examine different aspects of the issue. Chapter II examines international norms and practices on this subject from the perspectives of various disciplines. It explains the different dimensions of internal displacement through a survey of the relevant scholarships in international law, conflict resolution, psychiatry, demography, and sociology. Each article in

¹⁵ Aker *et al.* (2005).

¹⁶ Kurban *et al.* (2006).

this chapter was written by a member of the TESEV Working Group with specific knowledge or expertise on the relevant subject.

Chapter III focuses on the main features of Turkey's internal displacement problem and examines the legislation and current policies in this field. This chapter deals with the scope of relevant legislation and policies. The topics discussed in Chapter III provide a conceptual guide for reading the fieldwork reports in Chapter V, in which issues concerning the implementation of existing policies are covered.

The aim of Chapter IV is to examine national and international studies conducted previously on internal displacement in Turkey. This chapter contains summaries of the main findings of reports by local and international NGOs as well as reports and decisions by the UN, the EU, and the Council of Europe. A detailed examination of ECtHR's case law on applications by IDPs from Turkey is included in another article in this chapter.

Chapter V is a collection of articles that report on the findings of the qualitative fieldwork conducted in Diyarbakır, Istanbul, Batman and Hakkâri. Each field study was conducted by the members who authored the individual articles. Chapter VI, the conclusion of the book, contains TESEV Working Group's policy proposals towards the solution of Turkey's internal displacement problem.

CHAPTER II
INTERNAL DISPLACEMENT:
INTERNATIONAL NORMS AND PRACTICES

Introduction

**DİLEK KURBAN, DENİZ YÜKSEKER, AYŞE BETÜL ÇELİK,
TURGAY ÜNALAN, A. TAMER AKER**

This chapter examines how internal displacement and its various dimensions are addressed through different disciplines in the literature. It looks at solution mechanisms developed in other countries that have an internal displacement problem in order to inquire as to whether these policies and practices can be adopted in Turkey. The five articles contained in this chapter discuss the approach to internal displacement of disciplines such as population studies, sociology, community health/psychiatry, law, conflict-resolution, and political science; and examine how Turkey's internal displacement issue can be dealt with within the conceptual and theoretical framework generated by these disciplines.

In the first article, Turgay Ünalán discusses internal displacement in an international context and focuses on the various causes of displacement, citing examples from other countries. Ünalán also presents statistical information on the worldwide population that has been internally displaced as a result of conflicts, and argues that there are serious issues regarding accessibility of information regarding the specific numbers and conditions of internally displaced persons (“IDPs”). Ünalán also emphasizes that, although the worldwide number of IDPs has been decreasing over the last few years, internal displacement continues to be a large-scale issue.

In her article, Deniz Yüksekler deals with policies implemented by various countries in the field of conflict-induced internal displacement. Yüksekler states that practice in this field is still at the developmental stage. However, she points out that policies to be developed in Turkey could be motivated by examples of positive practice in other countries, and that the needs of people who have returned or who wish to return to their villages, as well as the needs of people who wish to remain in urban areas, should be met via the policies generated.

Ayşe Betül Çelik, who writes about the return to villages, states that return means more than the social and cultural integration of IDPs. She emphasizes that achieving reconciliation can play an important role in transforming return into a durable and sustainable process.

Dilek Kurban, who examines the international legal dimension of internal displacement, analyses various legal tools and practices, focusing on the “Guiding

Principles on Internal Displacement” (“Guiding Principles”). Kurban discusses that, because decisions regarding which legal issues are adopted depends on the will of governments, there are great disparities in worldwide implementation. She states that the enactment of government policies designed cooperatively with civil society contribution, along with comprehensive laws that protect the rights of IDPs and lay out the responsibilities of the government in a manner consistent with the Guiding Principles, would constitute important steps in addressing the issue.

The mental health of IDPs is one of the least studied fields, both in Turkey and internationally. A. Tamer Aker, who examines the literature in this field, points to the need for more research on the situation of IDPs and refugees whose living conditions differ from the rest of the population. Aker deals with problems which develop before, during, and following internal displacement, and states that traumatic events (violations of human rights, etc.) that occur during internal displacement, as well as socio-economic deprivation and poverty, can worsen psychological problems. Aker emphasises that in order to address issues originating from internal displacement, it is necessary to provide healthcare services in the fields of both mental and physical health.

Internal Displacement: Current Global Conditions and Trends

TURGAY ÜNALAN

This article presents a brief overview of recent historical developments concerning internal displacement and the factors giving rise to displacement in various parts of the world. As explained in Chapter I, the definition of internally displaced persons (“IDPs”) set by the “Guiding Principles on Internal Displacement” (“Guiding Principles”) includes people who had to leave their places of settlement due to disaster-induced and development-induced, as well as conflict-induced displacement. Therefore, in this article internal displacement will be used as a general category and when the displacement is caused by conflict, it will be specified as conflict-induced displacement.

1. THE WORLDWIDE ISSUE OF INTERNAL DISPLACEMENT

The first estimates of the number of IDPs¹ in 1982 established that they numbered 1.2 million, spread out in 11 countries.² As of the beginning of the 2000s, estimates stand at approximately 25 million people worldwide (Table 1). As of 2005, there were 23.7 million IDPs in 50 countries.³ These and other estimates presented in Table 1 and within this article have been compiled from statistics of the Internal Displacement Monitoring Centre (“IDMC”) established by the Norwegian Refugee Council (“NRC”).⁴ IDMC is an international organization that deals specifically with conflict-induced internal displacement. Its annual reports state that IDMC provides information only on populations that are internally displaced due to civil wars or conflict.

Although over time the number of IDPs seems to decrease due to return or permanent settlement of displaced persons away from their places of origin, as a result of newly added internal displacement incidences, the general global trend is not towards a decrease in the number of IDPs. A look at worldwide internal displacement shows

1 Internal displacement includes all relocations resulting from civil wars and conflicts, natural disasters, and development plans.

2 Cohen and Deng (1998).

3 NRC (2006).

4 The group that was renamed as IDMC in 2006 was previously known as the Global IDP Project: (<http://www.internaldisplacement.org>).

that although some regions are affected more than others, from the point of view of size, the crisis of internal displacement is a global one. It is impossible to say that public opinion is sufficiently aware of this global issue which has been occurring in 50 countries in various continents. International public opinion tends to focus on refugee (people who have crossed international borders after having been forced to leave their homes) issues, although the number of IDPs is twice that of refugees, they live under worse circumstances, and receive less attention.⁵

Disagreements regarding the definition of IDPs and the scarcity of institutional assistance make it even harder to estimate their number.⁶ According to the international definition, IDPs are “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”⁷ “Being forced” and “remaining within national borders” constitute the two main points of this definition. Only those who are forced to flee within the borders of their countries are considered IDPs. Economic migrants or voluntary migrants are not included in this category. However, this definition also includes people who have become internally displaced as a result of events such as floods, earthquakes, starvation, nuclear power plant explosions, and large-scale development projects. Therefore conflict-induced displacement constitutes a sub-category within the international definition of internal displacement.

Certain aid organizations have preferred to limit the IDP definition to people who would have been called refugees had they crossed a border or to people who have been subject to persecution in some way. Yet, underlying the decision to include victims of development-induced and disaster-induced displacement within this definition is the belief that they may require urgent attention, and that their needs may be ignored by their own governments for political or ethnic reasons, or that their human rights may be violated for different reasons.

According to the Center for Disease Control in the United States, the highest death rates in emergency situations are observed among people who have been internally displaced.⁸ According to Cohen, an important reason for this is that the international system developed following World War II does not include IDPs. In accordance with the traditional concept of sovereignty, the 1951 Convention Relating to the Status of Refugees (“Refugee Convention”) focused only on people who crossed their

5 Global IDP Project (2005b).

6 Vincent (2001).

7 UN (1998).

8 Cohen (2002).

countries' borders. People who remain within their countries' borders are left to the responsibility of their respective governments, and the international community has no say on how they are treated within their countries. However, with the increase in violence, devastation, and internal displacement in the last years of the twentieth century, the international community has begun showing more interest in this matter. Moreover, the decrease in the willingness to accept refugees has caused an increase in the belief that people need to be protected in the country where they live, rather than be encouraged to seek refuge in other countries. Mr. Francis Deng was appointed as the Representative of the UN Secretary-General on Internally Displaced Persons ("the Representative") in 1992 as a response to the realization that the international community needs to take more responsibility concerning IDPs.

The Guiding Principles were prepared by the Representative and a group of international law experts at the request of the UN Human Rights Commission and were enacted by the same commission in 1998.⁹ These principles also include a proposals section consisting of 30 articles to act as guidance for governments and humanitarian aid organizations on the matter of IDPs. These first international standards on IDPs emphasize that governments have fundamental responsibilities towards people who have become internally displaced within their country, and they point to the right to intervene which the international community can exercise if governments do not fulfill their responsibilities. According to this guide, governments must make it possible for aid organizations to obtain immediate and unimpeded access to IDPs under risk.

The Guiding Principles display in a single document the international laws to be implemented regarding IDPs. They stipulate that people have a right not to be arbitrarily displaced, and that they should have rights regarding basic living needs and protection against physical attacks during displacement. Moreover, IDPs should be able to regain their property, and they should have a right to compensation.

The Guiding Principles have formed the basis of international advocacy and activism since they were published in 1998. UN organizations, regional organizations, non-governmental organizations ("NGOs"), and an ever increasing number of governments have started employing these principles in policies and programs they develop for IDPs.

According to the Global IDP Project,¹⁰ very little progress has been made on the issue of protection of and provision of help to IDPs. Apart from a few exceptions, authorities in many countries are either unwilling or incapable of fulfilling their responsibilities, as stated in international law, regarding the protection of and provision of help to

9 The Guiding Principles and Explanatory Notes were translated into Turkish and published in 2005 by the United Nations Development Programme ("UNDP") Turkey Office with the collaboration of the Brookings Institution.

10 Global IDP Project (2005b).

IDPs. Similarly, international aid organizations are also unwilling or incapable of creating the necessary resources to meet the needs of IDPs.

2. CONFLICT-INDUCED INTERNAL DISPLACEMENT: CONTINENT-WIDE AND COUNTRY-WIDE

As mentioned previously, although it is difficult to find statistics concerning internal displacement arising only from civil wars or conflicts, IDMC maintains a database displaying the situation across countries. This database is compiled partly from reliable data sources and partly from the forecasts of various experts and organizations. The following part deals with evaluations of continents and countries on the basis of this database.

Although there are similarities between cases of conflict-induced internal displacement in different parts of the world, there are also various differences. In Africa, which presents the worst cases of conflict-induced internal displacement, the main reasons for the displacement of civilians are rebellions and inter-communal conflicts; whereas in many other countries the army or other armed forces may also have forced people to flee from their homes. The ongoing peace attempts in various countries increase the hope that a solution will be found for the IDPs of Africa, who live in the worst possible conditions. Although clashes have ended in many countries, neither the return of IDPs nor the restitution of their rights has been possible in many instances. For peace initiatives to be successful, treaties need to include durable solutions for IDPs. Genocides in Rwanda and Burundi are the main reason for *en-masse* population movements. Conflict-induced internal displacement in Liberia is connected to the collapse of the state, while the highest ever conflict-induced internal displacement numbers have been observed in Sudan, which has experienced the longest lasting civil war on the continent.

In Latin America, IDPs are found mostly in Colombia, Guatemala, and Peru. The violent conflict that resulted in complicated settlement patterns in Colombia is behind almost all of the cases of internal displacement in the region. Violent crime and the nearly complete dissolution of government authority have resulted in the displacement of hundreds of thousands of people. Efforts to develop lasting solutions for people who have been affected by the clashes - which have long since ended in the region - are still ongoing. Agreements were reached in the mid 1990s concerning the return and reintegration of IDPs in Peru and Guatemala, but none of these agreements have been implemented in any real sense.

Military campaigns initiated by governments in order to suppress rebellions are the main reasons behind new cases of conflict-induced internal displacement in the Asia-Pacific region, especially in Indonesia, Nepal, and the Philippines. A certain amount of return is happening in countries such as Afghanistan, Indonesia, and Sri Lanka, though less than in past years. The scarcity of aid, livelihood problems,

disagreements over land and property, hostile attitudes on the part of local populations, and ongoing wars mean that most IDPs will need to wait indefinitely to return to their homeland, or that they will have to settle in the places where they have migrated.

In Europe, former Yugoslavia is the region with the highest number of IDPs. As the Caucasus - a part of the former Soviet Union and where Chechnya, Azerbaijan, Armenia, and Georgia are situated - has a complicated ethnic structure and is a strategically important region; the conflicts and conflict-induced internal displacement are extremely important regarding the region's long-term stability. The number of IDPs continues to decrease as a result of the return of IDPs especially from Southeast Europe. On the other hand, many people who have had to flee from their places of settlement in the Southern Caucasus and in parts of the Balkans have still not returned to their homes. Because of a decrease in international interest, developing sustainable solutions for long-term IDPs has become a major issue. The Russian Federation (Chechnya) is the only European country where people run the risk of forced displacement because of the ongoing war.

More than half of the IDPs in the Middle East (Israel, Occupied Palestinian Territories, Syria, and Lebanon) have been away from their homes for 20 or more years, and the belief is that the majority of them must have settled permanently or partially in their new places of settlement. As for the others, there seems to be little hope of return as long as the armed conflicts, which are deeply rooted in the region, do not come to an end. In Iraq, although the end of the regime of Saddam Hussein created an opportunity for IDPs to return, ethnic tensions and extremely volatile security conditions prevent large-scale return.

2.1. CAUSES BEHIND CONFLICT- INDUCED INTERNAL DISPLACEMENT

With the exception of IDPs who are displaced as a result of natural disasters and development projects, it is possible to classify all other IDPs in two groups: people who have been displaced by the government or by rebel groups, and people who have been displaced because of the fight against terrorism.

A. PEOPLE DISPLACED BY GOVERNMENTS OR BY REBEL GROUPS

Clashes between government forces or government supported militants and rebel groups continue to constitute one of the main reasons behind the conflict-induced internal displacement of people who live on the advance or retreat routes of the armed forces all over the world. Civilians in Colombia, Sudan, the Russian Federation (Chechnya), Nepal, the Philippines, Burundi, Indonesia, Liberia, and many other countries have been forced to abandon their homes because of internal conflict or the indifferent attitude of the armed forces towards the protection of civilians. In

some countries, armed forces, militants, or rebel groups have deliberately targeted civilians and have purposely displaced them from their homes. Serious human rights violations such as arbitrary killings, lootings, the burning of houses, torture, and rape have been observed during such periods.

In addition to the many countries where internal displacement already exists, armed forces and government-supported militants have recently been displacing people in Burma, Zimbabwe, and the Ivory Coast. In 2003, more than half a million people were forced to migrate to the province of Darfur as a result of attacks by government forces and government-supported militants in Sudan. In Turkmenistan, displacement has been implemented by the government as a means of pressure against its citizens, particularly against minority members, dissidents, and their families.

In 2003, armed rebel groups, privately financed militants, or armies lead by warlords have committed atrocities and have been responsible for more than half of the new conflict-induced displacement cases all over the world. In Colombia, both guerrillas and paramilitary groups have eradicated rural populations in order to obtain political and economic advantage as well as to dominate or regain control over strategically important regions. Conflict-induced internal displacement cases in Uganda have reached the highest ever level in mid-2003 and have exceeded one million as result of an unsuccessful counter-rebellion attack by the government forces and the attacks by the rebel army that followed. In the Democratic Republic of Congo, opposing forces enacting disputes over their roles within the new provisional government have continued to fight to gain control over the region and its natural resources and have thus caused the displacement of hundreds of thousands of people.

B. PEOPLE DISPLACED BECAUSE OF THE FIGHT AGAINST TERRORISM

There were growing concerns that the United States-led “War on Terror” - which has expanded on several fronts - may have had a worsening effect on the worldwide displacement crisis by encouraging governments to seek military solutions to conflicts and by undermining respect for international humanitarian and human rights standards, including those relating to the protection of IDPs.

International anti-terrorism campaigns have caused marked changes in the dynamics of internal conflicts in many countries. When faced with armed opposition movements, a number of governments have immediately defined their opponents as “terrorists” and have presented their counter-rebellion operations as part of the “War on Terror.” As a result of such attitudes, these governments have obtained substantial military aid from the United States and have managed to avoid international investigations regarding the way they conduct their military operations and whether or not they abide by human rights standards. Most of the governments who receive military aid for local anti-terrorist campaigns are non-democratic regimes, and their histories include long periods of instability, military coups, and

violations of human rights. Yet, the delivery of military support was generally not accompanied by an increase in assistance aimed at strengthening the rule of law and respect for human rights. Furthermore, once military aid is provided, the supervision of how it is utilized is generally limited.

In many countries, including Uganda and Nepal, these developments encourage governments to deal with disputes through military means rather than political agreements. In the case of the Russian Federation - which claims to contribute to the “War on Terror” through its fight with Chechen rebels - international criticism regarding the war in Chechnya and the displacement it has created decreased following the terrorist attacks of 11 September 2001 in the United States. Tens of thousands of people have been displaced in Indonesia and the Philippines as a direct result of counter-rebellion operations conducted under the banner of the “War on Terror.” Some of these campaigns were initiated much earlier for reasons other than the increasing international interest in the fight against terrorism. The protection of civilians has been ignored in many of these operations where the stated objective is the fight against terrorism and the deteriorating security conditions. Although military interventions in Afghanistan and, more recently, in Iraq have created an opportunity for IDPs to return, the delicate security situation in both countries has prevented, to a large extent, the social reintegration of the previously displaced population.

A worldwide tendency to tighten laws regarding international migration and asylum is also on the rise, partly due to the effects of measures taken to prevent terrorism. For example, a serious decrease has been observed in the number of refugees accepted by the United States, which was well-known in the past for accepting large numbers of refugees fleeing from clashes in their own countries. As opportunities for third-country resettlement become more sparse, states bordering conflict areas are likely to become even less willing to accept refugees. There is a fear that the decreasing opportunity to cross a border and become a refugee will cause an increase in the number of people who will have to look for refuge in their own countries where their lives are already in danger.

2.2. THE WORST CASES OF CONFLICT-INDUCED INTERNAL DISPLACEMENT IN THE WORLD AND PROBLEMS ENCOUNTERED BY IDPS

More than one third of IDPs worldwide - approximately 9 million people - live in environments where their lives are in continuous danger. IDPs in Burma, Liberia, and Somalia have practically nowhere to go in order to escape from the clashes and to take refuge. As a result, most die of starvation or illness. Similarly, people who are not able to leave the environment of clashes in Colombia, Burundi, Indonesia, the Ivory Coast, Sudan, the Democratic Republic of Congo, and the Russian Federation (Chechnya) live under terrible conditions.

The majority of the internally displaced populations in these countries endeavor to survive with no shelter, very little food, and in very close proximity to a war. They are continuously subject to the attacks by rebel groups or by the country's own armed forces and, therefore, must relocate again and again. Humanitarian aid cannot reach these IDPs either because governments are unwilling or unable to provide them with help, or because international aid organizations are unable to reach them due to security concerns. Moreover, in certain cases either the governments or the rebel groups deliberately prevent humanitarian aid from reaching those in dire need of help.

Although IDPs can take refuge in camps and find shelter far from dangerous areas, they can still be subjected to violence. As in the case of Uganda, these camps can be attacked by armed militia, and it is also reported that women and children, who constitute a significant portion of IDPs in these camps, are commonly subjected to sexual abuse. In almost half of the countries where internal displacement occurs, IDPs are forced to enroll in the army or to engage in forced labor. Furthermore, they are unable to find sufficient food, they are deprived of safe shelter and healthcare services, and most IDPs develop psychological problems. In addition, most IDPs live in countries where there is widespread poverty, natural disasters, and pandemics such as HIV/AIDS.

In a quarter of the countries where conflict-induced internal displacement occurs, IDPs are not able to rely on their governments for protection. This means that, as of 2005, approximately ten million IDPs are faced with authorities that are either hostile or at best indifferent, and who make no attempt to provide for their security. While the collapse of the state structure in Liberia and Somalia has prevented any useful intervention in these counties, in many others there is no explanation for the failure of the governments to intervene. Moreover, according to 2005 figures, 9 million people in 22 countries receive only sporadic or partial aid. Only one third of governments have made significant attempts to protect IDPs in their regions.¹¹

In Burma, close to one million people have been displaced because the military regime has ruthlessly targeted minorities suspected to be supporting the rebel groups in the eastern border of the country. In the absence of any internal or external protection, IDPs in Burma are continuously subject to violence and to systematic violation of human rights at the hands of government forces.

Millions of IDPs whom governments are unwilling or unable to help, are forced, at least initially, to find food and safe shelters on their own, without any help from either the authorities in their own countries or international aid organizations. Although this often goes unnoticed, IDPs frequently have to react and cope alone with ever-increasing violence and displacement. In many cases, out of fear of war or of the presence of armed forces, they have to migrate to neighboring villages or to take refuge with families or friends until the situation is deemed safe. In some cases,

■ 11 Global IDP Project (2005b).

they are able to make use of their own lands, but in others they gather in camps in order to seek safety, food, and shelter. They only undertake a wide-scale and permanent move to urban centers or to more distant camps or places of settlement when violence and threats reach a chronic level. In some other cases, IDPs are able to hide in forests or in other wild zones.

Most of the people who are banished from their property and means of livelihood endeavor to survive on humanitarian aid, which is mostly erratic. In general, as internal displacement generally happens in countries with weak economies and limited infrastructure, there are very few opportunities to find income-generating activities. Long-term internal displacement causes traditional livelihood skills to be lost and family and social structures to be destroyed. In most cases, children's access to education is impeded or non-existent because of damage to school buildings or because teachers have fled as well.

In one third of countries where cases of internal displacement are encountered, access to land and favorable weather conditions can make it possible for a significant number of people to cultivate their own food and, therefore, be less dependent on external humanitarian aid. However, in all of these cases, lack of security prevents any form of subsistence farming. In certain countries such as Burma and Zimbabwe, governments have deliberately prevented agricultural activities for political reasons.¹²

Although the majority of IDPs all over the world need protection and humanitarian aid, the threats and violence that were the initial reasons for their flight no longer constitute an obstacle to their return in more than half of the countries in question. Approximately six million people find themselves constrained in situations where, upon the end of active war and lawlessness, the activation of a political will capable of creating the necessary conditions could result in the development of durable solutions. Many people in Southeastern Europe, the Caucasus, the Middle East, and Latin America have been internally displaced for ten or more years, and many do not harbor much hope of returning home in the near future. In extreme instances such as Cyprus, Israel and the Occupied Palestinian Territories, displacement has been ongoing for several generations.¹³

According to international law, governments are obliged to protect and help citizens who have been internally displaced. Yet, in reality, only one third of governments have made an effort to fulfill this responsibility on a level that could be considered sufficient, bearing in mind the resources at hand. In most instances, government authorities are either far from responding sufficiently to the needs of internally displaced populations or unwilling to do so. Approximately 18 million IDPs have received either no humanitarian aid from national authorities, or have received it only very seldom. On the other hand, it is undeniable that some governments do not

¹² *Ibid.*

¹³ *Ibid.*

have sufficient resources. In countries devastated by wars, the break-down of public services and damage to the infrastructure seriously hamper the provision of aid to an almost entirely defenseless population. In certain countries, the state structure has completely collapsed and the civilian population is obliged to fend for itself. However, with the exception of these extreme instances, provision of protection and aid to IDPs is generally a question of priorities. Governments at war especially tend to treat their internally displaced population as a low priority and prefer to use their resources for the military arena. Although policies and legislation are developed specifically for internally displaced populations, governments may be unsuccessful in their implementation. For example, the support provided by the Angolan government towards the re-settlement and social reintegration of IDPs is far from sufficient, especially considering the country's rich petroleum resources. On the other hand, in Colombia - which has the most advanced conflict-induced internal displacement laws in the world - it has not been possible to ensure the safety of places to which IDPs have returned, and opportunities have not been generated for them to earn a living. For these reasons, conflict-induced internal displacement continues to be extremely severe in this country.

3. GENERAL EVALUATION

There are serious problems in accessing data and information regarding the numbers and the conditions of IDPs worldwide. Especially in cases where internal displacement arises from civil wars or clashes, it is even more difficult to access reliable statistical information. In many cases, such as the case of Turkey, contradictory figures may emerge, and parties to the conflict may make different estimates on the basis of their respective interests. Yet, organizations, such as IDMC, evaluate all available data and information sources and make country-wide, continent-wide, and world-wide population estimates. However, as civil war or conflict-induced internal displacement is IDMC's main subject of interest, natural disaster and development-induced internal displacement is not included in these estimates. Yet, as natural disaster or development-induced internal displacement can result in more rapid returns or relocation when compared with conflict-induced internal displacement, it would not be erroneous to say that statistics regarding IDPs generally consist of people who are internally displaced as a result of conflicts.

Trends in the last 15 years indicate that, although the number of IDPs from time to time descends to 15 million or rises up to 30 million, it generally oscillates between 20 and 25 million.¹⁴ Although every year there are slight decreases in the number of IDPs in some countries, this figure does not present significant variations over time because of the impossibility of return, the prolongation of the process, and the occurrence of new cases of internal displacement in various countries.

■ 14 *Ibid.* and UNHCR (2004).

Internal Displacement: A Critical Analysis of International Policies and Practices

DENİZ YÜKSEKER

Although internal displacement is not a new phenomenon; scholarship, policy development, and information on this subject have been accumulating only in the past decade and a half. In fact, practices addressing internal displacement are still in the process of being developed.

The objective of this article is to examine critically those policy practices on the issue of conflict-induced displacement (“internal displacement”). With this aim, the conceptual differences in the definition of refugees and internally displaced persons (“IDPs”), debates about when displacement ends, problematic areas regarding the duties of the international community and of states towards IDPs, as well as existing policy practices are examined. The article then discusses the relevance of all of these discussions for the Turkish case.

1. THE IDP CONCEPT

The term “internally displaced person” as it is currently used in international literature, includes people who were forced to leave their places of settlement due to conflict-induced displacement as well as disaster-induced and/or development-induced displacement. Walter Kälin, who chaired the committee of legal experts during the drafting of the “Guiding Principles on Internal Displacement” (“Guiding Principles”) emphasizes that this term is not a definition but a description.¹ For example, the 1951 Convention Relating to the Status of Refugees (“Refugee Convention”) contains a clear definition of what constitutes a refugee. Individuals who fit this definition are conferred the legal status of refugee. Conversely, “internally displaced person” is not a legally conferred status.

The scope of who is an IDP is described very extensively in the “Guiding Principles.” Yet, this extensive scope also carries a great deal of flexibility and differences of opinion on matters such as humanitarian aid to IDPs, the responsibility of the international community, the duties of the state, the rights of IDPs, the end of displacement, return, and reintegration.

■ 1 Kälin (2003).

The Guiding Principles constitute “soft law,” which is different from the international refugee regime based on the Refugee Convention.² The Guiding Principles are not of a binding nature in the manner of the Refugee Convention or other international legal statutes. Moreover, the Guiding Principles do not constitute a new code of law; on the contrary, they consist of elements of existing international humanitarian law and international human rights law that are relevant for IDPs.³ IDPs therefore do not have special legal status – being named an IDP is only a recognition that a person’s citizenship rights have been violated as a result of being internally displaced.

Until now, there was no single international organization responsible for protecting IDPs. The United Nations (“UN”) Office for the Coordination of Humanitarian Affairs (“OCHA”) was in charge of coordinating the displacement-related activities of various UN agencies. However, as of 2006, under a new arrangement the UN High Commissioner for Refugees (“UNHCR”) has been charged with playing a leading role in providing protection for IDPs and in the management of the camps where they live.

2. DIFFERENCES BETWEEN INTERNATIONAL PERSPECTIVES ON IDPS AND REFUGEES

The international refugee regime established in 1951 with the Refugee Convention⁴ and expanded under the 1967 Protocol⁵ describes a refugee as follows: “those who flee from persecution or the threat of persecution and cross an international border and therefore need international protection.”⁶ States who have signed the Refugee Convention and the 1967 Protocol, as well as the international community have an obligation not to return refugees to the country from which they originate (*non-refoulement*) and to provide them with protection. As for IDPs, the international community is only expected to provide humanitarian aid and to help with the restitution of their human rights when their governments are unable or unwilling to do so. Thus, the Guiding Principles address internal displacement within the framework of the sovereignty of nation-states. For example, Francis Deng, who was the Representative of the UN Secretary- General on Internally Displaced Persons (“the Representative”) between 1992 and 2004,⁷ has repeatedly emphasized during his tenure that internal displacement is a country’s internal affair, that it falls under the principle of national sovereignty, and that, therefore, the international community’s duty is to help governments address this issue.⁸

International practices regarding internal displacement have therefore spilled over from the domain of international law for the first time since the 1990s and have

2 Adelman (2003) and Suhrke (2003).

3 Vincent (2000).

4 UN (1951).

5 UN (1967).

6 Frelick (2003) and Barutciski (1998).

7 The UN Secretary-General appointed Walter Kälin in 2004 as his Representative on the Human Rights of Internally Displaced Persons to succeed Deng.

8 Deng (2003) and Cohen and Deng (1998).

penetrated the domain of nation-state sovereignty.⁹ However, the question of state sovereignty continues to be a delicate one.

As stated above, the Guiding Principles have not introduced new norms in international law, they only reiterate existing humanitarian law and human rights law; they are not binding on states although they are based on binding international law. As such, the Guiding Principles differ from refugee law. However, this begs the question as to why, in spite of the non-binding character of the Guiding Principles, the international community feels the need to intervene in the domain of state sovereignty on the matter of internal displacement.

The increase in ethnic conflicts in Latin America, Asia, and Africa during and following the end of the Cold War, and the break up of Eastern Europe after the disintegration of the Soviet Bloc, were among the most significant triggers of a rapid increase in the number of IDPs in the 1990s.¹⁰ On the other hand, some international law scholars have argued that one of the main reasons for establishing a new category called “internally displaced persons” and extending international aid to the group thus defined, was motivated by western governments’ wish to prevent new streams of refugees.¹¹ There are no clauses in the Guiding Principles that would prevent IDPs from opting for asylum across borders. Nevertheless, providing international protection to displaced people in their own country and rejecting the asylum applications of persons who could be protected without crossing borders was an option seriously considered by the European Union (“EU”) and the United States in the early 1990s during the first Gulf War and during ethnic conflicts in Eastern Europe. This was called the “internal flight alternative.” Once the availability of an “internal flight alternative” was presupposed, it would be possible to reject individuals’ requests for asylum and also to return them to their countries of origin if they had crossed borders. However, some scholars argue that the notion of “internal flight alternative” violates the “*non-refoulement*” principle of the Refugee Convention and undermines established international law principles concerning the protection of refugees and their non-return to environments of conflict.¹²

3. WHEN DOES INTERNAL DISPLACEMENT END?

The above discussion hints at some of the inconsistencies and inadequacies in international practices targeting IDPs. For example, because the definition of IDPs in the Guiding Principles is quite flexible, confusion may arise concerning questions such as the number of IDPs in a country, under what conditions displacement ends

9 Following the first Gulf War, the establishment of a “safe haven” for the displaced Kurdish population in Northern Iraq at the initiative of the United States and the United Kingdom is considered to be the first time that the international community intervened in the sphere of national sovereignty with the pretext of protecting displaced people. Suhrke (2003).

10 Cohen and Deng (1998).

11 Barutciski (1998) and Rutinwa (1999).

12 Frelick (1999).

(return, integration to urban life, the return of property, the compensation of financial damages, cease-fire, peace treaties, etc.), states' responsibilities, humanitarian aid, and the restitution of human rights.

The Guiding Principles suggest two ways in which internal displacement can come to an end: 1) the return of IDPs to their homes; or 2) their re-settlement in another place.¹³ The Guiding Principles say that states are responsible for accomplishing these. Moreover, the Guiding Principles emphasize the fulfillment of the following conditions: return and re-settlement should happen voluntarily, "in safety and with dignity;" IDPs should not be discriminated against during this process (they should be able to participate fully and equally in public affairs and have equal access to public services); assistance should be provided for IDPs' return or compensation should be provided for the loss of their property.

However, apart from these stipulates, the Guiding Principles do not include the description of the circumstances under which internal displacement would be considered to have come to an end. International organizations and non-governmental organizations ("NGOs") therefore use varying criteria in each case. For example, it has been proposed that cessation clauses under which the refugee status, as described in the Refugee Convention, is considered to come to an end be considered valid for IDPs as well.¹⁴ Such a notion regarding the end of displacement was carried out in Mozambique in 1996. In that case, after the UN stated that "internal displacement had ended," international organizations stopped providing humanitarian aid. However, a short time later the UN admitted that because of its declaration, IDPs had suffered due to lack of aid.¹⁵ A more interesting situation arose in Bosnia following the Dayton Agreement: refugees were forced to return to their country, but they were unable to return to their homes and became internally displaced as a result.¹⁶

Another proposed criterion to determine when displacement ends is to consider when the circumstances that created internal displacement come to an end, such as the end of an ethnic conflict or a change in the political regime. However, the end of clashes does not necessarily mean that the circumstances are right for people to return to their homes. Yet, in cases where a war or conflict has lasted for quite a long time, it is questionable whether defining or maintaining a group of people as IDPs is useful for them (as seen in the example of IDPs who had to flee from their homes in Nagorno-Karabakh and resettled in Azerbaijan).¹⁷

13 Regarding the second alternative, it should be kept in mind that, in many parts of the world, IDPs live in temporary settlements or camps.

14 Bonoan (2003).

15 Mooney (2003b).

16 *Ibid.*

17 *Ibid.*

Some observers base the descriptive condition of internal displacement on “physical movement” and state that the return of IDPs to their homes is the only solution. For example, according to the United States Committee for Refugees (“USCR”), the possibility of return qualifies as the most valid criterion, regardless of whether IDPs make use of this opportunity.¹⁸ Based on this criterion, following the implementation of *en-masse* return programs, the USCR announced that there were no more IDPs in Guatemala in 1998 and in Sierra Leone in 2002. However, other international NGOs criticized USCR on this announcement in both cases. The issue of internal displacement could not be considered solved for either country due, for example, to the inability to ensure safety in areas where return took place, the lack of aid for reintegration, lack of compensation for lost property, and the illegal occupation of land by people other than their rightful owners.¹⁹ In Guatemala, in spite of the peace treaty signed between the government and the guerrillas in 1997, internally displaced indigenous groups found themselves with no land upon their return home. The natives, who had customary rights on agricultural lands (similar to usufruct rights on land in Turkey) suffered because some outsiders had claimed property rights on these lands following the civil war.²⁰ As a result of the “ruralization” program carried out by the government of Rwanda in 1999, various UN organizations declared that there were no more IDPs in the country. However, a short time later, aid organizations announced that the basic humanitarian needs of the people settled in the newly developed villages were not met: they were not given land, they were not provided with the means to a livelihood and, most importantly, the settlement process had not been voluntary.²¹ All these examples show that return, by itself, is not a sufficient criterion for determining whether displacement has ceased to be a problem in a specific place.

Meeting the needs specific to IDPs is another criterion proposed toward determining when displacement ends. Regardless of whether or not IDPs have returned to their homes, the resolution of problems unique to IDPs that originate from internal displacement such as protection, aid, and reintegration are considered necessary conditions to make it possible to determine decisively that “no IDPs are left” in a country.

If the last two criteria - return and meeting specific needs of IDPs - are applied comprehensively, progress will be made towards finding permanent solutions to the internal displacement problem. Therefore, some observers argue that return cannot be a solution by itself and that it should be considered only as the beginning point of a solution process.²²

18 Frelick (2003).

19 Mooney (2003b) and McGoldrick (2003).

20 Bailliet (2000).

21 Zeender (2003).

22 Mooney (2003b).

A practice worthy of consideration is the provision of international protection for IDPs during the return process, an idea that was put forward by Roberta Cohen, founder and former co-director of the “Brookings-SAIS Project on Internal Displacement.”²³ She pointed out that, even if clashes have officially ended in a country, conditions such as enmity between groups and individuals, the presence of landmines, and the lack of safety can impede return and can even cause the renewal of internal displacement. Under such circumstances, the provision of protection or the active monitoring of human rights violations by an international organization or by an NGO can produce positive results. For example, in the “return” process in Tajikistan following the signing of a cease-fire treaty in 1994, the formation of an active human rights monitoring program by the UNHCR (the continuous monitoring of violations in areas where return has taken place, keeping the authorities informed on this matter, providing aid to IDPs concerning their petitions to official authorities for the return of their property, etc.) made a contribution to the relative success of the return process. Angola, however, constitutes an example to the contrary. Following the civil war, the UNHCR provided help during the peace process mainly to refugees, excluding IDPs from these services.²⁴

Cohen argues that in order to find solutions to internal displacement, the international community needs to play a larger role regarding protection and human rights during the return process. However, Cohen, herself a leading advocate of the Guiding Principles, admits that international protection and human rights still constitute “secondary concerns” regarding IDPs, and that practices in these areas are carried out in a haphazard way.²⁵

A promising but limited practice in this area has taken place in Colombia. A London-based NGO called the Peace Brigades International offered human rights monitoring services to approximately one million people who were displaced in the 1990s in the Uraba region of Colombia. International monitoring groups called “*acompañamiento*” recorded human rights violations during both displacement and afterwards, informed the authorities of these violations, and published reports. In order to provide such a service, it is necessary for NGO workers to have received special training and be knowledgeable about local circumstances. Similar mentoring services were provided in the 1990s by NGOs for El Salvadoran and Guatemalan IDPs and refugees who were returning home.²⁶

23 Following the appointment of Kälin as the Representative in 2004, the title of the project was changed to “Brookings-Bern Project on Internal Displacement.”

24 Cohen (2003b).

25 *Ibid.*

26 Eguren (1999).

4. A CRITICAL REVIEW OF THE IMPLEMENTATION OF THE GUIDING PRINCIPLES

Following the adoption of the Guiding Principles, the level of information and awareness on internal displacement has increased in many countries.²⁷ In some countries (for example Colombia and Angola) laws concerning the return of IDPs and the re-establishment of their rights in the restructuring process following the end of armed conflict, have even been inspired by the Guiding Principles.

The Guiding Principles also have made possible the harmonization and coordination of the work of various UN agencies as well as international NGOs concerned with IDPs.

In spite of these positive developments, the scope of activities shaped around the Guiding Principles is very limited and still inadequate. The most important criticism concerns the fact that practices inspired by the Guiding Principles most often focus on how the international community should act in emergency situations and fail to consider the development of permanent solutions.²⁸

Especially in the case of internal displacement crises in African countries, international organizations concentrate their efforts on matters such as the protection of internally displaced groups from clashes, their settlement in camps, and the distribution of humanitarian aid (food, healthcare, hygienic conditions, etc.). However, apart from the millions of people who take refuge in camps and are therefore “officially” considered IDPs, there are also many “invisible” IDPs. These IDPs, who generally migrate to urban areas and take refuge with their relatives who live there, are not included in the official IDP figures and are, therefore, ineligible to receive help.²⁹

One reason for such a blind spot in international practices is an implicit assumption that conflict-induced internal displacement is “temporary,” and that when people return to their homes after the clashes are over the issue will be eliminated.³⁰ However, not only do people who return encounter various problems, there are also many other problems such as reintegration and economic difficulties for IDPs who prefer not to return due to security concerns or other reasons. In many cases, internal displacement accelerates migration to cities and aggravates urban issues. IDPs from rural areas who move to cities are particularly negatively affected because the authorities and the society generally do not comprehend that the problems (unemployment and inability to benefit from social rights and services) experienced by this group of people arise from internal displacement.³¹

27 Deng (2003) and Barutciski (1998).

28 Weiss Fagen (2003).

29 *Ibid.*

30 *Ibid.*

31 *Ibid.*

When internal displacement arises from clashes based on ethnic or religious disputes, if the state in question accepts the international community's intervention and defines the process as one of internal displacement, the following situation arises: those who were obliged to abandon their homes due to clashes are placed in a new category - they become part of the state's and/or international organizations' field of governance either by being registered or because they stay in places of settlement specially constructed for IDPs.

Then, as a target group, IDPs may become the object of specific international humanitarian aid practices and policies that are implemented elsewhere in the world as well. In such a situation, internal displacement may be drawn into an internationally developed discourse and approach, whereby the real problems and experiences of actual victims may be excluded from consideration. At times, international organizations may ignore the stratification based on class, religion, and ethnicity within the group that they serve and may end up treating them like a homogeneous entity. In such cases, the humanitarian and economic aid provided may not achieve the stated objectives or may actually be completely unsuccessful.³²

As the literature on internal displacement is generally policy-oriented, such risks are rarely mentioned. It is important however, to pay attention to the warnings made by some social scientists working in this field. For example, one criticism is that debates within such an international policy discourse objectify IDPs, generalize their problems, and take these problems out of context. In this case, the demands of IDPs who do not wish to return and who wish to build an urban life for themselves may get lost within the discourse of return. Or, practices by international organizations and NGOs pertaining to the return of IDPs and their reintegration may ignore the wishes and aspirations of individual IDPs, their problems may be de-politicized, and return and reintegration may be reduced to a solely "technical" problem.³³

IDPs' inclusion in the sphere of governance of the international community and of the state enables the provision of humanitarian aid and human rights support. Yet, while that is a positive effect of such governance, the process of categorizing a group of people as IDPs by organizations and the state can also result in the reshaping of their current social reality and their future.³⁴

Post-internal displacement practices and international policies are still at a nascent stage. A recently introduced policy proposal consists of comprehensive, sustainable, transparent, and participatory practices in four fields: repatriation, reconstruction, reintegration, and rehabilitation.³⁵ In fact, the UN has initiated comprehensive

32 Harris (1999).

33 Sorensen (2003).

34 Brun (2003).

35 Rogge and Lippman (2004).

“4R” pilot programs in Sierra Leone and Sri Lanka to ensure the cooperation of the United Nations Development Programme (“UNDP”), UNHCR, International Labor Organization (“ILO”) and the United Nations Children’s Fund (“UNICEF”).³⁶

5. LESSONS FOR TURKEY

When we examine cases of internal displacement and the international community’s practices regarding this area in different countries, the unique nature of Turkey’s internal displacement problem becomes clear. The first point that requires emphasis is that around a decade and a half has passed since internal displacement took place in Eastern and Southeastern Anatolia. Therefore, practices such as emergency humanitarian aid, the registration of IDPs, and the protection of IDPs through gathering them in camps are not relevant for Turkey. However, the protection of IDPs who wish to return to their places of settlement is still very much a current issue in Turkey.

Since international policies concerning internal displacement are still in the process of development, policies to be devised in Turkey may be inspired by positive practices in other countries and can also constitute a good practice in the international field. Therefore, rather than focusing on single issues such as return or humanitarian aid, a comprehensive restructuring and rehabilitation project needs to be launched in Eastern and Southeastern Anatolia. It is hoped that the pilot project targeting IDPs recently initiated in the province of Van, in cooperation between UNDP-Turkey and the Turkish government, will be inspired by best practices in other regions and by “4R” programs mentioned above.

It is worth emphasizing that the solution to internal displacement in Turkey cannot be achieved through the narrow framework of the “Return to Villages and Rehabilitation Project” (“RVRP”). Based on an examination of other country cases, one may argue that return to places of original settlement will not be sustainable and durable unless IDPs’ safety is ensured, the village guard problem is solved, property rights (based on title deeds and/or on usufruct rights) are reinstated, financial damages are compensated, landmines are cleared, and, as a more general point, the armed conflict comes to an end. Another point to emphasize is that the solution to the displacement problem does not lie solely in returns; therefore the needs and demands of those IDPs who want to stay in the cities where they have moved to following displacement, also need to be taken into account.

■ 36 Lippman and Malik (2004).

Return, Reconstruction, and Best Practices in Conflict Resolution

AYŞE BETÜL ÇELİK

In the literature on conflict resolution, return is viewed as part of a stage called *post-conflict reconstruction/transformation/rehabilitation*. The post-conflict¹ reconstruction and rehabilitation of areas where return is to take place requires elements such as durable peace, the establishment of organizations that encourage stability and security, the formation and implementation of mechanisms that will bring together parties to address the conflict, and the reconciliation of communities prone to conflict.² Therefore, the analysis of this process requires not only the examination of efforts to overcome problems arising from conflict (for example the prevention of inter-group conflict, the clearing of mines, etc.), but also research into how the various actors (the state, local administrations and non-governmental organizations (“NGOs”)) intend to prevent the recurrence of violence and tension and what they do to render conflict areas more appealing for returnees.

According to the literature on conflict resolution, the scope of return is broader than simply the social and cultural reintegration of those who return. The following issues stand out in this context: the reconstruction of places where return is to take place, the strengthening of development activities and of the economy in such locales, the social and civic reintegration of returnees,³ the establishment of human rights practices, the protection of vulnerable groups such as women and children, the rehabilitation of ex-combatants, and addressing poverty. The most important factor that sets conflict resolution literature apart from other forms of literature on this subject is its claim that in order to resolve a conflict, it is necessary to address the root causes of that conflict, and that this can only be achieved through discussions involving all the parties to the conflict with the help of a third party/actor/mediator, or by using problem-solving workshops, or community-based approaches. Underlying this claim is the belief that understanding the nature of these issues

1 “Post-conflict” should not be seen as a complete resolution of conflict. In conflict analysis terminology, this concept is used to signify the ending of active acts of violence (negative peace), rather than the establishment of positive peace. The literature also stresses that conflict is a process consisting of various stages. Conflicts can re-escalate if the root causes of the problems are not examined properly and remain unaddressed.

2 Lederach (1998), Abu-Nimer (2001), World Bank Conflict Prevention and Reconstruction Unit (undated-d), and Nygren (2003).

3 Arowolo (2000) and Ghosh (2001).

and the positions and needs of the actors will facilitate return and will create durable and viable solutions.

Ideally, return should begin after the mechanisms developed as a result of discussions held between the state, local NGOs, and international organizations have been functioning properly and for a long period of time. A certain amount of preliminary work is therefore needed before physical resettlement can begin. At this point, besides the state, various international and local actors also need to be included in any policy addressing the issues.

The process of return and of post-conflict reconstruction also requires that local administrations and NGOs play a role in the areas of decision-making and service-provision.⁴ NGOs play an important role in reframing the issue, holding discussions with local administrations and state organizations on the reasons behind the conflict, and directly representing internally displaced persons (“IDPs”).

The development of the local economy constitutes an important element of rehabilitation. What matters here is that local actors (in both the public and private sectors) play a significant role in determining the specific characteristics, issues, potential, and needs of the region. In various regional conferences practitioners have agreed that the most valid method in this field is a bottom-up approach where local actors define the process and convey it to international organizations.⁵

Another crucial subject is whether return should take place parallel to the difficult process of reconciliation or whether it should lead this process. Louis Kriesberg, who is one of the most acclaimed scholars in the field, defined reconciliation as follows: reconciliation is a “process by which parties that have experienced an oppressive relationship or a destructive conflict with one another move to attain or to restore a relationship that they believe to be minimally acceptable.” There are four dimensions to this process: 1) truth; 2) justice; 3) apology and forgiveness; and 4) personal and/or group safety and security.⁶ According to Paul Lederach, who is also internationally renowned in this field, for communities to coexist and for the establishment of security, empathy, and a culture of democracy; the combination of four vital factors is necessary: 1) truth-telling; 2) reparation; 3) healing; and 4) restorative justice.⁷

In this sense, the durability of return depends on whether those who have experienced a situation of conflict have realized or are in the process of realizing the need for reconciliation. This requires revealing the factors behind internal displacement, acknowledging wrong-doings, and re-establishing relationships in a

4 Lederach (1998), Abu-Nimer (2001), World Bank Conflict Prevention and Reconstruction Unit (undated-d) and Ghosh (2001).

5 UNOPS/ILO (undated).

6 Kriesberg (2001), 48.

7 Lederach (1998).

safe environment. The establishment of independent truth and reconciliation commissions for exposing the truth, along with the legal disclosure of past human rights violations and injustice, constitute important and necessary processes. However, this requires empowering groups that have been oppressed, re-instating their dignity, and taking precautions so that the relationship does not once again experience similar disasters.

An analysis of the literature on conflict resolution provides the opportunity for drawing the following conclusions and making these solution proposals concerning return:

- i. The return process requires reconciled, sustainable, durable, reliable, and dignified solutions. Such solutions can only be developed if all parties involved in the conflict convene to discuss the sources of the problem - that is, to establish the root causes of social, economic, and political injustices - and their possible solutions.
- ii. Discussions need to take place in the presence of all parties. Local organizations, especially those representing IDPs, need to participate in these discussions. The initiation of dialogue between parties involved in the conflict is very important and necessary for the stability of return to be operable. It is also of critical importance for sustainable peace that these parties work together and coordinate their work.
- iii. International organizations can play an important role as facilitators in the initiation of these discussions, as well as during the process itself. These organizations can also constitute a pressure group.
- iv. In order for the internally displaced population to benefit fully from all citizenship rights, it is necessary to open all democratic paths and to begin the required process of political change. Indeed, a process that does not enjoy the approval of this segment of the population and of local organizations has a very low probability of success. As discussed below, positive examples only manifest themselves when local actors endorse the process.
- v. Achieving a durable return process also requires developing an early warning system. That is, it requires the formation of preventive mechanisms.

1. COMPARATIVE EXAMPLES

Before moving on to comparative examples, it is important to point out that, worldwide, there are very few cases of internal displacement which fit exactly within the literature and can be considered as good examples, comparable to the current situation in Turkey. Because states still consider internal displacement as part of their “sovereignty” issue, they try to prevent interventions by international

organizations, and this in turn prevents the discussion that is necessary for the generation of a productive solution. However, successful return processes have been witnessed in recent years, particularly in Latin America. Peru, Guatemala, and Colombia in particular have come a long way in the process of return initiated in the 1990s.

As a result of work initiated following the 20-year long civil war in Peru between state forces and the Maoist Shining Path along with the Tupac Amaru Revolutionary Movement (“MRTA”), it is believed that out of a total of 600,000 IDPs, 540,000 have returned and the return process has been largely successful. The most important reason behind this success is the formation of a national coordination group where IDPs were represented. A group was founded in 1996 and comprised of 45,000 members, including both the Interprovincial Displaced Association (*Asociación Interprovincial de Desplazados* - “ASFADEL”), and the Junin-Based Regional Association of the Displaced of Central Peru, as well as local, regional, and international organizations.⁸ Furthermore, in order to raise awareness, internally displaced women organized an international conference in 1998 with the participation of 2,700 people. This national group received international support especially for capacity-building and to encourage internally displaced individuals to join forces. The group formed as a result of this support was able to hold important discussions with the state and was especially influential in the implementation of the “Guiding Principles on Internal Displacement” (“Guiding Principles”). Here, NGOs played an influential role in disseminating and implementing these principles, in addition to playing a monitoring role in establishing the correctness of the implementation and a consultative role in promoting the rights of IDPs. However, the most crucial problem within this process was that these principles were not translated into the native language of the IDPs.

Two significant developments essential for the reconciliation process are the establishment of truth and reconciliation commissions and the enactment of new laws to protect the rights of IDPs. In Peru, where no peace treaty was signed, the commissions formed in 2001 constituted an important step toward the fulfilment of the most important condition necessary for reconciliation. These commissions documented the human rights violations that took place in the past and acknowledged that all of the 600,000 IDPs were victims of war and, as such, they were entitled to compensation. The commissions also showed that it is necessary to document crimes perpetrated against women and children, such as abuse, violence, and rape - which are taboo subjects in Latin America. Moreover, as a result of the reports and proposals produced by the commissions, a law recognizing the special status of IDPs and endorsing their special rights was enacted in May 2004. This law also required the formation of a database containing information on IDPs.

■ 8 Global IDP Project (2005a).

Three major problems surfaced during this process. The first problem emerged because the IDPs who were native to the land did not have the necessary documents proving that they owned land, and other individuals who had confiscated the lands of IDPs during the time of conflict acquired the necessary documents and subsequently claimed the lands as their own. This, in turn, resulted in disputes between the usurpers and IDPs who claimed ownership upon return. A second problem lay in the fact that the state provided limited financial aid for the return process. Although between 1994 and 2000 the state spent USD 74 million on restructuring and infrastructure, this still constituted a limited resource. Most of those who returned did so through their own means. However, the most important problem is that return projects excluded those who migrated to urban areas.

Colombia constitutes another example that can be considered successful. The Human Rights Foundation in Colombia was influential in protecting the human rights of IDPs. During the post-conflict period, this NGO provided post-conflict training on human rights for the police and the armed forces, as well as for local and national authorities; acted as consultant for the state regarding laws developed for IDPs; monitored the implementation of these laws; and examined the problems faced by IDPs. As for Guatemala, after the peace treaty was signed, NGOs worked on the provision of the necessary documents (most importantly, title deeds and property deeds) for the social integration of IDPs, acted as consultants for local and national authorities, worked in national committees, and helped to gather information about IDPs. The main problem encountered by such organizations in Latin America is the claim by the state that they are connected to illegal organizations working in opposition to the state and the fact that their work is restricted. Moreover, they had less of a say than the state in deciding which projects should move forward and in the generation of possible solutions to the crises.

The help and pressure generated by international organizations have resulted in an increase in the number of return projects almost everywhere in the world. In the three Central American countries of Nicaragua, El Salvador, and Guatemala, which experienced internal displacement similar to that in Turkey, human rights workers claimed that it was both guerrilla groups rebelling against the state, and the state forces themselves who were guilty of violating human rights. The UN carried out two major projects to support the return efforts in these countries: The International Conference on Refugees in Central America (*Conferência Internacional sobre Refugiados da Centroamericanos* - "CIREFCA") and The Development Program for Displaced Persons, Refugees and Returnees (*Proyectos Decoraciones y Reformas* - "PRODERE"). The International Labor Organization ("ILO"), the United Nations ("UN") High Commissioner for Refugees ("UNHCR") and the World Health Organization ("WHO") participated as sub-contractors. The Italian government made a contribution of USD 115 million via the UN Development Programme ("UNDP"). The Local Economic Development Agency ("LEDA"), a unit under PRODERE and operated through the

sponsorship of ILO, initiated a UN program. This program aimed to achieve a peace process in Central America between 1990 and 1995 and to provide help to displaced persons, refugees, and returnees. As the program was very successful, there are currently attempts to realize similar models with the sponsorship of ILO in Angola, Bosnia, Cambodia, Croatia, Djibouti, Mozambique, Somalia and Tajikistan.⁹

LEDA has worked on various projects such as the development of the local economy, the development of economic opportunities by local mechanisms, reconstruction and the provision of infrastructure in areas that have experienced conflict, the social re-integration of returnees, the provision of services such as healthcare and education, and capacity-building designed to protect the economic interest of stakeholders. The regions chosen for the program were areas where intense conflicts had occurred; areas that had produced high numbers of refugees; where there were high levels of economic and social discrimination; where state organizations were scarce and weak, the infrastructure was damaged, poverty was widespread; and where there was a mutual sense of mistrust between the state and the IDPs. The program's basic goals were developing human rights, reaching consensus on development issues, facilitating the return process, providing basic services such as healthcare, education, and shelter, and boosting the local economy. The main objective here is to make return lasting by providing financial and technical incentives to returnees and thereby regenerating agriculture and repairing the damaged infrastructure. The main lesson to be drawn from this example is that these kinds of programs can lend durability to the return process by developing regional and local development and that third parties can play a significant role in facilitating the process.¹⁰

Even in Asian countries where assistance by international organizations is considered by the states as an attack against their sovereignty, the UN's help has been influential toward finding a solution for internal displacement. For example in Sri Lanka, the state has developed projects with the UN regarding return and settlement, and the Liberation Tigers of Tamil Eelam ("LTTE") has participated in these projects.

Apart from Latin America, there are not many instances where NGOs have been able to protect the rights of IDPs vis-à-vis the state or where they have exercised pressure in the enactment and implementation of the necessary laws. In the case of Algeria, for instance, the absence of a unity among NGOs strong enough to attract the attention of international organizations has resulted in an unsuccessful return project. In Asia, issues similar to those in Turkey can be encountered in Burma, Sri Lanka, the Philippines, Nepal and Indonesia (Aceh). Large-scale returns have occurred only in Indonesia and Sri Lanka. In Afghanistan, although the situation is dissimilar, return is encouraged through the UN's efforts; but the UN's influence in this case is seen as questionable by many organizations. The common issue in all of

9 World Bank (undated-c).

10 UNOPS/ILO (undated).

these instances is related to land and property rights. The inability to protect these rights is partially due to the lack of an effective solidarity network among NGOs that are able to negotiate at the national level. The inability to achieve an environment of peace and the non-clearance of landmines can be listed among the reasons preventing return in India. The conclusions to be drawn from all of these not-so-successful examples can be summarised as follows:

- i. The return process must be carried out in parallel with efforts to achieve a sustainable peace/cease-fire and with the clearing of landmines in areas of conflict. It must be remembered that these constitute significant factors for a durable and sound return process.
- ii. In order to achieve the protection of land and property rights, there is need for a strong regional and national committee/group to protect the rights of the IDPs and to participate in negotiations on their behalf.
- iii. A durable return can only be achieved by providing the necessary economic and social infrastructure. Moreover, the active participation of both local and international organizations and their endorsement of the process are necessary pre-conditions of durability.

2. REFLECTIONS ON TURKEY AND POLICY PROPOSALS

Turkey is not precisely comparable in terms of the implementation of the literature briefly summarized above and the duplication of successful examples. In many of the above examples, civil wars took place among different ethnic groups or classes. What distinguishes internal displacement in Turkey and makes return proposals problematic is the fact that the dispute in Turkey has taken place between the state's armed forces and the Kurdistan Workers' Party (*Partiya Karkerên Kurdistan* - "PKK"), and that an official cease-fire is and will continue to be out of the question. What is even more problematic is that there is neither a respondent party for the conflict-resolution process nor an organization to represent IDPs, as is the case in the other examples.

The literature on conflict resolution and the examples discussed here show that the most suitable environment for return can be achieved when the state, NGOs, and international organizations work together and in a participatory manner. Workshops and meetings to discuss the nature of the issue are most essential for a sustainable return. A roadmap jointly generated by these parties is needed for the development of possible solutions. The presence of NGOs representing IDPs can be very helpful in regional committees that play a role in the establishment of compensation alternatives.

A conclusion to be drawn from the above examples is that international organizations need to be more influential. As shown by the Latin America example, solutions are

more easily reached and are more durable in cases where regional organizations accept the Guiding Principles and play a facilitating and influential role. The internal displacement that occurred in Turkey did not spread on any grand scale to the region of Europe (apart from a few countries in Europe) nor has it resulted in major regional instability. However, this has resulted in insufficient and delayed interest on the part of international organizations.

The reconciliation necessary to achieve sustainable return requires the empowerment of the weak parties so that they can be represented and their rights can be protected, along with the development of projects in this field, and the participation of local communities in these projects. NGOs need to be trained in the areas of capacity-building and awareness-raising. Conflict-resolution training has produced positive results in many places in its attempts at creating an environment of peace for populations who have suffered from conflict. For example, projects and trainings financially and technically supported by various international organizations in Sri Lanka have enabled progress in the resolution of conflicts between the Sinhalese, Tamil, and Muslim populations. In the case of Turkey, there is no community-based conflict of this kind, but such practices can generate productive solutions in the resolution of other issues. For example, this kind of training can produce significant results in the reconciliation of village guard and non-village guard villages in Eastern and Southeastern Anatolia, and in the eradication of mistrust between IDPs and state organizations (in particular the police, the army, and the security forces). Moreover, such work can also be useful in overcoming post-displacement tension experienced in urban areas (such as the Arab-Kurdish conflict in the province of Mardin in Southeast Turkey). Similarly, capacity-building can facilitate the dissemination of the Guiding Principles via the NGOs and the local population can be more effectively informed of their citizenship rights.

The most important problem to overcome in the field of return and reconciliation is the stage of dealing with the past. What emerges both from the literature and various country experiences, is that dealing with the past is very important and that its implementation can certainly present manifold problems. As the following chapters will address, even various legal and political instruments adopted by the government to address internal displacement propose different dates for the onset of this problem. While the scope of Law no. 5233 titled “Law on Compensation for Losses Resulting from Terrorism and the Fight against Terrorism” (“Compensation Law”) begins in 1987, the Framework Document entitled “Measures on the Issue of IDPs and the Return to Villages and Rehabilitation Project” (“Framework Document”) dates the events back to 1984. The facilitation of discussion on the origins of this situation in Turkey will, of course, help to overcome problems raised by this issue. Just as conflict is a process, so too is reconciliation. It is an important and essential process in order to achieve sustainable return and to avoid renewed internal displacement.

Internal Displacement: Developments in International Law and Practices in Other Countries

DİLEK KURBAN

Internal displacement, the existence of which has only recently been officially acknowledged in Turkey,¹ has also been ignored for a long time by international law and the international community. Policies that should be developed towards finding a durable solution to the issue, the role to be played by governments, international organizations, and civil society, as well as the role to be assumed by international law, have been matters of international debate in recent years. Although developments and discussions on both international and national platforms indicate how difficult it is to achieve a durable solution, they also display the necessity to take into account international norms and experiences.

This article discusses the post-Cold War transformation undergone by international law, which for a long time has excluded from its scope people who have been displaced as a result of armed conflicts but who, unlike refugees, have remained within national borders; it examines the significance of the “Guiding Principles on Internal Displacement” (“Guiding Principles”) in international law as well as their adequacy in meeting the needs of the internally displaced persons (“IDPs”); it analyzes the developments in international law concerning the protection of the property rights of IDPs and the experiences of some other countries. Finally, it discusses the subjective circumstances of Turkey’s internal displacement issue in light of international principles and practices.²

1. THE EMERGENCE OF INTERNAL DISPLACEMENT IN INTERNATIONAL LAW

The perception and acknowledgement of IDPs as being under the realm of international law, coincides with the period following the Cold War, when in many cases traditional wars among states were replaced by civil wars and internal conflicts. At the end of the 1980s, a large mass of displaced persons emerged as a

¹ See Chapter III in this book.

² As mentioned in the “Introduction to the Turkish Edition,” the definition of internal displacement in the Guiding Principles covers people who have been displaced due to conflicts, as well as due to natural disasters and development projects. However, as the book deals with internal displacement that has occurred during the State of Emergency in Turkey, this article will evaluate the international law and practices from the point of view of conflict-induced internal displacement only.

result of the displacement of millions of people during civil wars in South America and in Africa. These masses consisted of *refugees* covered by the 1951 Convention Relating to the Status of Refugees (“Refugee Convention”)³ because they had crossed an international border; as well as *IDPs*, who numbered in the millions but who, not having left their countries, did not fall under the protection of refugee law. In the 1990s, the number of IDPs exceeded that of refugees. Yet, there did not exist an organization to provide humanitarian aid to IDPs akin to the services provided for refugees by the Office of the United Nations (“UN”) High Commissioner for Refugees (“UNHCR”). This situation has eventually motivated the international community to search for a solution.

The main political motivation behind this search was the fact that the international refugee regime, with its Euro-centric and individual-based approach, was insufficient to respond to the mass flow of IDPs originating from under-developed countries.⁴ The Refugee Convention, designed with the aim of solving the “refugee problem” in Europe caused by World War II, provided protection to individuals who fled their countries “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.”⁵ However, the picture emerging at the end of the 1980s was one in which internally displaced populations were either targeted on grounds of their race, ethnic identity, religion, etc. and/or fled civil wars, armed conflicts, or natural disasters. These populations were beyond the scope of the UNHCR and faced a growing worldwide inhospitality to refugees, especially on the part of developed countries which wished to grant asylum to limited numbers of people. In response to the emergence of this new phenomenon, the international community focused its efforts on *controlling* and *preventing* a mass flow of IDPs.⁶ In this sense, initiatives to address internal displacement were connected to the desire of the international community to stop mass flows of refugees.⁷ The general acknowledgment that internal displacement is not only a question of humanitarian aid, but also a political and strategical problem that constitutes a threat to regional and international security has been influential in securing a place for this issue on the agenda of the international community.⁸

However, what lies at the base of such initiatives is also the criticism that the international humanitarian law regime makes an arbitrary distinction among the displaced. The classification of persons who have been displaced for similar reasons - as “refugees” or “IDPs” - on the basis of whether or not they have crossed an

3 UN (1951).

4 Bagshaw (2005).

5 UN (1951): Articles 1a and 2.

6 Bagshaw (2005).

7 Cohen (1994) and Deng (1995).

8 Cohen (2003a).

international border has been criticized both on the basis of making an unjustified distinction among people who had suffered from the same environment of conflict⁹ and on the ground that these categories are not static.¹⁰ Unlike refugees, IDPs do not enjoy the protection of an international legal regime responsible for providing them with special protection or humanitarian aid.¹¹ While the UNHCR has started to provide humanitarian aid to IDPs in certain countries since the 1970s, it exercises wide discretion on the necessity, timing, and characteristics of such aid.¹² This regime leaves IDPs - who are among the groups that need international attention the most due to the fact that they are subject to the jurisdiction of the governments which may have inflicted their suffering - in a vacuum.¹³

As a result, efforts to establish an international regime to prevent the mass flow of IDPs from impoverished countries as well as to provide aid and protection for IDPs resulted in the UN taking action at the beginning of the 1990s. The Guiding Principles were the fruit of this initiative, which began when a group of non-governmental organizations (“NGOs”) decided to mobilize member countries.

2. THE GUIDING PRINCIPLES AS A “SOFT LAW” MECHANISM

What motivated the UN in this process was the fact that international initiatives targeting IDPs were provisional, unforeseeable, and short-term. The few initiatives that reached a small number of IDPs were limited to humanitarian aid and did not meet IDPs’ needs for protection. At the request of the UN Commission on Human Rights in 1992, the UN Secretary-General appointed Francis Deng as the Representative of the UN Secretary-General on Internally Displaced Persons (“the Representative”). On the Commissioner’s request that emphasis be given to the protection of human rights of IDPs, as well as the provision of humanitarian aid to IDPs, Deng initiated a six-year long study of international human rights law, humanitarian law, and refugee law. The end result of this collaborative effort was the Guiding Principles which were acknowledged by the UN Commission on Human Rights in 1998.¹⁴

The Commission’s request that current legal principles be examined in order to develop “an appropriate framework” to provide protection for IDPs, gave the Representative ample room to maneuver.¹⁵ Therefore, instead of resorting to traditional legislative processes in which international conventions are drafted through diplomatic negotiations, the Representative organized meetings over a long

9 Brun (2003).

10 Martin *et al.* (2005).

11 Deng (1995) and Mooney (2003a).

12 Martin *et al.* (2005).

13 Brun (2003).

14 Deng (1995).

15 UN Human Rights Commission (1996).

period of time, which brought together NGOs and academics specializing in the field of refugees, human rights, and humanitarian law. One of the main issues examined in this process concerned whether there was a preference for a convention which would be binding on member states but would be limited in content, or for a non-legally binding comprehensive “soft law” document.¹⁶ In the end, substance was preferred over power of enforcement and the Guiding Principles were adopted as a soft law instrument. The fact that the multiplicity of views and positions among member states in the aftermath of the Cold War has increased and made inter-governmental negotiations more difficult as well as the increased risk of veto of international conventions, were influential factors in the choice of this method.¹⁷

As a result of their research, the Representative and his team came to the opinion that international human rights law and humanitarian law principles met many protection and humanitarian aid needs of IDPs, but that there remained significant legal loopholes and uncertainties.¹⁸ The Guiding Principles’ main contribution is seen to be the re-statement of international principles from the point of view of the specific circumstances and needs of IDPs¹⁹ as well as its sound basis in international law²⁰. An alternative view sees the Guiding Principles as no more than an unnecessary reminder for governments - the main causes of internal displacement to begin with - of their duties under human rights law which they have already violated.²¹

In the final analysis, whether or not governments comply with the Guiding Principles - which do not have a legal binding power or an effective sanctioning mechanism - depends on their own political will. Still, the Guiding Principles are a normative tool offering new avenues for effective advocacy and policy activities on behalf of IDPs. In fact, UN organizations, regional organizations, NGOs, and an ever increasing number of governments have started making use of the Guiding Principles in the development of new policies, laws, and programs.²² Recent research indicates that when the Guiding Principles are implemented, especially by means of national laws, they provide the most effective protection for IDPs.²³ That state parties to the Organization for Security and Cooperation in Europe (“OSCE”) have stipulated their recognition of the principle of return “in safety and dignity,” is another

16 Bagshaw (2005). However, Walter Kälin, who was appointed as Francis Deng’s successor, pointed out that the Guiding Principles, which, unlike statements, decisions and recommendation documents of international organizations were not discussed by member states, do not constitute “soft law.” Kälin (2001b). Kälin states that the Guiding Principles, drawn up by a group of specialists, are even softer than soft law.

17 Kälin (2001a).

18 Deng (1995).

19 Mooney (2003a), Holland (2004), and Martin *et al.* (2005).

20 Kälin (2001a).

21 Barutciski (1998).

22 Cohen (2003a).

23 Martin *et al.* (2005).

indication of the increasing legitimacy of this document.²⁴ The Guiding Principles have also been echoed in the Council of Europe through a reference by the European Court of Human Rights (“ECtHR”) in its *Doğan and Others* judgment concerning internal displacement in Turkey.²⁵

3. AN EVALUATION OF THE GUIDING PRINCIPLES IN THE CONTEXT OF INTERNAL DISPLACEMENT

Under the Guiding Principles, the main responsibility for the provision of protection and humanitarian aid to IDPs lies with the state, on the basis of the principle of sovereignty.²⁶ However, if governments do not fulfill this duty, they are obliged to allow international organizations to help the IDPs and to facilitate the process.²⁷ Although the international community has been allowed to intervene in many such cases in the near past, it has exercised its right of access only in a few cases, and when it has, there have been significant inconsistencies between the nature, the degree, and the length of such interventions. The UN Security Council has resorted to military interventions in exceptional cases, it has enforced economic sanctions in a few cases, has done little more than issue diplomatic warnings in others, and has taken no steps in many others. The lack of political will and the inconsistent stance on the part of the international community indicate the importance of durable and effective institutional mechanisms towards providing protection and humanitarian aid to victims of forced migration in general, and to IDPs in particular.

The Guiding Principles impose duties and responsibilities on states in four stages: 1) protection against displacement; 2) protection during displacement; 3) post-displacement humanitarian aid; and 4) return, re-settlement, and re-integration. Whatever the circumstances, states are responsible for providing IDPs with minimum healthcare equipment, food, shelter, clothes, and clean drinking water in a non-discriminatory way. As for finding a durable solution to the problem, two separate routes are foreseen: 1) the return of IDPs to their homes; and 2) their settlement in other places.²⁸ What matters here is that this decision is made by the IDPs themselves and that it is made voluntarily. The state is responsible for developing the circumstances necessary for the return or resettlement of IDPs and to facilitate the reintegration of both IDPs who have returned and those who have resettled. This principle has also been emphasized by the ECtHR in its *Doğan and Others* judgment.²⁹ That is to say, return constitutes only one of the options foreseen for a durable solution and IDPs have the right to return as well as the right to remain where

24 OSCE (1999).

25 ECtHR (2004f).

26 UN (1998): Principle 3, and Cohen (2003a).

27 UN (1998): Principle 30.

28 *Ibid.*: Principle 28.

29 ECtHR (2004f).

they are. Moreover, the Guiding Principles call for enabling IDPs' full participation in the return or re-settlement and re-integration processes; the restitution of their properties or the payment of just compensation where restitution is not possible; and enabling and facilitating assistance by international organizations.

In spite of the increasing normative power of the Guiding Principles, they continue to be inadequate for developing a comprehensive, effective, and durable solution to the problem of internal displacement. Although the document emphasizes the right to return, it does not lay out the conditions that should be created to facilitate the exercise of this right. Furthermore, issues such as the disarmament and re-integration of parties to the conflict, the identification and punishment of the perpetrators of human right violations - which are critical for the achievement of peace and justice - are not addressed in the Guiding Principles. Finally, the fact that the conceptual foundation of the document is based on the principle of national sovereignty and that steps to be taken to address the problem are left to the will of governments, makes the Guiding Principles inaccessible for IDPs in countries where the authorities do not acknowledge the existence of the problem or do not allow access to international organizations to take part in resolution efforts.

4. RESTITUTION OF PROPERTY RIGHTS: INTERNATIONAL LAW AND PRACTICES

Following the examination of international human rights law and international humanitarian law, the Representative formed the opinion that there were legal uncertainties and loopholes preventing the solution of IDPs' problems. Among these loopholes was the protection of the property rights violated during the internal displacement process.³⁰ There was no organization or mechanism that IDPs could resort to in cases such as long-term inability to access their goods and properties, damage to or confiscation of their properties during their absence from their homes, and the lack of compensation for these damages. Although IDPs had property rights arising from general human rights, in the case of the violation of these rights during internal displacement, their rights to have their property restituted or to obtain compensation for the damages incurred, was not properly protected. Taking this as a starting point, the Guiding Principles emphasized that property rights conferred by the general human rights conventions implied the restitution of their properties to IDPs or the granting of their right to compensation: "Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation."³¹

³⁰ Deng (1995).

³¹ UN (1998): Principle 29; para 2.

In fact, since the early 1990s there has been a visible tendency to protect the property rights of IDPs particularly within the framework of regional human rights instruments.³² For example, in its decision concerning the human rights of the Miskito people in Nicaragua, the Inter-American Commission for Human Rights has recommended the compensation of damages incurred on the goods and property of returning IDPs.³³ The World Bank's Operational Policies on Involuntary Resettlement foresee the payment of compensation for the resettlement of people who have been displaced because of development projects.³⁴ On the other hand, in its decision concerning Turkey, the ECtHR ruled that in the case of petitioners who were internally displaced, they were not permitted to return and, therefore, were not able to access their property. Furthermore, they were not compensated for their property and, therefore, their property rights, protected by the European Convention on Human Rights ("ECHR"), have been violated.³⁵

The UN Principles on Housing and Property Restitution for Refugees and Displaced Persons, also known as the "Pinheiro Principles," were adopted in August 2005 by the UN Sub-Commission on the Protection and Promotion of Human Rights ("Sub-Commission"). They constitute the most concrete example of the international initiatives towards the restitution of the property rights of IDPs.³⁶ The Pinheiro Principles, which are soft law instruments named after Paulo Sérgio Pinheiro, the Special Rapporteur appointed by the Sub-Commission, re-state the rights and principles that are guaranteed under international human rights law in the context of the property problems of refugees and IDPs. Regardless of the reasons or circumstances behind internal displacement, the Pinheiro Principles are applied equally to all refugees and IDPs whose homes, lands, and properties have been arbitrarily or unlawfully confiscated.³⁷ The Principles state that the restitution of the property rights of IDPs is an important element of restorative justice;³⁸ that all refugees and IDPs have the right to have any land or property, of which they were arbitrarily or unlawfully deprived, restored to them or to be compensated in cases where this is impossible;³⁹ that this right is not prejudiced by the return of refugees or IDPs;⁴⁰ that refugees and IDPs have a right to pursue durable solutions to displacement other than return; and that this does not prejudice their right to restitution of their property rights.⁴¹ With these objectives, the principles emphasize

32 Deng (1995), Bagshaw (2005), and Kälin (2005).

33 Bagshaw (2005) and Kälin (2005).

34 Bagshaw (2005) and Kälin (2005).

35 ECtHR (2004a).

36 UN (2005).

37 *Ibid.*: Principle 1.2.

38 *Ibid.*: Preamble.

39 *Ibid.*: Principle 2.1.

40 *Ibid.*: Principle 2.2.

41 *Ibid.*: Principle 10.3.

that states should establish equitable, timely, independent, transparent, and non-discriminatory procedures, institutions, and mechanisms to enforce property restitution;⁴² provide all relevant agencies with adequate financial, human, and other resources;⁴³ establish guidelines pertaining to institutional organization, staff training, investigation of complaints, enforcement, and appeals mechanisms;⁴⁴ adopt measures to ensure that women and children are able to participate on a fully equal basis in this process and that the process is timely, accessible, and free of charge;⁴⁵ ensure that all affected persons, regardless of whether they are in their countries of origin or in countries to which they have fled, are made aware of the process;⁴⁶ develop restitution claims forms that are simple and easy to understand and use, and make them available in the native languages of the people affected;⁴⁷ ensure that legal aid is provided to poor victims;⁴⁸ and ensure the protection of traditional rights of possession.⁴⁹ The principles recommend that, in situations of mass displacement where little documentary evidence exists as to ownership or rights of possession, the states adopt the conclusive presumption that persons fleeing their homes during a period of violence or disaster have done so for reasons related to violence or disaster and are therefore entitled to the restitution of their property rights.⁵⁰

The efforts made by the international community for the restitution of IDPs' property rights can not be considered independently from international politics. The mass migration movements following the Cold War forced the international community not only to make an effort to stop or prevent these movements but also to seek ways to reverse this migration. Emphasis on the property rights of IDPs should also be evaluated within this context. Although the formation of an entirely novel international legal mechanism for the restitution of the property rights of refugees and IDPs through the enactment of the Pinheiro Principles constitutes a significantly positive development, it is also of interest from the point of view of the political concerns it points to. In fact, the international community has not acted with equal determination in the identification and punishment of the perpetrators of human rights violations against IDPs.

However, the advocacy of property rights on the basis of return, rather than human rights is not only problematic in principle, but it is also questionable in light of the international experience. Although the international community demonstrated an

42 *Ibid.*: Principle 12.1.

43 *Ibid.*: Principle 12.3.

44 *Ibid.*: Principle 12.4.

45 *Ibid.*: Principle 13.2.

46 *Ibid.*: Principle 13.4.

47 *Ibid.*: Principle 13.7.

48 *Ibid.*: Principle 13.11.

49 *Ibid.*: Principle 15.

50 *Ibid.*: Principle 15.7.

unprecedented effort to prevent the intensive flow of refugees from Bosnia and Croatia to Western Europe in the beginning of the 1990s, undertook comprehensive legal measures, committed large financial resources for the restitution of property rights to IDPs, and closely monitored the situation; the return process was not as speedy or as effective as expected. In Croatia, although the government took comprehensive legal measures for the restitution of properties or the payment of compensation to Serbian IDPs, for the provision of state aid toward the reconstruction of their homes, and for the provision of permanent alternative shelter when necessary, only a very small portion of the internally displaced Serbian minority has been able to return.⁵¹

On the other hand, Annex 7 of the Dayton Peace Treaty - which ended the civil war in Bosnia - foresaw the restitution of confiscated goods and properties of IDPs in order to achieve the return of ethnic/religious minorities displaced as a result of the war to a region where other ethnic/religious groups constituted the majority (Article 1). However, as the restitution of property rights linked to the return process did not achieve its objectives, the international community began to follow a new strategy that emphasized human rights.⁵² Nowadays Bosnia is considered to be one of the few good examples where the property rights of IDPs are protected. One of the main reasons for the return of half of the refugees and IDPs (approximately one million people) in the ten years following the end of the war is believed to be the restitution of properties under the watchful eye of the international community.⁵³ However, the optimistic view that the restitution process of property rights in Bosnia has had positive results on the return process is met with a degree of caution on the grounds that not all IDPs who are entitled to the restitution of their property have made a permanent return, and that many people have later either sold or rented out the property that had been restored to them.⁵⁴ Therefore, merely developing a legal framework for the restitution of property rights does not *ipso facto* guarantee return.

Although Bosnia and Croatia - in spite of the problems experienced in these countries - are considered as good examples in terms of the restitution of property rights of IDPs, it must be borne in mind that these countries are situated in Europe and that the main concern of European countries was to secure the return of refugees within their borders to the countries of origin. The main political concern behind the high amounts of international financial aid provided and the long-term international institutional presence in these countries was to guarantee European security and to enable refugee return. In this sense, whether or not Bosnia and Croatia constitute "good examples" for other countries should be carefully pondered. However, if the

51 Global IDP Project (2005a).

52 *Ibid.*

53 *Ibid.*

54 Williams (2006).

Pinheiro Principles - which were enacted in August 2005 and the implementation of which has not yet begun - can acquire the same normative power and legitimacy as the Guiding Principles, this may result in achieving progress towards the protection of the property rights of IDPs.

5. TURKEY IN LIGHT OF INTERNATIONAL LAW AND OTHER COUNTRY EXAMPLES

There is no doubt that an important threshold has been crossed regarding the provision of humanitarian aid and protection to IDPs. Especially after the enactment of the Guiding Principles, the issue of internal displacement has irrefutably become part of the agenda of international and regional organizations, governments, and NGOs. The best achievement has probably been the establishment of the understanding that IDPs need the protection of the international community and the normative power that the Guiding Principles have acquired. However, there are factors that cast a shadow on these achievements: the fact that the UN's increasing interest in the issue is motivated by the objective to stop and prevent mass displacement originating from underdeveloped countries, that the political will behind the initiatives of developed countries is indexed to security rather than human rights, and that there is no internationally binding organization or mechanism with the power to provide protection and humanitarian aid to IDPs. The point of major criticism for initiatives based on international law is that, rather than bringing a comprehensive approach to internal displacement, they are limited to efforts to solve problems such as return, integration, and the restitution of property rights. However, the indispensable condition for the reparation of damages incurred by IDPs is the identification and punishment of the perpetrators of the human rights violations that they have experienced.

On the other hand, leaving decisions regarding a solution to the problem of displacement to the will of governments results in great differences among country practices. In the final analysis, each country's internal displacement issue is "unique" due to their historical, political, and sociological subjectivities. In this sense, the objective of examining other country examples in the search for a solution to Turkey's own internal displacement problem should be seen more as along the lines of "learning a lesson" rather than "finding a good example to take as a model." One of the main lessons to be drawn should be that a comprehensive, properly thought-out, government policy formed through democratic processes with the participation of civil society is essential. Gathering all authority and responsibility under one central body and achieving coordination among all public units and officials is important from the point of view of the accessibility of public services. On the other hand, over-authorizing a public organization and not establishing the limits of its authority can cause bureaucratic obstacles and delays in IDPs' access to public services (as, for example, in Colombia or Sri Lanka). The effective implementation

of government policies is possible through the provision of the necessary financial, logistical, and human resources. In Colombia, which is described as “the country with the most comprehensive re-structuring world-wide” regarding IDPs, there is a system functioning at the national, regional, and local levels; a comprehensive law regulating the rights of IDPs and the responsibilities of the governments at all levels; and a single official institution in charge of all displacement-related laws and regulations. Moreover, IDPs’ access to education and healthcare services has been achieved. However, factors such as the inadequacy of institutional and financial resources set aside for the implementation of this regulatory framework, the lack of political will, and the tension among central and local officials result in the failure to develop a durable solution.⁵⁵

In the final analysis, a durable and democratic solution for Turkey’s internal displacement issue requires that international principles as well as lessons drawn from other countries’ experiences are taken into account, and also that the subjective conditions of the problem in Turkey are considered as well. Because internal displacement happened a long time ago, the imminent need of IDPs in Turkey is no longer the provision of humanitarian aid. Moreover, the fact that a significant part of the IDPs will not or cannot return to their places of origin transforms internal displacement into an urban issue in Turkey. Therefore, a component of policies that will be developed in Turkey should address the education, employment, and healthcare needs of IDPs in urban areas. One of the main expectations of IDPs in Turkey is the identification and punishment of the perpetrators of the human rights violations that occurred during the process of internal displacement. Taking measures to respond to this demand must be seen as a prerequisite for a durable solution to the issue. Consequently, the active participation of NGOs and of representatives of IDPs in the search for a solution, the development of legal measures via democratic decision-making processes which reflect the needs and expectations of society, and the establishment of a transparent and participatory mechanism to effectively monitor the implementation of such policies should constitute the main principles in designing policies targeting IDPs.

■ 55 Martin *et al.* (2005).

Internal Displacement: A Mental Health Perspective

A. TAMER AKER

Internal displacement carries not only political, legal, and socio-economic ramifications, it also affects the physical and psychological health of individuals, as Yüksekler points out in Chapter V.¹ There is generally a close connection between the physical and socio-economic circumstances of internally displaced persons (“IDPs”) and their state of psychological health. The objective of this article is to establish the relationship between internal displacement and psychological problems by examining the psychological troubles resulting from traumas suffered by IDPs in different parts of the world. This article also introduces the literature related to psychological problems suffered by refugees and IDPs in other countries.

1. FORCED MIGRATION AND PSYCHOLOGICAL PROBLEMS

In order to understand the psychological effects of internal displacement, it is necessary to define the concepts of migration and forced migration. Although migration is defined as voluntary action by an individual, people have been forced to migrate involuntarily throughout history. Wars are among the main triggers of this kind of migration. It thus becomes possible to speak of a “forced” migration. Forced migration should be classified in two groups, depending on whether or not country borders have been crossed. Accordingly, forced migrants who cross borders are called refugees while those who do not are called IDPs. Irrespective of whether forced migration remains within country borders or results in a refugee flow, it is a psychologically traumatic process, which determines the psychological state of migrants in three different stages: before, during, and after forced migration.

1.1. PRE-MIGRATION PSYCHOLOGICAL PROBLEMS

When compared with voluntary migration, forced migration cannot be said to consist of a single traumatic event. Victims of forced migration are subject to trauma such as war, torture, physical or sexual assault, rape, and death threats.² Such a life by itself qualifies as psychologically traumatic.

1 See Chapter V, Yüksekler, “Internal Displacement in the Province of Diyarbakır: Return, Urban Issues, and Implementation of the Compensation Law” in this book.

2 Aker *et al.* (2002), Kreisber-Voss *et al.* (1998), Petersen and Wandall (1994), Tienhoven (1993), and Baker (1992).

It is also highly probable that such events have been occurring for a long time in environments of forced migration, where conflicts or human rights violations are common. From a psychological perspective this situation is significant in two ways: 1) individuals may have been suffering from such trauma for a long time, they may have witnessed such events, or they may have heard of similar events happening to their loved ones; and 2) although traumatic events are mainly of human origin, they cannot be said to be of a single type. People can therefore encounter traumatic events of a complicated and differing nature.

Societies affected by such events are generally in “differentiating” positions in terms of important factors such as ethnic origin, culture, and language. Moreover, other factors such as negative parameters for community health and inequitable access to healthcare services constitute significant data from the perspective of psychological health.

1.2. PSYCHOLOGICAL PROBLEMS DURING MIGRATION

What triggers forced migration is generally a traumatic situation. This is perpetuated with the disintegration and reunification of families. The decision “to leave the home, the homeland, the family hearth” has been taken and the process has begun. Many emotional problems such as mistrust, solitude, and mourning are triggered during this process.

1.3. POST-MIGRATION PSYCHOLOGICAL PROBLEMS

The effects of all negative psychological and social events are transferred to this period. IDPs report that following migration, their life standards drop, they either become unemployed or are only able to find temporary work - many work seven days a week with no social security - the women and children in their families must work, and that the family has problems finding adequate shelter. All of these can result in new psychological problems. It is difficult to say that people will definitely be negatively affected in the post-migration period. However, it would be correct to say that, in general, the frequency of psychopathology is higher among communities experiencing all three of these hardships.³

2. PSYCHOLOGICAL EFFECTS OF INTERNAL DISPLACEMENT

As of the early 2000s, approximately 25 million people were estimated to have been internally displaced due to conflicts or human rights violations.⁴ Unaccompanied children, children who act as heads of the family, child soldiers, people subjected to torture or sexual violence, the handicapped, mentally ill patients, and the elderly

3 Kara (1997), Aker *et al.* (2002), Kreisber-Voss *et al.* (1998), Petersen and Wandall (1994), Tienhoven (1993), and Baker (1992).

4 WHO (1999).

constitute groups requiring special attention among the IDPs. More than one third of IDPs worldwide - approximately 9 million people - live in environments where their lives are in continuous danger.⁵ Consequently, many of them die of hunger or illness. Others generally attempt to survive in places proximate to active war, in spite of a lack of proper shelter, nutrition, and health standards. Constantly subject to attacks by either rebel groups or security forces, IDPs are sometimes forced to change residences repeatedly and generally have no access to humanitarian aid. Women and children, who constitute a significant part of the internally displaced population, are frequently subjected to sexual abuse. Moreover, most IDPs live in countries where poverty, natural disasters, and contagious diseases such as HIV/AIDS are very common. The survival of most of these IDPs - who have been banished from their property and their means of livelihood - depends on humanitarian aid, which is all too infrequent.⁶

Humanitarian complex emergency cases⁷ that worsen due to man-made traumas (especially following the Cold War) bring about, not only serious political consequences, but also negative circumstances affecting community health. These complex emergency cases of man-made disasters can cause a higher increase in the ratio of death and illness than any other natural or man-made disaster. Traumatic events of extreme violence are also said to increase this ratio as much as contagious diseases. Most of the illnesses arising from such situations are preventable. A considerable percentage of IDPs are known to suffer from ongoing psychological problems or to lead highly traumatic lives from a psychological point of view.⁸ Moreover, the World Health Organization ("WHO") estimates that a few million IDPs have problems affecting their psycho-social functionality.⁹ It must also be said that the vast majority of IDPs live in an environment of significant pressure and stress. It must not be forgotten that the majority of these problems are ordinary reactions given to extraordinary situations.

Because of the cognitive, emotional, and socio-economic problems arising from widespread human rights violations, about half of IDPs are said to suffer from various psychological troubles and problems, including psychological trauma and related problems.¹⁰ With the addition of problems arising from displacement-generating events - such as wars and armed conflict - which affect the healthcare infrastructure and availability of manpower, it becomes more and more difficult to

5 *Ibid.*

6 WHO (1999), Petevi (1996), Petevi *et al.* (1999), and Cholewinski (2002).

7 The definition of complex emergency, as endorsed by the WHO, is "a humanitarian crisis in a country, region or society where there is total or considerable breakdown of authority resulting from internal or external conflict and which requires an international response that goes beyond the mandate or capacity of any single and/or ongoing UN country programme."

8 WHO (1999) and Petevi (1996).

9 WHO (1999).

10 WHO (1999) and Petevi (1996).

meet the increased needs of IDPs. Overshadowed by other problems of IDPs such as poverty and lack of adequate shelter, it can be said that psychological health needs go practically unnoticed or are not sufficiently addressed. Angola, Afghanistan, Cambodia, Somalia, Burundi, Rwanda, Sierra Leone, Kosovo, and Chechnya are regions where people frequently change their places of settlement as a result of traumatic events. The consequences of events in these regions will probably continue to remain in the individual and collective memory even following the implementation of peace treaties.

The effects of traumatic events such as murder, assault and battery, loss of home, torture, and sexual violence can persist for several generations.¹¹ Psycho-social problems arising from life in crowded camps, poverty, an uncertain future, and the collapse of social support systems should also be added to the above.

Many long-term psychological problems have been identified in IDPs during studies carried out especially in Africa and in other parts of the world. The process of internal displacement encompasses many traumatic events. Post-traumatic Stress Disorder (“PTSD”) is consequently one of the most frequently studied psycho-social problems among IDPs. As a result of all of these characteristics, it is only possible to understand the consequences of internal displacement via psychological trauma paradigms.

It is possible to find information concerning psychological problems suffered by IDPs and refugees - such as post-traumatic stress disorder, depression, somatization, and mourning, as well as intense anxiety and hopelessness - in the scientific literature on this subject.¹² A study carried out in Cambodia between 1975 and 1979 established that 55 percent of IDPs suffer from depression and 15 percent from PTSD.¹³ In another study carried out with refugees and IDPs, the rates of PTSD are reported as follows: 37 percent in Algeria, 28 percent in Cambodia, 18 percent in the Gaza Strip, and 16 percent in Ethiopia.¹⁴ The rate of PTSD among Somali refugees living in Europe was established as 38 percent, while that of subliminal PTSD as 60 percent.¹⁵ The rate of PTSD among Cambodian, Laotian, and Vietnamese refugees was of 50 percent.¹⁶ Another fact to be taken into account is that circumstances in the countries where individuals live affect their psychological health. The data in most of the studies was obtained from refugee camps. There is of course a difference between living in a camp and living in a home among the inhabitants of the country.¹⁷

11 *Ibid.*

12 Baron *et al.* (2003), Arcel (1999), Sir *et al.* (1998), Bilanakis *et al.* (1997), Baker (1992), Hondius *et al.* (2000) and Van Ommeren *et al.* (2002).

13 Mollica *et al.* (1993).

14 De Jong *et al.* (2001).

15 Roodenrijs *et al.* (1997).

16 Mollica *et al.* (1987).

17 Baron *et al.* (2003).

3. CONCLUSION

Forced internal and external migration (flows of IDPs and of refugees) are traumatic processes that trigger psychological health problems. As stated above, other events accompanying forced migration - human rights violations, etc. - as well as socio-economic deprivation and poverty can aggravate psychological problems. There is need to conduct research amongst IDPs and refugees living in different circumstances to find out the frequency and gravity of psychological problems. In conjunction with this, at the stage of providing protection for and humanitarian aid to IDPs, in addition to services addressing physical healthcare, mental health issues should also be taken into account and the relevant services should be provided.

CHAPTER III
INTERNAL DISPLACEMENT IN TURKEY:
THE ISSUE, POLICIES, AND IMPLEMENTATION

Internal Displacement in Turkey: the Issue, Policies, and Implementation

TURGAY ÜNALAN, AYŞE BETÜL ÇELİK, DİLEK KURBAN

1. INTRODUCTION

This chapter examines the government policies and practices on internal displacement in Turkey and the research carried out on the issue. The aim here is to provide a conceptual framework for the evaluations made in the fieldwork reports in Chapter V concerning problems in the implementation of government policies. Therefore, the content of current legislation and policies will be reported here, and evaluations concerning their implementation will be made in Chapter V.

This chapter consists of eight sections. The first section discusses international definitions and principles concerning internal displacement and internally displaced persons (“IDPs”), and places the problem of internal displacement in Turkey within that conceptual framework. The second section presents the available data regarding the quantitative dimension of IDPs in Turkey. Furthermore, various figures set forth by non-governmental organizations (“NGOs”) concerning the numbers of IDPs are reported here. In the third section, the Return to Villages and Rehabilitation Project (“RVRP”), launched by the Ministry of Interior and focusing on the groups of persons displaced in Eastern and Southeastern Anatolia, is introduced. The fourth section presents information about the provisional village guard system initiated during the State of Emergency.¹ The fifth section deals with landmines, which constitute a serious security problem in Eastern and Southeastern Anatolia, and discusses the steps taken by the Turkish government towards implementing the “Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and on their Destruction” (“Ottawa Convention”) it has recently acceded to. The sixth section presents information on the Law no. 5233 titled “Law on Compensation for Losses Resulting from Terrorism and the Fight against Terrorism” (“Compensation Law”) passed by the Turkish Grand National Assembly (“Turkish Parliament”) in July 2004. The seventh section deals with a framework document

1 First declared in a number of provinces in Eastern and Southeastern Anatolia in 1987 and progressively expanded to others in the early 1990s, the State of Emergency was fully terminated in 2002 as part of the political reforms undertaken by the Turkish government towards accession to the European Union. During the State of Emergency, the region was governed under a special legal regime under the authority of the Regional Governor of the State of Emergency. It was during this period, particularly in the early 1990s, that massive internal displacement took place in Turkey.

issued by the Council of Ministers on 17 August 2005, titled “Measures on the Issue of Internally Displaced Persons and the Return to Village and Rehabilitation Project in Turkey” (“Framework Document”). Lastly, the final section presents information on the data collection and planning activities carried out by the government in the 2000s regarding the problems arising from the displacement process in Eastern and Southeastern Anatolia and the possibility of investments in rural areas within the return process.

2. INTERNAL DISPLACEMENT AND INTERNALLY DISPLACED PERSONS

When talking about the re-establishment of citizenship rights in the aftermath of internal displacement in Turkey, it is pertinent to establish a comprehensive definition, in accordance with international literature and international law, of the group whose rights have been violated.

The definition accepted by the international community is the definition found in the “Guiding Principles on Internal Displacement” (“Guiding Principles”), which are acknowledged by the United Nations (“UN”) and which reflect the principles of international human rights law and international humanitarian law.² According to this definition, IDPs are “*persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.*” This definition includes groups of persons displaced for three different reasons, therefore three groups, each with different characteristics.

Displacement situations arising from natural disasters such as earthquakes, floods, volcanoes, or soil erosion and human-made disasters such as radioactivity, nuclear leaks, and industrial accidents are described as *disaster-induced displacement*. As the obligation to change the habitual place of residence arises from natural or non-selective reasons, in such situations there is no differentiation or bias regarding the characteristics of the victims of these random and unforeseeable phenomena. As a result, in the majority of cases, aid is provided to the victims of disaster-induced displacement either in the short or in the long term, regardless of the victims’ characteristics such as language, religion, ethnic origin, etc.

On the other hand, the displacement of persons living in a particular inhabited area, in accordance with sufficient advance planning, and on the basis of a development project is classified as *development-induced displacement*. In situations where dam, highway, and airport construction; urban renewal plans; mining and environmental protection projects are implemented in accordance with such development policies, persons living in the areas where these activities will occur are generally forced to be

■ 2 UN (2005a).

displaced *en masse* to be re-settled in other areas. Yet, since these projects are generally planned sufficiently in advance, and the necessary measures are taken in order for the victims not to incur pecuniary damages, part of the problems encountered is solved in the short term. Still, it can be observed world-wide that losses arising from such cases of displacement are generally not sufficiently compensated.

Situations in which persons, regardless of whether there is use of arms or violence, are obliged to leave their places of residence where they live with their families or where they live together with other people, as a result of pressure by a person or a group, in order to avoid human rights violations, or because their lives are in danger, are described as conflict-induced displacement. The majority of displacement incidents that took place in Turkey during the armed conflict between 1984 and 1999 belong to this group. In cases of *conflict-induced displacement*, administrations and governments may be directly or indirectly responsible for the displacement as they are parties to the said conflict or disagreement. Displacements occur as a result of the direct or indirect pressure exercised by governments or by the groups in conflict with the governments. In the cases of conflict induced displacement, the problems arising from displacement are generally not resolved quickly, and instances in which internal displacement becomes permanent and cannot be solved for decades are frequently seen in many parts of the world.³

There is no official definition of internal displacement in Turkey that authorities agree on or use. According to the 1998 report by the Turkish Parliament Investigation Commission, the following are the reasons for forced migration: 1) people leaving their villages because of the collapse of animal husbandry and agriculture - a result of the ban on the use of pastures, and because of military operations/armed clashes; because of pressure exercised by the Kurdistan Workers' Party (*Partiya Karkerên Kurdistan* - "PKK") on villages in which there were village guards; and because of the intensification of military operations in villages that were regarded with suspicion by the security forces due to their refusal to become village guards; 2) the eviction by the PKK of certain villages and hamlets whose inhabitants accepted to become village guards; and 3) the eviction by security forces of villages whose inhabitants refused to become village guards, whose security could not be provided, or who were thought to aid the PKK.⁴ However, while the Turkish Parliament report mentions the evacuation and eviction of villages, it does not mention the forced migration of inhabitants from province and district centers. Yet, in the 1990s, an intensive wave of displacement occurred in various districts (for instance Lice, Kulp, Cizre) and even province centers (for instance Şırnak) of Southeastern Anatolia as a result of operations by security forces and armed clashes. Therefore, although the reasons given for displacement in the Turkish Parliament Report are in accordance with the

3 More detailed information on this subject is presented in Chapter II.

4 Turkish Parliament (1998), 31.

definition of IDPs as outlined for the first time in 1998 in the Guiding Principles, they are still problematic as they only include forced migration from rural settlements. The definition of IDPs in the Guiding Principles refers not only to people who were obliged to leave their villages, but, more generally, to people who leave their “places of habitual residence.”

Furthermore, as discussed below, in both the Turkish Parliament Report and the statements made by the Ministry of Interior in recent years, the number of people whose villages were evacuated/evicted include only 2 and 3 of the clauses mentioned above. Similarly, the wording “Resulting from Terrorism and the Fight against Terrorism” in the Compensation Law carries the risk of excluding those who fall under cause 1.⁵ This differential treatment of individuals who have suffered similar damages not only contradicts the definition in the Guiding Principles, but also violates the principle of equality protected by Article 10 of the Turkish Constitution.

The findings of the TESEV Working and Monitoring Group on Internal Displacement in Turkey (“TESEV Working Group”) fieldwork in Diyarbakır, Batman, Istanbul, and Hakkâri demonstrate that all three causes of forced migration mentioned in the Turkish Parliament Report are significant. The majority of the household representatives interviewed in the above-mentioned four provincial centers, in certain districts of Batman and Hakkâri, and in several previously evicted villages of Batman, told us that security forces had evicted their villages entirely, either without giving a reason or on the grounds that they had refused to become village guards. Some of them said that they were caught between PKK members who came to their villages to ask for food and the security forces who insisted that they do not help the PKK; hence, they left their villages because they feared for their safety. Several interviewees pointed out that, although their villages were not completely evicted, they were caught between fires during armed clashes, that several houses were demolished or burnt during these incidents, and that some families left their villages out of fear for their lives. Several interviewees said that the security forces or the PKK claimed that they supported the opposite side and targeted their families (inflicting injuries and beatings, opening gunfire on their houses or through arson). They had, therefore, been obliged to flee their villages. Several others said that, although they had not been directly exposed to danger and their own villages had not been evicted, they had migrated to provincial or district centers because they had not been able to till their fields or graze their flocks in a situation where the villages surrounding theirs had been evicted and the armed conflict continued.

As can be inferred from these eyewitness accounts and other available information, internal displacement in Turkey from the mid-1980s onwards is a much more widespread and large-scale phenomenon than merely the eviction of a limited number of villages and hamlets. Considering the extensive scale of internal displacement, it is

■ 5 Official Gazette (2004a): Article 1.

obvious that the number of evicted villages published by official institutions are rather low and do not reflect the totality of internal displacement cases. However, it should be noted that the authors of this book do not include, for the purpose of this study, those individuals who experienced forced resettlement in the same period in the eastern and southeastern regions due to natural disasters, such as earthquakes and floods, or due to dam projects in the category of displaced persons.

3. THE QUANTITATIVE DIMENSION OF INTERNAL DISPLACEMENT IN TURKEY

The Turkish Parliament Report mentioned above points out that, according to the State of Emergency Regional Governorship, as of 1997, in the provinces under emergency rule, in their adjacent areas, as well as in surrounding provinces, 905 villages and 2,523 hamlets were evacuated and 378,335 people migrated.⁶ However, according to figures presented by the Ministry of Interior within the framework of the RVRP, as of January 2006 a total of 358,335 people have been displaced from 945 villages and 2,021 hamlets which were evacuated. Since 1998, 137,636 of these people have returned to their villages.⁷

On the other hand, international organizations and national and foreign NGOs estimate the figure of IDPs in Turkey at between one and three or four million.⁸ However, most of these estimates are not supported by specific data; rather, they are used to indicate the extent of the population affected by the armed clashes and security problems in the region during the last 20 years.

In fact, the available information is not sufficient for determining the number of IDPs. According to the 1990 general population census, 540,821 persons migrated from the RVRP provinces to other provinces during the period between 1985 and 1990. According to the 2000 general population census, 628,470 persons migrated during the period between 1995 and 2000. Information on migration between 1990 and 1995 is not available, because the census interval was increased to 10 years and no other census took place in the interim period. According to the 2000 census, the ratio of people born in RVRP provinces but residing in other provinces at the time of the census was 30 percent (i.e. 2,819,749 people) of the total population born in the RVRP provinces (i.e. 9,323,430 people). However, these numbers reflect all types of migration (such as for security, economic, family, education, and earthquake-related reasons) and do not include returnees; it is therefore not possible to establish a link between these numbers and data concerning the causes of migration. Moreover, we

6 Turkish Parliament (1998).

7 Dağ (2006).

8 For example, the US Committee for Refugees estimates that there are between 380,000 and one million internally displaced persons ("IDPs"). USCR (1998). Human Rights Watch puts the figure at two million. HRW (2002). Human Rights Foundation of Turkey (*Türkiye İnsan Hakları Vakfı* - "TİHV"), Human Rights Association (*İnsan Hakları Derneği* - "İHD"), and the Migrants' Association for Social Solidarity and Culture (*Göç Edenler Sosyal Yardımlaşma ve Kültür Derneği* - "Göç-Der") have estimated a figure of three to four million in their common press release (2001).

know that some of the internal displacement took place within the same provinces, from rural areas towards urban centers. However, based on the numbers of the 1985 and 2000 censuses, we can observe that the urban population in the RVRP provinces has increased by a total of 1.5 million as a result of births in the cities, migration from other provinces, and migration motivated by other causes. Therefore, it is obvious that the figure of three to four million suggested by international organizations and NGOs is a rather high estimate.⁹

Indeed, the special study carried out in 2005 by Hacettepe University Institute of Population Studies (“HIPS”) upon the request of the Turkish government showed that the estimated number of IDPs ranges between 953,680 and 1,201,000.¹⁰ This number is much lower than the estimates suggested by national and international NGOs, but is nearly three times as much the official figures given by the government.¹¹

4. RVRP

Many villages and hamlets in Turkey, especially in Eastern and Southeastern Anatolia, have been evacuated or evicted as a result of armed clashes during the last 20 years. Furthermore, parts of the population have also been displaced because of other reasons, such as large scale development projects within the framework of the Southeastern Anatolia Project (*Güneydoğu Anadolu Projesi - “GAP”*) and natural disasters. The Turkish government initiated the RVRP in 1994 targeting this group of people. The RVRP initially covered 12 provinces and was administered by the General Directorate of Rural Services between 1994 and 1999, but it acquired its current shape when its administration was transferred to the Ministry of Interior and the Special Provincial Administrations of the relevant provincial governorships. Between 1999 and 2002, the GAP administration prepared Sub-Regional Development Plans within the framework of the RVRP in collaboration with governorships. Initially consisting of 12 provinces, the RVRP now covers 14 provinces, with the addition of Adıyaman and Ağrı.

The objectives of the RVRP are as follows: resettling those who wish to return to the vicinity of their own villages or in other available areas; building the necessary social and economic infrastructure, and facilitating sustainable living conditions in these areas; rebuilding and reviving the disrupted rural life; developing a more balanced settlement plan in rural areas; providing a more rational distribution of government investments and services; and supporting the development of “central villages”¹²

9 Although families established by the displaced and children born to married couples in their new places of residence are not included among IDPs according to the UN definition, it is inevitable that new members joining internally displaced families following forced migration should be considered to be affected by the problem. Therefore, new family members need to be taken into consideration in assessments addressing the problems. However, it would be more appropriate to evaluate these people in a separate category, rather than including them in the number of IDPs.

10 HÜNEE (2006), 61.

11 For more on this study, see section 9.2: “The HIPS Research” in this same chapter.

12 Ministry of Interior (2004).

According to data supplied by the Ministry of Interior, as of the beginning of 2006, there were a total of 358,335 IDPs in 14 provinces of East and Southeast Anatolia (Adiyaman, Ağrı, Batman, Bingöl, Bitlis, Diyarbakır, Elazığ, Hakkâri, Mardin, Muş, Siirt, Şırnak, Tunceli, and Van), and of these persons, 137,636 have returned to their villages under the auspices of the RVRP.¹³ The Hacettepe study, released on 6 December 2006, showed that the estimated number of returnees is slightly lower than the official figures, ranging between 112,000 and 124,000.¹⁴

5. THE VILLAGE GUARD SYSTEM

Although the status of village guards was defined in the 1924 Village Law no. 442, the current provisional village guard system has been created through an amendment made to Article 74 of this law through Law no. 3175 dated 26 March 1985.¹⁵ The provisional village guard system is still in effect in 22 provinces. There are also voluntary village guards who are active in the region.

At the outset, the differences between the provisional and voluntary village guard systems should be identified. According to the information the TESEV Working Group has obtained from the Ministry of Interior, as of 7 April 2006, there are 57,174 provisional village guards¹⁶ in Eastern and Southeastern Anatolia.¹⁷ Provisional village guards receive a salary of around YTL¹⁸ 365 from the state, and they are allowed to take part in military operations not only in their own villages, but in other villages as well, provided that they are headed by a member of the Gendarmerie. Until the hiring of provisional village guards was ceased in 2004, it was based on the decision of the Council of Ministers. On the other hand, voluntary village guards are hired by sub-provincial governors upon the authority conferred under the Village Law no. 442. The hiring of voluntary village guards is contingent on a clean criminal record and on the confirmation by the Gendarmerie that the village in question has a security problem. According to the information supplied by Abdülkadir Aksu, Minister of Interior, following a motion submitted by the Republican People's Party (*Cumhuriyet Halk Partisi* - "CHP") Diyarbakır MP Mesut Değer, as of 30 November 2003, there are 12,279 voluntary village guards in the State of Emergency region.¹⁹

According to officials from the Ministry of Interior, the hiring of both provisional and voluntary village guards in the region was discontinued following a decision by the Council of Ministers in 2000.²⁰ However, according to media reports that in the

13 Dağ (2006).

14 HÜNEE (2006), 63.

15 Official Gazette (1986).

16 Provisional village guards are generally known as village guards on the payroll.

17 Ministry of Interior (2006a).

18 As of June 2007, YTL 1 (*Yeni Türk Lirası* - New Turkish Lira) equals to USD 0.755.

19 Aksu (2003).

20 Dağ (2006).

summer of 2005, 650 voluntary village guards were hired in the Sason district of Batman,²¹ as well as according to the findings of the fieldwork carried out by the TESEV Working Group,²² the hiring of *voluntary* village guards is continuing, at least in Batman. In response to a question from the TESEV Working Group, officials from the Ministry of Interior stated that the hiring of village guards in the region had no legal ground since 2000, and that in the case of Sason people volunteering to become village guards, they had been registered by the sub-provincial governor but they had not been provided with arms.²³

In the period between 26 March 1985, when the provisional village guard system began to be implemented, and April 2006, 5,139 provisional village guards throughout Turkey committed crimes, but only 868 were arrested. The breakdown of these crimes is as follows: 2,391 are terror related, 964 are crimes against property, 1,341 are crimes against individuals, and 443 are crimes related to smuggling.²⁴ Moreover, as of December 2003, 264 voluntary village guards were convicted for petty crimes such as murder and attempted murder, violation of the Law no. 6136 on Firearms, firing of arms in public places, forestry products smuggling, and arms smuggling.²⁵

In the report he has released following his visit to Turkey, the former Representative of the UN Secretary - General on Internally Displaced Persons (“the Representative”) recommended that “the Government should take steps to abolish the village guard system and find alternative employment opportunities for existing guards.”²⁶ However, the situation discussed above indicates that the government is not responding to these recommendations. Indeed, the Framework Document on internal displacement, approved by the government in August 2005 through a decision by the cabinet of ministers, does not contain a statement regarding the abolishment of the provisional village guard system.²⁷ As a result, it is clear that the government is not currently carrying out any work on the abolishment of the provisional village guard system. The Framework Document only contains a reference to the fact that, “regarding the return to villages, priority will be given to dealing with complaints regarding provisional village guards.”²⁸ Officials from the Ministry of Interior have

21 Batman Daily Newspaper (2005).

22 For the relevant section of the fieldwork carried out in the Batman province, see Chapter V, Çelik: “Evaluation of Fieldwork Conducted in the Province of Batman: The Socio-Economic Consequences of Internal Displacement and Obstacles to Return” in this book.

23 Information obtained during a phone conversation on 27 February 2006.

24 To obtain the breakdown of the crimes committed by provisional village guards, the figures mentioned in the answer by Abdülkadir Aksu, Minister of Interior, Aksu (2005); to the written motion by MP Türkan Miçooğulları, were updated in light of information provided by the Ministry of Interior’s Social Relations Department to the TESEV Working Group. Ministry of Interior (2006a).

25 Aksu (2003). There is no up-to-date data made public on the number of voluntary village guards in the region and the crimes they have committed.

26 Deng (2002), 4.

27 For the framework document, see section 8: “The Framework Document” in this same chapter.

28 Council of Ministers (2005): Implementation Principle 5.

stated that this sentence refers to complaints concerning returnees who are harassed by village guards.²⁹

Contrary to the recommendation of the Representative, a regulation dated 2003 has brought about a rectification that permits for the firearms license of former village guards and the heirs of village guards who are deceased to be changed from the “carrying” to the “possession” of firearms.³⁰ On the other hand, according to information given by the Ministry of Interior to the TESEV Working Group in February 2006, the Ministry was at the time working on a draft law which aimed for “the improvement” of the economic and social situation of provisional village guards.³¹ In fact, in his reply to MP Türkan Miçoğulları’s written motion, Abdülkadir Aksu, Minister of Interior, has stated that work was underway which “aims to provide social security” to meet provisional village guards’ expectations.³² This much awaited law was finally adopted by the parliament on 27 May 2007 and entered into force on 2 June 2007.³³ On a positive note, the law provides the provisional village guards with social security.³⁴ However, adopted at a time when the armed conflict has intensified in Eastern and Southeastern Turkey, the law authorizes the recruitment of up to 60,000 additional provisional village guards. In provinces identified by the Council of Ministers and “where serious signs of circumstances requiring the declaration of state of emergency and of acts of violence in villages or their vicinities, or where attacks against the life and property of villagers for any reason increase, upon the proposal of the governor and the authorization of the Minister of Interior, it may be decided to recruit sufficient number of provisional village guards. The number of provisional village guards who will be recruited in this manner may not exceed 40.000. The Council of Ministers is authorized to increase this number by fifty percent.”³⁵ This measure is not only a clear breach of the commitment the government has made vis-à-vis the Representative and the European Union (“EU”), but it also poses a serious threat to the safety of returnees and a heightened obstacle to the return of remaining IDPs contemplating to go back to their homes.

6. LANDMINES

The Ottawa Convention, which Turkey acceded to on 25 September 2003, entered into force on 1 March 2004. In accordance with this convention, which more than three

29 Dağ (2006).

30 Official Gazette (2003a).

31 Information obtained during a phone conversation on 27 February 2006. The Ministry has refused the request by the TESEV Working Group to see the draft of the proposed law, on the grounds that sharing a yet to be completed text would “lead to speculations.”

32 Aksu (2005). As of the beginning of 2006, provisional village guards with ten years of service, as well as the families they provide for, are able to take advantage of the “Green Card” system. Official Gazette (2006b).

33 Official Gazette (2007b).

34 *Ibid.*: Provisional Article 16.

35 *Ibid.*: Article 1.

quarters of countries worldwide have acceded to, countries party to the convention prepare annual reports entitled “Article 7 Reports,” which indicate to what extent they have fulfilled their responsibilities.³⁶ Turkey submitted its first Article 7 Report on 1 October 2004³⁷ and its second report on 10 May 2005.³⁸

Anti-personnel landmines constitute a serious issue in Turkey, as they do throughout the world. According to official data, initially used “to prevent illegal border crossings,” later on, landmines started to be used, “as part of the fight against terror and only for security reasons.”³⁹ Turkey stated in 1996 that it had ceased the production of landmines and suspended their sale and transfer; in 2001 Turkey was removed from the International Landmine Monitor Committee’s⁴⁰ (“Landmine Monitor”) list of countries producing landmines.

The exact numbers and locations of landmines in Turkey are unknown. According to the government, Turkey has a stockpile of 2,970,000 anti-personnel landmines.⁴¹ Furthermore, there are 920,000 landmines laid in 15 areas,⁴² and 687 landmines suspected to be placed in seven provinces.⁴³ According to these figures, Turkey has one of the highest stockpiles of landmines among countries party to the convention.⁴⁴ According to NGOs, landmines have been laid not only in the border areas of East and Southeast Turkey, but also in inhabited areas far from borders and in the vicinity of evacuated villages.⁴⁵ NGOs state that these landmines have been laid by both the state and the PKK.

Countries that are party to the Ottawa Convention are obliged to destroy their stockpiles of anti-personnel landmines within four years after the convention enters into force and to clear the deployed landmines within ten years after that date. The dates for Turkey to implement these tasks are respectively 1 March 2008 and 1 March 2014. The Representative has recommended that landmines be cleared by the government in order to allow the return of IDPs.⁴⁶ However, although it is stated in the Framework Document that, “in the context of returns, problems arising from

36 For more detailed information see the “International Campaign to Ban Landmines:” (<http://www.icbl.org>) and the “Initiative for a Mine-free Turkey:” (<http://www.mayinsizbirturkiye.org>).

37 Ministry of Foreign Affairs (2004).

38 Ministry of Foreign Affairs (2005).

39 Landmine Monitor (2005).

40 The International Landmine Monitor Committee is a non-governmental organization network founded by the International Campaign to Ban Landmines, with the aim of monitoring the implementation of the Ottawa Convention: (<http://www.icbl.org/lm>).

41 Ministry of Foreign Affairs (2004).

42 These areas are Ardahan, Batman, Diyarbakır, Doğubeyazıt, Gaziantep, Hakkâri, İskenderun, Kağızman, Kars, Mardin, Siirt, Şanlıurfa, Şırnak, Tunceli, and Van.

43 *Ibid.* These provinces are Batman, Bingöl, Bitlis, Mardin, Tunceli, Siirt, and Şırnak.

44 Landmine Monitor (2005).

45 “Initiative for a Mine-free Turkey:” (<http://www.mayinsizbirturkiye.org>).

46 Deng (2002).

landmines laid by terrorist organizations will be dealt with,” there is no commitment to clear these landmines.⁴⁷ An official from the Ministry of Interior has stated that the state guarantees the clearance of landmines, but he did not specify when or how this would be carried out.⁴⁸ On the other hand, the government has declared that it has carried out clearing activities of deployed landmines in various provinces since 1998⁴⁹ and that 1,225 landmines have been cleared.⁵⁰ The government has also declared that it would retain 16,000 anti-personnel landmines for the training and development of the Turkish Armed Forces.⁵¹ This would make Turkey the country with the second highest number of retained landmines among states party to the Ottawa Convention, after Brazil.⁵²

Whether laid by the PKK or by the army, every year landmines cause the deaths of dozens of military personnel and civilians, as well injuries to hundreds of people. The government has reported that a total of 400 military personnel were killed and 1,126 were wounded due to landmine explosions between 1984 and 2004.⁵³ According to figures provided by the state for civilian casualties, 29 people died and 111 people were injured in 2004 and 2005.⁵⁴ However, according to the Human Rights Association (*İnsan Hakları Derneği* - “İHD”), a total of 69 deaths and 161 injuries were caused by landmines in 2005 alone.⁵⁵

Whatever the actual figures may be, landmines and explosives constitute a significant threat for people. Those who survive landmine explosions are in need of physical and psychological treatment, and victims who suffer loss of limbs also encounter social and economic problems. Most people are not aware of the legal processes to turn to for the compensation of their losses. Landmines and explosives laid around inhabited places evacuated for “security” reasons are not cleared and this constitutes a serious obstacle for the return to villages. The mined land includes fertile agricultural lands and this is a cause of serious loss for the country’s economy.⁵⁶ In Turkey, where the government has not yet developed a policy regarding Mine Risk Education, efforts to increase mine awareness and to provide legal aid for victims are carried out by NGOs.⁵⁷ As children are also part of the population group frequently affected by landmines, their education is of particular importance.

47 Council of Ministers (2005): Implementation Principle 6.

48 Dağ (2006).

49 Landmine Monitor (2005).

50 Ministry of Foreign Affairs (2005).

51 *Ibid.*

52 Landmine Monitor (2005).

53 Ministry of Foreign Affairs (2004).

54 Landmine Monitor (2005).

55 İHD (2005b).

56 Initiative for a Mine-free Turkey (2006).

57 For examples of these initiatives, see Kurban et al. (2006).

Although the Turkish government has stated that the security of civilians has been provided for by the fencing and marking all mined areas with permanent hazard signs in accordance with international standards, and by having these areas monitored by guards 24 hours a day,⁵⁸ NGOs report that security precautions aimed to help civilians are insufficient.⁵⁹ According to NGOs, undertaking a sudden return process without preceding it with an extensive mine survey and clearance activity could have devastating consequences.⁶⁰ Therefore, it is extremely important that the government launch a coordinated mine survey and clearing process as well as mine awareness campaigns as soon as possible.

7. COMPENSATION LAW

The most important step taken to this date by the Turkish government towards addressing internal displacement is the Compensation Law. Pressure from the international community has, no doubt, played an important role in the adoption of this law. The Representative has recommended that legislation providing compensation to people affected by violence, including “those who were evacuated from their homes by the security forces,” be developed as soon as possible.⁶¹ Following the inclusion of the Compensation Law among the political criteria that the EU expects Turkey to fulfill during the accession process, the Government has committed to put the Compensation Law into effect in 2004, as part of the “Turkish National Program for the Adoption of the *Acquis Communautaire*.”⁶²

The connection between the adoption of the Compensation Law and Turkey’s process of membership to the EU is clearly visible in the Preamble of the Law.⁶³ As stated in the Preamble, another political concern behind the adoption of the law was the wish to reduce the number of cases taken to the European Court of Human Rights (“ECtHR”) and thereby prevent the use of “compensation as a means of unjust enrichment.”⁶⁴ On the other hand, the Preamble of the Law states that the compensation of damages incurred by people who have been affected by terrorism, “is a requirement of justice

58 Ministry of Foreign Affairs (2005).

59 Landmine Monitor (2005).

60 Hakkâri Anti-Landmine Awareness Campaign (2004).

61 Deng (2002).

62 Official Gazette (2003b).

63 The Preamble of the Law includes a reminder that, according to the “Decision Concerning the Implementation, Coordination, and Monitoring of the Turkish National Program for the Adoption of the *Acquis Communautaire*” taken by the Council of Ministers on 24 July 2003, the Compensation Law should be enacted in 2004. Official Gazette (2004a).

64 It is stated in the Preamble of the Law that the Compensation Law is prepared “with the aim to compensate quickly and via friendly settlement people who incurred damages as a result of terrorism, or during the fight against terrorism, or from measures taken to fight against terrorism, without their having apply to legal remedies, and to ensure that only those whose applications are not resolved through friendly settlements apply to the European Court of Human Rights and to prevent the use of compensation as a means of unjust enrichment.” Official Gazette (2004a).

and of the principles of a social state based on the rule of law,” and that, among the law’s purposes is, “bolstering trust towards the state, rapprochement between the state and its citizens, and contributing to peace.”⁶⁵ Thus, the Compensation Law is not a law aimed specifically at IDPs, but is a law of a more general type, aimed at all victims who have incurred damages arising from terrorism and from measures taken to fight against terrorism. However, the Framework Document mentions that with the adoption of the Compensation Law, “a major step is taken towards the elimination of the difficulties faced by our citizens who were obliged to leave their villages,” indicating that the real beneficiaries of the law are IDPs.⁶⁶

The Compensation Law entered into force on 27 July 2004,⁶⁷ and its implementing regulation on 20 October 2004.⁶⁸ An amendment made to the regulation entered into force on 15 September 2005⁶⁹ and an amendment made to the law entered into force on 3 January 2006.⁷⁰ This law is the most concrete and important step that Turkey has taken to this date in addressing internal displacement. Furthermore, the aim stated in the Framework Document of “ensuring an effective implementation” of the law is important in that it clearly indicates for the first time an expression of political will regarding this law on the part of the government.⁷¹ However, the law has been criticized by attorneys and NGOs since its stage of drafting.⁷²

The Compensation Law aims to compensate people who have incurred material damages, “resulting from terrorism and the fight against terrorism,” since 1987.⁷³ Thereby, the law grants the right to compensation to everyone - armed forces, village guards, civilians - who has incurred damages, regardless of who inflicted the losses. That is, people who have incurred damages due both to the PKK and to the armed forces are covered by this law. Yet Article 1, whose scope is limited to people who have been displaced because of the acts of the PKK or the armed forces, contains the risk of excluding people who were not forcibly evicted from their villages but who were obliged to leave their habitual places of residence due to the effects of armed clashes. However, according to the Guiding Principles, such people are also considered IDPs. Moreover, the initiation of the law’s scope from 1987 results in the non-compensation of losses sustained between 1984, the year when the armed clashes were started by

65 *Ibid.*

66 Council of Ministers (2005).

67 Official Gazette (2004a).

68 Official Gazette (2004b).

69 Official Gazette (2005).

70 Official Gazette (2006a).

71 Council of Ministers (2005): Objective 7.

72 For this criticism, see Aker et al. (2005), Diyarbakır Bar Association (2005), and the Foundation for Society and Legal Studies (*Toplum ve Hukuk Araştırmaları Vakfı - “TOHAV”*) (2004).

73 Official Gazette (2004a): Article 1.

the PKK, and 1987.⁷⁴ Lastly, the Compensation Law is based not on the negligent responsibility of the state, but on the, “doctrine of social risk based on the objective responsibility of the state,” in other words on the principle of strict liability.⁷⁵ That is, people who have incurred damages are compensated regardless of whether the state is at fault or not and public officials who have caused this damage are not held responsible for their acts.

The tasks of processing petitions, assessing the damages, establishing the compensation payments, preparing declarations of friendly settlement, and preparing protocols of non-agreement in cases where applicants refuse to sign declarations of friendly settlement, are conferred on damage assessment commissions that are established in provinces on demand.⁷⁶ Chaired by a deputy governor, the commission is composed of six other members: five officials appointed by the governor from the provincial public departments of finance, agriculture and rural affairs, health, industry and commerce, and public works and housing; and a lawyer appointed by the bar association.⁷⁷ That is to say, the commissions consist predominantly of civil servants, and they have only one member who is not a public official.

The law does not provide compensation for the following material damages: damages already compensated; damages compensated as a result of petitions made to the ECtHR; damages arising from economic or social reasons or incurred by people who left of their own volition; damages caused by the applicants’ own faults, and damages incurred by individuals who have been convicted under Anti-Terror Law where the damages in question, “resulted from such acts,” which led to their conviction.⁷⁸ The law foresees providing reparation for three kinds of losses: damage to moveable or immoveable property, damage to the life and body

74 The Framework Document states that the first cases of “village and hamlet evacuation” occurred between 1984 and 1998 (see section 8: “Framework Document” within this chapter). Yet, when members of the TESEV Working Group pointed out this inconsistency between the Framework Document and the Compensation Law, an official from the Ministry of Interior who took the floor during the “Conference on Internally Displaced Persons” organized by the United Nations Development Programme (“UNDP”) on 26 February 2006, stated that the reason for choosing the year 1987 as a starting point was to enable people who incurred damages during the State of Emergency period - when administrative practices were not subject to judicial review - to access justice. However, it was much more difficult for people to have access to justice between 1984 and 1987, when the region was governed under a rule of Martial Law during which both the executive and judicial branches of the government were subject to military control, than it was during the State of Emergency period.

75 The Preamble of the Law contains the following statement: “In principle, the legal responsibility of the administration is based on the proof of fault. As an exception to the said rule, certain damages incurred because the administration was unable to prevent them although it had responsibility to do so, need to be compensated regardless of a causality link and proof of fault. This principle, which is known as the principle of social risk based on objective responsibility, is established in academic and judicial opinions.” Official Gazette (2004a).

76 Official Gazette (2004a): Article 5, and Official Gazette (2004b): Article 7.

77 Official Gazette (2004a): Article 4, and Official Gazette (2004b): Article 6.

78 Official Gazette (2004a and 2004b): Common Article 2.

of the person, and damage sustained due to inability to access one's property.⁷⁹ The Compensation Law provides compensation for pecuniary damages only and does not provide reparation for psychological traumas that people have suffered. Commissions are given authority to determine the amounts of payments to be made for damages to moveable and immoveable property and for damages sustained due to inability to access one's property.⁸⁰ The law provides that such damages can be compensated in kind or in cash, but that "where possible, priority will be given to in-kind compensation."⁸¹ In cases of injury, disability, and death, the law allows for fixed compensation amounts.⁸² The amount of this kind of compensation is pre-determined by multiplying the indicator figure of 7,000 by the civil servant salary coefficient. For the year 2005, the compensation amount for death was YTL 14,000, a maximum of YTL 2,000 for injuries and between YTL 1,000-21,000 for disabilities.⁸³

The deadline for petitions to the Compensation Law, initially established as 27 July 2005,⁸⁴ has been extended to 3 January 2007 with an amendment to the law which entered into force on 3 January 2006.⁸⁵ Initially, commissions were obliged to complete every file within two years following the petition date.⁸⁶ In an amendment to the law which entered into force on 15 December 2006, the assessment period was extended by one year, which can periodically be further extended by an additional year by the Council of Ministers.⁸⁷ Thus, the government is now authorized to indefinitely extend the period for the conclusion of petitions. Most recently, in a further amendment which entered into force on 30 May 2007, the deadline for applying to the Compensation Law has been extended one more time, until 30 May 2008.⁸⁸

The method to be followed in the assessment of petitions is defined by law in the following way: petitions which are ruled not to be within the scope of the law are rejected. Individuals whose petitions have been rejected retain the right to bring an action for compensation in the relevant administrative court.⁸⁹ When

79 Official Gazette (2004a): Article 7, and Official Gazette (2004b): Article 15.

80 Official Gazette (2004a): Article 8, and Official Gazette (2004b) Article 16.

81 Official Gazette (2004a): Article 10, and Official Gazette (2004b): Article 19.

82 Official Gazette (2004a): Article 9.

83 These figures have increased a little as of 2006, as a consequence of increases in the civil servant salary coefficient.

84 Official Gazette (2004a): Provisional Article 1.

85 Official Gazette (2006a): Provisional Article 1. That is to say, the amendment extending the petition deadline of the law was made more than six months after the deadline expired.

86 Official Gazette (2004a): Provisional Article 1, and Official Gazette (2004b): Article 8.

87 Official Gazette (2006b): Provisional Article 1.

88 Official Gazette (2007a).

89 Official Gazette (2004a): Article 12 (e). Accordingly, "in cases where disputes cannot be solved via friendly settlement, the people concerned can exercise their right to go to court." Actually, it can be thought that the letter of the law is unclear

evaluating petitions, if necessary, commissions conduct on-site investigations in order to assess the damages. Commissions establish, either directly or via experts, the damage incurred in light of applicant testimonies along with information and documents obtained from legal, administrative, and military institutions, “taking also into consideration possible fault or negligence on the part of the people incurring damage.”⁹⁰ Previously, petitioners were expected to supply difficult or impossible to obtain documents such as incident reports, health reports, probate decisions, and autopsy reports,⁹¹ but an amendment that was made in the regulations which permits the presentation of, “all kinds of information and documents which can be taken into consideration in the establishment and assessment of the way the event happened,” has significantly de jure alleviated the heavy burden of proof resting on victims.⁹² Following the establishment of damages, commissions determine the type and amount of compensation and communicate the proposed declaration of friendly settlement to petitioners.⁹³ Any compensation, payment, or aid that has been provided to petitioners in the past by public institutions and insurance companies is deducted from the compensation amount offered by the commissions.⁹⁴ Petitioners who have been offered a declaration of friendly settlement are faced with two options: 1) to accept the declaration of friendly settlement and to renounce their right to go to court; or 2) not to accept it and to exercise their right to go to court.⁹⁵ In the case that petitioners choose the second option, the official dispute reports prepared by the commission are forwarded to the Ministry of Interior.⁹⁶

According to a Ministry of Interior document which contains up-to-date data concerning the country-wide implementation of the Compensation Law,⁹⁷ as of the end of May 2006, 195,463 petitions were made country-wide.⁹⁸ Of the 27,011 petitions

on the subject of whether legal remedies can really be accessed regarding petitions which are not taken into consideration by the commissions and are rejected, and, therefore, that do not have the opportunity of being solved via “friendly settlement.” However in practice, administrative courts are expected to interpret this article so as to cover rejected petitions.

90 Official Gazette (2004a): Article 8, and Official Gazette (2004b): Article 16.

91 Official Gazette (2004b): Article 17.

92 Official Gazette (2005): Article 17. However, petitioners continue to face difficulties in discharging their burden of proof in practice due to the reluctance of some commissions to adjust their implementation of the law to the later evidentiary standards established by the new regulation. See generally Chapter V.

93 Official Gazette (2004a): Article 12 (a), and Official Gazette (2004b): Article 7.

94 Official Gazette (2004a): Article 5 (b), and Official Gazette (2004b): Article 23.

95 Official Gazette (2004a): Article 12 (e).

96 *Ibid.*: Article 12 (d).

97 The TESEV Working Group obtained this document as this book was being prepared for publication. Ministry of Interior (2006b). The table that formed the basis of the information in this document can be seen under the heading “Table 3,” at the end of this book. Table 2, which is cited as a reference in Chapter V, has been prepared based on another Ministry of Interior document which contained information on the country-wide implementation of the Compensation Law as of the end of December 2005. Ministry of Interior (2005).

98 Ministry of Interior (2006b).

that were brought to a conclusion, 11,899 resulted in positive decisions and 15,112 were rejected.⁹⁹ The total allocation set aside for petitioners who have been awarded compensation was YTL 113,256,430, and YTL 69,606,961 of this was paid before the end of May 2006.¹⁰⁰

8. THE FRAMEWORK DOCUMENT

In his report on Turkey, Representative Francis Deng, also recommended that the government clarify and make more widely known its policies on internal displacement.¹⁰¹ The report recommended that government policies on return, resettlement, and reintegration should be clarified and a focal point should be formed to facilitate coordination and cooperation among different government structures working on these issues. Deng also called for the planning of policies concerning the solution of problems including obstacles preventing the return process, such as the village guard system and landmines, and the creation of a road map to indicate how this plan would be implemented.¹⁰²

In December 2003 and January 2004, meetings were held with this objective between officials from the Ministry of Foreign Affairs and the United Nations Permanent Representative, the United Nations High Commissioner for Refugees (“UNHCR”), the International Organization for Migration (“IOM”), the United Nations Development Programme (“UNDP”), the World Bank, representatives, and relevant official institutions from the EU. Following these meetings, the government formed a commission consisting of representatives from the Ministry of Interior, the Ministry of Foreign Affairs, the State Planning Organization (*Devlet Planlama Teşkilatı* - “DPT”), the GAP and the State Institute of Statistics (*Devlet İstatistik Enstitüsü* - “DİE”). An exchange of opinions and information was held between this commission and the governorships of the 14 provinces within the RVRP and with officials from the UN and the European Commission.

Following these preparations, the government informed the Representative, Walter Kälin, who visited Turkey between 4-6 May 2005 that, “preparation of a new strategy document on internally displaced persons in Turkey that would allow addressing the problems faced by displaced persons in a more effective way” was ongoing.¹⁰³ In fact, the Framework Document was adopted by the Council of Ministers on 17 August 2005. Because the Framework Document was adopted through a decision

99 The detailed breakdown of these rejections are as follows: 4,980 for falling outside the scope of the law; 5,777 for having received compensation earlier; 724 for falling outside the time period covered by the law as the damage was incurred before 1987; 1,213 for lack of proper information and documents; and 2,418 for “other reasons.” Ministry of Interior (2006b).

100 *Ibid.*

101 Deng (2002).

102 *Ibid.*

103 Kälin (2005).

of principle, it was not published in the Official Gazette.¹⁰⁴ The four page document is not the strategic document as recommended by the Representative but, rather, according to Ministry of Interior officials, a guiding document to be used in the preparation of such a strategy. On the other hand, the most important characteristic of the Framework Document is that it contains, for the first time, the use of the term “internal displacement” in an official document, in the way that it is defined in the Guiding Principles.

In contrast to the Compensation Law, the text of the Framework Document states that internal displacement occurred in the years 1984-1998 and that there are about 360,000 IDPs.¹⁰⁵ The Framework Document also states that it was decided that, “the Institute of Population Studies of Hacettepe University, which has previously practiced cooperation with the UN and the European Union, was designated by the State Planning Organization to undertake a new complementary and up-to-date study with national financial resources,” would “carry out a pilot project on the issues of internally displaced persons, return to village, and rehabilitation with a goal to identify the characteristics and inclinations of citizens concerned.”¹⁰⁶ The Framework Document, which “aims the development of an integrated strategy in general terms that shall also take into consideration the UN Guiding Principles,”¹⁰⁷ aims to establish the identification of measures with the objectives mentioned below:

- i. Ensuring that returns are voluntary and secure;
- ii. Establishing the necessary social, economic, cultural, and educational infrastructure within the framework of return and providing sustainable living conditions;
- iii. Supporting the development of central villages;
- iv. Providing support for citizens who do not wish to return;
- v. Ensuring effective implementation of the Compensation Law; and
- vi. Reviewing the legislation currently implemented concerning returns and integration, and making the necessary amendments.

Although the principles in the Framework Document are positive, the fact that their implementation is left unclear does not meet the Representative’s wish for “an integrated plan and a road map to indicate how this plan will be implemented.”¹⁰⁸

104 The Framework Document can be obtained from the website of the Ministry of Interior: (http://www.icisleri.gov.tr/_Icisleri/Web/Gozlem2.aspx?sayfaNo).

105 Council of Ministers (2005).

106 *Ibid.*, 2.

107 *Ibid.*

108 Deng (2002), 2.

9. THE GOVERNMENT'S DATA COLLECTION ACTIVITIES ON INTERNAL DISPLACEMENT

This section introduces the “Eastern and Southeastern Anatolia Return to Village and Rehabilitation Project Sub-Regional Development Plan” (“TSBD Project”) prepared by the Turkish Social Science Association (*Türkiye Sosyal Bilimler Derneği* - “TSBD”) following fieldwork in the RVRP provinces, with the aim of preparing a spatial planning and rural development project. Information is also provided on the “Research on Migration and Displaced Persons in Turkey” (*Türkiye Göç ve Yerinden Olmuş Nüfus Araştırması* - “TGYONA”), which was commissioned to HIPS by the DPT and which aims to establish the number of IDPs and their current conditions, the state of returns, and the dimensions of outstanding issues.

9.1. THE TSBD PROJECT

The TSBD Project, carried out within the framework of the project that GAP Regional Development Administration of the Prime Minister’s Office and TSBD acceded to in February 2001, consists of planning reports regarding the 12 provinces within the RVRP. The project covers 12 provinces and is basically a technical spatial planning and a rural development project. The macro level plans and the proposals for rural development were completed in mid-2002.¹⁰⁹

The objectives of the TSBD Project are as follows: to make it possible for the groups which were involuntarily displaced and were most affected by the consequences of displacement to become productive and be of benefit to themselves and to society; to transform the cost of involuntary displacement to the society and the economy into opportunities via the correct planning of the return to villages; to form a new settlement pattern instead of the current form which is scattered and difficult to reach, where the cost of providing services is high, and which is overly-dependent on agricultural activities rather than letting the return process happen of its own accord; to use a new approach in re-organizing the ruined dwelling and rural service infrastructure; and to form a more rational and livable physical and social environment.

In the first stage of the project, face-to-face focus meetings, aiming for a quick rural assessment, were held with households determined according to a certain sampling, within groups that lived in provincial centers and certain district centers within the scope of the research and which informed administrative authorities of their wish to return to villages. The working groups formed within this framework went to the provinces in the work area within the scope of the project between 19 February and 1 March 2001, and met with governors, deputy governors, sub-provincial governors and mayors, and completed the focus group work.¹¹⁰

¹⁰⁹ TSBD (2002).

¹¹⁰ The working groups were formed under the leadership of Prof. Oğuz Oyan, Prof. Melih Ersoy, Assoc. Prof. Çağatay Keskinok, Assoc. Prof. Tarık Şengül, Dr. Galip Yalman, city planner, Remzi Sönmez, and city planner, Erdal Kurttaş.

The working groups held focus group meetings within a sampling of 1,097 people who migrated from the provinces of Batman, Bingöl, Diyarbakır, Elazığ, Hakkâri, Mardin, Muş, Siirt, Şırnak, Tunceli, and Van, from the districts of Gercüş in Batman, Genç in Bingöl, Palu in Elazığ, Eruh in Siirt, and from the village of Kumçatı in the district of Merkez in Şırnak.

Following the analysis of the data collected, a report was presented to the GAP Administration. Assessments and conclusions that were reached concerning the social feasibility of the return, its conditions of realization, and a preliminary determination regarding the settlements where return will take place were presented to the relevant provincial governorships at a briefing organized in the State of Emergency Regional Governorship.

The report contains the results of the focus work, as well as some policy recommendations based on these results. In summary, these results are as follows:

- i. Internal migration has become an urban problem as much as a rural one. Even if people return to their villages, their organic ties with the cities will continue. Therefore, the projects of return to villages and re-development of urban centers should be conducted in parallel;
- ii. Displacement has created situations of absolute poverty;
- iii. Opportunities must be provided to persons who were displaced from villages that were close to cities to live in the city and continue working in rural areas; and a new planning strategy aimed at provincial and district centers must be developed;
- iv. According to one of the findings of the focus group work, IDPs do not wish to return to places other than their own villages and hamlets;
- v. However, individuals feel positively about projects aiming to collectivize services;
- vi. A significant part of IDPs are not in a position to undertake their return without government aid. It is important from the point of view of peace and integration that attention is paid not to cause unfairness and feelings of marginalization during the provision of aid; and
- vii. While establishing a strategy regarding return, people's wish to return voluntarily and whether they are in a position to undertake return must be taken into consideration.

The second stage of the project was followed by the determination of the sub-region where the return should take place and of villages to be examined in detail in order to form the basis for the selection of villages. For the selection of villages to be examined in this framework, the following data was used as a basis: the list of villages in the project description prepared by the GAP Regional Development Administration; lists of villages prepared by relevant provincial governorships; the willingness to return determined during the focus group work; the pre-displacement population of

villages and the “central village list” adopted by the Council of Ministers. In order to collect data from the settlements selected on the basis of these lists, 180 villages in 12 provinces were visited, the necessary examinations were carried out, and detailed data regarding 157 of these was collected.

The report prepared by the TSBD states that, within the method followed in the project, rather than planning returns to individual villages, the attitude adopted regards the villages as sub-regions. In this context, the concept of “sub-region” indicates a rural settlement pattern which consists of more than one village and sub-village unit, which shows or has the potential to show common characteristics within a totality of geographical conditions, economic, and cultural relationships, and which can be thought of collectively, especially from the point of view of service provision.

According to the report, the objective of this approach was established as decreasing costs and increasing the benefit of services by planning schools, village clinics, post offices, police stations, and other public services at sub-regional scale rather than village scale. Because of the high number of sub-village settlements (hamlets) in the region, the report does not foresee encouragement to return to settlement units with a population beneath the limit of service provision. The support for intermediate stage settlement units is regarded as an important starting point. Among the objectives adopted in the project, there is the development of such centers not only as service provision centers but, if conditions are suitable, as centers where economic exchanges take place.

In accordance with the agreement reached between the TSBD and the GAP, one sub-region was selected among the many sub-regions formed by the villages examined in the first part of the project that is within the framework of the method developed concerning the selection of the sub-region and villages where the detailed planning will take place. The report specifies the criteria that were used in the selection of villages where sub-scale planning work is foreseen:

- i. Efforts were made to make a selection from village clusters where internal displacement occurred;
- ii. Particular attention was paid to select villages where there is minimum risk of natural disasters;
- iii. Rural units were selected where settlements in the short term are considered rational from the point of view of infrastructure possibilities and the constructed environment;
- iv. Among the villages where there was no significant problem in the short term from the point of view of settlement, villages where IDPs wished to return were taken into consideration;
- v. Among these villages, the ones which showed stronger characteristics of a central village in comparison to other villages or sub-village units in the vicinity were selected;

- vi. Priority was given to the selection of villages with a strong potential for economic/ agricultural development;
- vii. Particular attention was paid to the selection of villages where the number of pre-migration households and the number of households wishing to return was no less than 30; and
- viii. Although the fact that villages were completely empty, partially empty (where the return process has started), or not empty was not taken as a basic scale; priority was given to villages which were empty and/or to which the return process had already started.

The report states that, in determining the central village within the sub-region, where the detailed sub-level implementation plan was to take place, the villages in the sub-region, which would be prioritized, were chosen on the basis of criteria under six headings: number of households, state of technical and social infrastructure, state of the dwelling, vegetal production, animal husbandry, and existence of pastures. The values calculated according to the number of points given to these criteria, were taken as a basis and the “central settlement” was determined for detailed planning work to be carried out within that sub-region. According to the TSBD report, the governorships were informed of the settlements thus determined, their opinion was taken, and as a result of meetings held, some changes were made in the sub-regions of certain provinces; and new sub-regions were determined in other provinces and new fieldwork was carried out. It is also stated in the report that “action plans” were prepared concerning the public investments proposed for sub-regions for which plans and supra-level plans were prepared, and that the institution to make the investment, the settlement where the investment should be made, the type, the priority, and the cost of the investment were specified one by one.

The “sub-regional development plans” commissioned by the GAP Administration to the TSBD have not been implemented yet. It is also stated that within the framework of the cooperation held between the UN and the Turkish government on internal displacement, the data from the reports was also discussed in meetings, but that, at that stage, the TGYONA data and findings that were about to be made public were of great importance, but that the findings of the TSBD research were by then out-of-date.

9.2. THE HIPS RESEARCH

Within the framework of the cooperation initiated in 2003 with the UN and the European Commission on the issue of IDPs, the Turkish government decided that new research needed to be undertaken in order to establish the current state of returns and the dimensions of outstanding issues.

Collecting data on the number of IDPs and the problems affecting them was among the recommendations that the former Representative made in his report.¹¹¹ The

■ 111 Deng (2002).

government assigned this task to HIPS, which started working on the TGYONA Project in December 2004.¹¹² The project was supposed to be concluded in February 2006 but was extended to June 2006.

The objective of TGYONA was established as collecting data through a survey to be carried out in the 14 provinces within the scope of the RVRP, where there was a significant amount of migration and internal displacement (Adıyaman, Ağrı, Batman, Bingöl, Bitlis, Diyarbakır, Elazığ, Hakkâri, Mardin, Muş, Siirt, Şırnak, Tunceli, and Van), and in the provinces which received a large number of migrants from the former.¹¹³

The project's goal was declared to be the determination of several figures: the numerical dimension and the reasons of the post-1990 migration, which occurred throughout Turkey, but especially in Eastern and Southeastern Anatolia; the demographical structure of the region and of population movements in the region; the destination preferences of migrants; and the problems encountered by migrants in their new places of settlement and their adaptation to these places, and other problems that they encounter.

In 2004, HIPS carried out a pre-project work concerning the objectives and the scope of this project, the population targeted by the research, and what the research strategies and activities should be. HIPS presented these preparations for debate at a working meeting on 16 July 2004 attended by the relevant public institutions, academics, NGOs, and representatives from international institutions.

At a meeting held on 4 March 2005, again with the participation of relevant public institutions, academics, NGOs, and representatives from international institutions, the project was officially presented, developments regarding the project were reported, and activities to be carried out by the end of 2005 were presented and opened to debate with participants.¹¹⁴

At that meeting, it was stated that during the fieldwork the following information would be collected: 1) basic information on all of the population that migrated from

112 TGYONA was carried out by a team of HIPS academics. The Director of TGYONA was the HIPS Director, Prof. Sabahat Tezcan. Assoc. Prof. Turgay Ünalın was responsible for technical matters, Assoc. Prof. İsmet Koç for the questionnaire design, Assoc. Prof. Banu Ergöçmen and İlknur Yüksel for the quantitative work, and Dr. Sinan Türkyılmaz for the sampling and fieldwork. However, following the release of the report "The Problem of Internally Displaced Persons in Turkey: Assessments and Proposed Solutions," Aker *et al.* (2005), by the TESEV Working Group on 28 October 2005, Turgay Ünalın, who was also a part of this team, was dismissed from his post at TGYONA by the Hacettepe University. For more detailed information on this subject, see Kurban *et al.* (2006).

113 This article presents information on TGYONA that was made public after October 2005 (such as information on quantitative work, field work, contents of question forms, and headings of the report about to be released) and was updated by Deniz Yüksek, member of the TESEV Working Group, in the light of presentations held by HIPS officials at the "Conference on Internally Displaced Persons" organized collaboratively on 23 February 2006 by the UNDP and the Ministry of Interior.

114 The presentations held during the introduction meeting can be found at TGYONA's web site: (<http://www.hips.hacettepe.edu.tr/tgyona/sunum.htm>).

provinces in the scope of the RVRP; 2) demographic and socio-economic information on IDPs; and 3) detailed information on the population who were included in the definition of IDPs as a sub-group and who were obliged to leave their villages/places of residence within the last 20 years or so because of armed clashes in the region. It was emphasized in the presentations, that within the above described sub-group, information would be gathered on both people who had returned to their villages, and people who had not returned and who continued to live in cities; and that particular attention would be paid so that men and women would be represented equally and different age groups would be covered during the interviews with IDPs.

In order to estimate for the first time in this project the quantitative dimension of internal displacement, various publications, reports, and data resources were reviewed. As the existing resources do not permit for the direct estimation of the number of IDPs, in this first stage a general analysis was carried out by HIPS concerning, not only IDPs, but the general internal migration movements in Turkey in the last 20 years.¹¹⁵ It was stated by Ünalán that in the later stages of the project, first quantitative and then qualitative approaches would be used to collect information and data on IDPs, both within and outside of the region.

At the meeting on 4 March 2005, it was stated that the 1985, 1990, and 2000 general censuses, the 1997 population assessment, the 1993, 1998, and 2003 “Turkey Population and Health Research” studies, and statistics carried out on this subject by the Ministry of Interior would be analysed. Furthermore, the findings of small or large scale researches carried out in regions where a significant amount of migration occurred in this period and the reports by domestic and international NGOs would be assessed.

The reason for migration was asked for the first time (to people who had changed their places of residence in the last five years) during the 2000 census. Questions regarding a change of place of residence within the last five years were asked of all household members of and above 5 years of age for the first time during the 2003 “Turkey Demographic and Health Survey” by HIPS. It was declared in the introduction meeting that a detailed analysis of this data will be carried out as part of TGYONA.

As a result of these activities, TGYONA aimed at obtaining quantitative evaluations concerning people subjected to internal migration after 1980, analysis of the reasons for the internal migration (data permitting), and findings regarding the changes that internal displacement has undergone over the years and regarding its distribution from a geographical point of view. Besides internal displacement, it is probable that migration movements arising from other reasons, principally economic ones, are also expected to be included within the overall migration movements in the region.

■ 115 Ünalán (2005).

The establishment of overall migration movements would form a basis for the determination of the highest possible number of IDPs and for the assessment of whether the number of 1 to 4 million estimated by various NGOs and international organisations is realistic or not.¹¹⁶

In the second stage of the project, qualitative work was carried out in which in depth interviews were held with people who live in places which had received intensive migration over the last 20 years from Eastern and Southeastern Anatolia, in villages where returns have taken place, and in large provinces of Eastern and Southeastern Anatolia. As part of this stage, in depth interviews were held with 70 IDPs living in Diyarbakır, Batman, Van, Istanbul, Adana, and Mersin.¹¹⁷ In a meeting organized by HIPS on 4 May 2005, the objective of the qualitative work was described as the collection of in depth information on the future expectations, the willingness to return, and the reasons for unwillingness to return of individuals who have settled in new places of residence; on the degree to which the expectations of IDPs who have returned to their villages have been met; on how IDPs dealt with the decision to return; on IDPs' problems regarding health, education, and accommodation, as well as the problems that both IDPs who have returned and those who have not returned encounter. It was also stated by HIPS that the objective of this study was to better establish the characteristics, problems, and needs of the target population and to contribute to the design of the questionnaire for the qualitative research.¹¹⁸

In the third stage of the project, quantitative work was carried out in the 14 provinces that fall within the scope of the RVRP, in the 10 provinces (Istanbul, Ankara, İzmir, Adana, Mersin, Bursa, Antalya, Malatya, Manisa, and Kocaeli) that received the highest number of IDPs from this region, and in 8 provinces (Tekirdağ, Muğla, Burdur, Bolu, Çankırı, Aksaray, Kars, and Giresun) selected out of the remaining 57 provinces. The provinces in these three groups were also divided into rural and urban groups. Data concerning the "birthplace," the "place of residence on the day of the census," and "the place of residence 5 years before the day of the census," taken from the 2000 general population census were used in the determination of the provinces that receive the highest number of IDPs from RVRP provinces.¹¹⁹

For the fieldwork of this project, a multi-stage, layered, cluster-sampling and a representative sample selection approach was used. But different approaches were also used within the 14 provinces and in the other provinces. It was stated, in short,

116 No information has been released as to whether these statistical analyses have been carried out or not. In the presentations by HIPS researchers, who carried out TGYONA, made at the "Conference on Internally Displaced Persons" on 23 February 2006, no information was provided on analyses made on existing statistical data. Türkyılmaz (2006).

117 *Ibid.*

118 HÜNEE (2005).

119 Türkyılmaz (2006).

that following qualitative research, a representative sampling was used for the 14 provinces, and samplings which were representative of settlements selected among places which have received significant migration and of other settlements, were used in the settlements other than the 14 provinces.¹²⁰

Two different questionnaires were used in the survey; one for households and one for individuals. In the household questionnaire - which was filled out by one person in the household, or by both a male and a female - the questions aimed to collect information on demographic, social, and economic characteristics (health, education, employment, work life, and social security). The questionnaire for individuals contained questions regarding age, sex, place of residence, marital status, employment, and education, as well as experiences of past migrations and plans concerning future migrations. Of these individuals, those who have migrated because of security reasons in the last 20 years (and who were above 15 years of age during the migration), were also asked questions regarding the migration process and regarding petitions made under the RVRP, and the Compensation Law, and applications to the ECtHR. People who had migrated for security reasons and who had returned were also asked to what degree their expectations had been met.¹²¹

In the meeting held on 23 February 2006, HIPS stated that fieldwork had been conducted between 9 September and 1 November 2005 in two stages in order to cover provinces in the east and provinces in the west. During the fieldwork, 5,347 households were contacted and face-to-face interviews were carried out with 7,316 people. Of the people participating in the survey, 3,047 were men and 4,269 were women. The data entry of the survey was done in November 2005. In the meeting of 23 February 2006, HIPS officials stated that the analysis of the data was still in progress.¹²²

In the meeting of 23 February, Prof. Sabahat Tezcan, Director of HIPS, stated that the report on the research findings and the data analysis would be made public in the spring of 2006. She further declared that the report would consist of the following sections: methodology and scope; demographic, social, and economic characteristics of the regions where the fieldwork was conducted; structure of the household and characteristics of the dwelling; socio-economic characteristics of people completing the individual questionnaire; the stages of and the reasons for migration; characteristics of individuals who migrated for security reasons during the last 20 years (migration stages would be examined in light of the Guiding Principles and the individuals' pre-migration and post-migration situations would be compared); information on the applications to the RVRP and the Compensation

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

¹²² *Ibid.*

Law and applications made to the ECtHR; the potential of new migrations in future; conclusions; and policy proposals.¹²³

HIPS submitted its report to DPT in June 2006. In accordance with the protocol that the DPT has acceded to, the report needed to be submitted to the UNDP in mid June, which would then make it public. However, the UNDP officials did not acknowledge their receipt of the report at that time. At a public meeting held on 29 September 2006 in Van, Turkey, where the Representative, Walter Kälin, and the Minister of Interior, Abdülkadir Aksu, were also present, a Ministry of Interior official stated that the TGYONA report “had been approved by the Prime Minister” the day before (namely, 28 September).¹²⁴ The report was finally launched on 6 December 2006 in Ankara at a press meeting attended by Kälin and Aksu, where the HIPS team presented the findings of the quantitative study. Neither the full findings of the qualitative study nor the questionnaire has yet been disclosed as of the end of July 2007.¹²⁵

123 *Ibid.* It is not clear from the information provided whether findings of the qualitative research will be given in the report or whether they will be presented in a separate report.

124 Bekir Sıtkı Dağ, Department of Strategy Development, Ministry Of Interior, Presentation at the “Van Province Action Plan for the IDPs Service Delivery Model” Introduction Meeting, 29 September 2006, Van.

125 For a commentary on the findings, language, and presentation of the report by Dilek Kurban, member of TESEV Working Group, see addenda titled: “What the Report Leaves Unsaid” and “Open Letter to the Ministry of Interior” in this book.

CHAPTER IV
THE APPROACH OF NATIONAL AND
INTERNATIONAL ORGANIZATIONS TO TURKEY'S
INTERNAL DISPLACEMENT PROBLEM

Introduction

It was only a few years ago that the Turkish public began closely following the issue of internal displacement that occurred in Eastern and Southeastern Anatolia in the 1990s. However, this delay on the part of public opinion does not mean that various national and international organizations were indifferent to the subject of internal displacement, both at the time it occurred and afterwards. On the contrary, human rights organizations in Turkey, the Turkish Grand National Assembly (“Turkish Parliament”), international human rights organizations, the United Nations (“UN”), the Council of Europe, and the European Union (“EU”) have prepared various reports and issued statements on this subject. Moreover, the European Court of Human Rights (“ECtHR”) has dealt with very significant cases concerning the issue of internal displacement in Turkey and has issued precedent-setting judgements. On the other hand, some social scientists in Turkey have carried out a series of research projects that approach the subject in a multi-disciplinary way. This chapter summarizes and evaluates the said reports and research, classifying them according to the characteristics of the organizations that prepared them. Each article in this chapter is written by a member of the TESEV Working Group who has experience or expertise in that particular field.

In the first article of this chapter, Ayşe Betül Çelik evaluates the reports prepared by the EU, the Council of Europe, and the UN on Turkey’s internal displacement issue. In particular, Çelik focuses on the report prepared by Francis Deng, the Representative of the UN Secretary-General on Internally Displaced Persons (“the Representative”) following his visit to Turkey in 2002, on observations of the internal displacement issue in the European Commission’s progress reports on Turkey, and on reports by various units of the Council of Europe. In fact, all of these documents played an important role in the initiation and the shaping of the cooperation in the 2000s between the Turkish government and the international organizations on internal displacement.

On the other hand, some international human rights organizations have carried out studies on internal displacement in Turkey and have published reports monitoring the situation and issuing recommendations to the government. In her article in this chapter, Dilek Kurban evaluates these reports. She also makes an analysis of the judgements of the ECtHR in cases brought by internally displaced persons (“IDPs”) since early 1990s.

In the mid 1990s, a long time before any of these international organizations made their reports public, human rights associations operating in Turkey had already published reports on internal displacement that were based on their own research and observations. Then, in 1997, the Turkish Parliament established a research commission and made public its findings on the issue through a report published in 1998. In her article in this chapter, Deniz Yüksek presents information on these reports by non-governmental organizations and by the Turkish Parliament and summarizes available academic studies on this topic.

The least examined aspect of Turkey's internal displacement issue is probably the health problems and psychological trauma suffered by IDPs. In his article in this chapter, A. Tamer Aker evaluates the few studies carried out in Turkey on psychological trauma arising from internal displacement. Aker also deals with the health problems in Eastern and Southeastern Anatolia which have worsened as a result of internal displacement and as a result of unequal access to healthcare. Aker also presents a proposal for a community-based project related to the provision of health and psycho-social care services for IDPs.

It would have been greatly difficult to write this book had it not been for the reports, ECtHR decisions, and research examined in this chapter. This literature has been of invaluable guidance to the TESEV Working and Monitoring Group on Internal Displacement in Turkey during the writing of the fieldwork reports in Chapter V and the policy proposals presented in the conclusion of this book.

The Approach of the United Nations, The Council of Europe, and The European Union to Turkey’s Internal Displacement Problem

AYŞE BETÜL ÇELİK

The main aim of this article is to examine the role played by the Council of Europe, the European Union (“EU”), and the United Nations (“UN”) in forming the policy proposals related to the problems experienced during and after the process of internal displacement in Eastern and Southeastern Turkey, as well as to examine the recent developments in this field. Both the EU’s and the UN’s stronger influence in this area in comparison with their past intervention in Turkey’s internal displacement problem, ensues the period following the acceptance of Turkey’s candidacy for EU membership.

Turkey’s process of joining the “European Community”¹ has developed in parallel with the globalization of human rights. It is in the area of human rights, in general, and cultural rights, in particular, that European organizations are exercising the most pressure on Turkey. Subjects that are highlighted in this context include encouragement by the EU towards the recognition of cultural rights, in general, and the social and economic development of Southeastern Anatolia and the acceleration of return to villages, in particular.² The pressure exercised by the EU on the Turkish government in these fields has increased following the EU summit of heads of state and governments held in Helsinki on 11 December 1999, when Turkey’s candidacy for the EU was announced. The European Commission regularly prepares reports concerning progress in candidate countries. The reports that are sent to the European Council qualify as fundamental documents concerning the initiation of the negotiation process with, or the granting of membership status to candidate countries.

1 “European Community” here does not mean only the EU but also other European political and cultural formations. Another important actor emerging during this process besides the EU is the Council of Europe. In fact many of the treaties that the EU stipulates to candidate countries as part of the Copenhagen Criteria are mechanisms of the Council of Europe. Moreover, although its power of influence in Turkey is negligible, the Organization for Security and Cooperation in Europe (OSCE) is a significant actor in European countries.

2 For a study regarding the influence of European organizations and of the UN on Turkey in the context of internal displacement and from the point of view of the globalization of human rights, see Çelik (2005). For a critical approach on the same subject, see Ayata and Yüksek (2005).

The Copenhagen Criteria's³ section on political requirements emphasizes in particular the principle of a state based on the rule of law and respect for minority rights. As a result of pressure exercised by the EU prior to the declaration of Turkey as an official candidate for membership, the government had committed to bringing about improvements in Southeastern Anatolia. However, until the end of the 1990s, changes introduced in the region by the government were limited to infrastructure investment (construction of roads, schools, etc.). Following the acceptance of Turkey as a candidate, notable changes began to be observed in Eastern and Southeastern Anatolia. Most significantly, the State of Emergency was gradually abolished by the end of 2002.

In the interim period leading up to the Brussels Summit of the European Council on 16-17 December 2004 when Turkey obtained the green light for the start of negotiations for EU membership, the problems arising from internal displacement and return were among the subjects where the EU criticized Turkey the most. The European Court of Human Rights ("ECtHR"), whose decisions are of essential importance for the EU, warned Turkey about three issues in October 2004. Luzius Wildhaber, President of the ECtHR, met with Prime Minister Recep Tayyip Erdoğan on 5-7 October 2004 and said that serious problems awaited the Justice and Development Party (*Adalet ve Kalkınma Partisi* - "AKP") government because of the many property rights and related lawsuits filed against Turkey by Greek Cypriots in Cyprus, and the internally displaced persons ("IDPs") and non-Muslim minorities in Turkey.⁴ In order to understand the background of these developments, this article examines the process in which the Council of Europe, the EU, and the UN have developed their expectations from Turkey on the matter of internal displacement.

1. THE ROLE OF THE COUNCIL OF EUROPE

The Council of Europe⁵ has played as significant of a role as the EU in the effective achievement of the return of IDPs in Turkey. The Council of Europe is the main regional actor in the development of a series of international agreements that protect the social, political, economic, and cultural rights of individuals to which the EU requires candidate countries to accede. In the case of complaints regarding the violation of rights protected under the European Convention on Human Rights, the ECtHR

3 In the Copenhagen Summit held on 22 June 1993, the European Council accepted that the expansion of the EU would include Eastern European countries. It also established the criteria to be fulfilled by candidate countries before their complete membership is conferred as follows: the application of economic and political criteria and the harmonization of national laws with EU's *acquis communautaire*.

4 Radikal (2004b). For a discussion of the property issues of non-Muslims in Turkey see Dilek Kurban, "Unraveling a Trade-off: Reconciling Minority Rights and Full Citizenship in Turkey," *European Yearbook of Minority Issues*, Vol. 4, 341-372 (2006).

5 The Council of Europe is an inter-governmental organization which has been meeting since 1949, and which enacts treaties in the fields of education, the protection of human rights, and culture. Turkey is among the founding members of the organization, which has 47 member states.

intervenes to ensure states' compliance with their obligations under the convention. Other institutions within the Council of Europe can also play an important role in creating public opinion with their reports. For example, the Third Report on Turkey by the European Commission Against Racism and Intolerance ("ECRI") accepted on 25 June 2004 by the Council of Europe, contains a section on Kurdish people. The report draws attention to the poverty, unemployment, social exclusion, and health issues suffered by Kurdish IDPs especially in Istanbul and in other urban centers, and emphasizes that measures need to be taken in these fields. The report points out that serious problems are still encountered concerning return and that state institutions do not permit returns on the grounds of security concerns. Among other obstacles to return cited by the report, are Turkish officials' requirement that IDPs who wish to return to their villages sign a statement saying "I abandoned my village because of the Kurdistan Workers' Party (*Partiya Karkerên Kurdistan* - "PKK"), which would disqualify them from seeking compensation, and the confiscation by village guards of properties belonging to IDPs in certain villages.⁶ The report also claims that the Return to Villages and Rehabilitation Project ("RVRP") is not very successful because it does not provide sufficient information on return and it does not clearly display the political will of the state on this matter. The Third Report on Turkey contains the following recommendations addressed to the Turkish government:

- i. The government should take the necessary measures for the solution of the problems of Kurdish people who were obliged to migrate because of the armed clashes in Southeastern Anatolia. The authorities should develop means to assist people who suffer economic and social difficulties in particular.
- ii. The authorities should continue implementing and strengthening programs to support the voluntary return of IDPs. The authorities are encouraged to develop extensive cooperation with NGOs towards that end. Issues arising from the presence of armed village guards in Southeastern Anatolia need to be solved. IDPs need to return in the shortest possible time to their homes, should obtain compensation, and/or be able to access their property.

2. PROGRESS REPORTS BY THE EUROPEAN COMMISSION

The progress reports on Turkey published every year by the European Commission⁷ have been dealing with the issue of internal displacement since the very first report which was released in 1998. The issue is dealt with in more and more detail each year.

6 It is well known by the non-governmental organizations ("NGOs") working on the issue that in certain regions in the early 2000s, petitioners applying for aid under the scope of the RVRP were made to sign petitions containing an option which listed "PKK terrorism" as a reason for leaving their villages (but not an option indicating eviction by security forces as the cause of displacement). However, the signing of this kind of petition does not preclude IDPs from seeking compensation under the Compensation Law.

7 For the European Commission's Progress Reports on Turkey, see Delegation of the European Committee to Turkey: (<http://www.deltur.cec.eu.int./Default.asp?lang=1>).

The 2004 Progress Report addresses the solution of problems arising from internal displacement, the removal of obstacles to return, and the economic development of Southeastern Anatolia. The abolishment of the State of Emergency was referred to as a positive development in the report. The abolishment of restrictions on pre-trial rights of suspects within the scope of the State of Emergency, the initiation by Turkey of a process of dialogue on IDPs with some international organizations - including the European Commission - and the conducting of a survey in accordance with the suggestions made by the Representative of the UN Secretary-General on Internally Displaced Persons ("the Representative"), following his visit to Turkey in 2002, were recorded as progress in these areas. The report noted that Law No. 5233 titled "Law on Compensation for Losses Resulting from Terrorism and the Fight against Terrorism" ("Compensation Law") has entered into force. While acknowledging the general improvement in the attitude of the Turkish government towards Southeastern Anatolia, the report states that a comprehensive strategy to meet the economic, social, and cultural needs of the local people and to lessen the imbalance between regions has still not been put forward. The report states that the return of IDPs has been restricted due to the village guard system and the insufficiency of government assistance, and recommends that changes be made in accordance with the suggestions made by the Representative.

The 2005 Progress Report, released on 9 November 2005, lists not only the above issues, but also economic underdevelopment, lack of adequate infrastructure, lack of investment, unemployment, security problems, and landmines as obstacles to return. The report also draws attention to the fact that village guards still constitute a problem. The report states that, although the government claims that no new village guards have been recruited since 2000, NGOs claim that the number of village guards has increased due to the increase in clashes, and that some of the IDPs wishing to return are only permitted to do so on the condition that they become village guards.

The report considers developments in Eastern and Southeastern Anatolia "slow and imbalanced" and states that the situation is worsening in some places. Although the European Commission criticizes the fact that the government does not have a clear policy on this matter, it considers as a positive development Prime Minister Erdoğan's meeting in August 2005 with leading thinkers to discuss the Kurdish issue and his statement a few days later in Diyarbakır that the "Kurdish issue" needs to be solved through democratic means. The Progress Report states that although since 1999 there have been improvements from the security point of view, the situation is made more volatile by the fact that the PKK, which is included in the EU's list of terrorist organizations, is continuing to resort to violence. The report also criticizes the fact that although the State of Emergency has been abolished, checkpoints have been re-established in some places, adding that these kinds of security measures

affect local people's lives. The report further states that the implementation of the Compensation Law is slow and inconsistent.

3. THE REPORT BY THE REPRESENTATIVE OF THE UN SECRETARY-GENERAL ON INTERNALLY DISPLACED PERSONS

Representative Francis Deng issued recommendations to the Turkish government following a mission to Turkey between 27 and 31 May 2002.⁸ Deng's visit took place upon an invitation by the Turkish government to the United Nations Country Team ("UNCT") to work together in order to identify issues arising from internal displacement in Turkey. In addition to the representatives of various state organizations, Deng also held meetings with the governorships of Diyarbakır, Şırnak, and Şanlıurfa, with local NGOs, and with IDPs. Within this same process, an expert from Geneva visited Turkey and carried out a situation assessment.

In a report that he presented to the UN Human Rights Commission in November 2002, Deng reported the elements that stood out during his visit to Turkey as well as the measures to be taken. Below are Deng's observations and suggestions, in summary and not listed in priority order:

- i. Government policy concerning return, re-settlement, and re-integration:** The government should clarify its policy on these matters. The duties and responsibilities of government institutions, NGOs, and the international community should be made clear and widely-known. Coordination and cooperation of these efforts should be ensured. The government should work together with the international community in this field. Since the Turkish government has previously not accepted international aid on the issue of internal displacement, aid by UN organizations is particularly important.
- ii. Numbers/location:** The scale of the issue needs to be properly defined in order to ensure return, resettlement, and re-integration. In this context, there is need for comprehensive and reliable information on the overall number of IDPs and the number of those who wish to return, on their current location, situation, and special needs, and on whether they wish to return or not. It is therefore necessary for the government to establish the number of IDPs and their needs through a comprehensive survey to be conducted in cooperation with local NGOs that are in contact with IDPs.
- iii. Return under equitable terms:** The state's refusal to grant IDPs permission to return on the basis of security reasons is in conflict with the principle of non-discrimination and transparency. The prioritization of former village guards in the matter of return over IDPs thought by the state to be PKK supporters should come to an end.

■ 8 Deng (2002).

- iv. **Issues concerning return:** Role of the Gendarmerie in places of settlement where the state does not permit return for security reasons, the existence of mined areas, and the lack of transparency on these issues are grounds for concern. Where the Gendarmerie does permit return, it should not behave in an unjust and extra-judicial manner. The government, which has committed to accede to the UN Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-personnel Mines (“Ottawa Convention”) should initiate the clearing of landmines; while the RVRP will be the main document forming the framework of government policies concerning return and settlement in other regions, the government should develop a strategic document besides the RVRP to address all issues related to internal displacement.
- v. **Aid and re-integration in places where IDPs have settled:** Some IDPs who have lived in cities for many years may not wish to return. Problems such as unemployment and lack of access to education are preventing IDPs from integration into urban life. The government should make an effort in cooperating with the UN and with NGOs in order to solve problems unique to IDPs living in cities, such as shelter, healthcare, and psycho-social care services.
- vi. **Security/protection:** The government’s long-term policies regarding security forces and village guards are not clear. The village guard system should be abolished and former village guards should be re-integrated into society.
- vii. **Compensation:** The legal steps taken in this field are welcomed. While the government faces financial difficulties, the law on compensation of damages incurred by IDPs and other individuals who were affected by the violence in Southeastern Turkey should be submitted to the parliament as soon as possible, and the requisite system for the effective implementation of the law should be established.
- viii. **Partnership with civil society:** The contribution of other actors will be useful in the reinforcement of the cooperation between the government and NGOs. International NGOs can be useful in the provision of technical and financial aid.

As stated in Chapter III, the Turkish government has initiated a process of cooperation with the UN and the EU to address the issue of internal displacement in line with the recommendations in Deng’s report. Some progress has already been made concerning the recommendations regarding non-prevention of return, avoiding discrimination in return, implementing the Compensation Law, and developing a document that outlines the framework of government policies on these matters. However, there are still serious problems, such as the village guard system, the provision of effective support to returnees, the problems of IDPs living in cities, and the effective implementation of the Compensation Law, as reported in detail in the fieldwork reports.⁹

■ 9 See Chapter V in this book.

Walter Kälin, Deng's successor as the new Representative,¹⁰ visited Ankara between 4 and 6 May 2005 upon the invitation of the Ministry of Foreign Affairs. Kälin, who defined his visit as a working visit rather than a "mission," met with government officials and obtained information regarding the "Research on Migration and Displaced Persons in Turkey" (*Türkiye Göç ve Yerinden Olmuş Nüfus Araştırması - "TGYONA"*) carried out by Hacettepe University Institute of Population Studies ("HIPS"). Kälin also participated in a training session on the "Guiding Principles on Internal Displacement" ("Guiding Principles") held by the Norwegian Refugee Council ("NRC") for deputy governors at the Ministry of Interior. Stating at the end of his visit that he appreciated the new measures taken by the government, their work on the soon to be issued strategy document, and their open-mindedness on addressing internal displacement, Kälin made the following recommendations to the officials:

- i. On an international level, IDPs include everyone who has been forced or felt obliged to migrate. The strategy document to be issued by the government should be based on this principle and should implement the Guiding Principles.
- ii. A unit should be established for the implementation and the coordination of the strategy document and this unit should work with the participation and contribution of international organizations, NGOs, and IDPs.
- iii. The high rate of rejections among the petitions to the Compensation Law that were finalized up to that date was disconcerting. The deadline for application should be extended in order to create a more effective implementation.

In response to these recommendations, the Council of Ministers issued a decision on 15 August 2006 adopting the "Framework Document" which lays out the government's policies on internal displacement and endorses the Guiding Principles.¹¹

4. EVALUATION

The roles that the Council of Europe, the UN, and the EU played in the process point out two different situations. As the EU considers return mainly from the point of view of the protection of the political, cultural, social, and economic rights of citizens of different ethnic origins, it offers solution proposals that predominantly concern rights and regional development. From this point of view, an ambiguous and narrow definition of what is actually a multi-dimensional and problematic concept such as return, as well as the concentration of policy proposals on return; not only limit the possibility of a solution in the short term, but also do not constitute a sufficient contribution to the process of reconciliation corresponding to a much longer

¹⁰ Kälin's title has been changed to "Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons."

¹¹ See Chapter III in this book.

timeframe. However, the recommendations by the EU can still play a complementary role when combined with the recommendations by the Representative. Especially after the development of reconciliation methods and of solutions on specific subjects related to return, the protection of rights through these recommendations and the acceleration of regional development will contribute greatly to the achievement of durable peace. Therefore, the EU's attitude on this matter can be considered a complementary one, rather than one which can constitute a solution by itself.

The UN's general attitude is one which considers the problem an "internal issue" tied to the sovereignty of the Turkish state. However, the Representative's approach does not consider sovereignty as an obstacle to international cooperation; on the contrary, it foresees that if necessary, the state should accept international help and should strengthen its sovereignty in order to protect its citizens. In this context, the Representative accepts that the most important responsibility lies with the state but emphasizes the importance of including civil society and, especially NGOs in this process.

While the observations and recommendations of the Representative provide a more complete picture in comparison to those of the EU, there are still some important shortcomings. The UN has not limited the consequences of internal displacement and its solution proposals to return; it also issued recommendations regarding the problems of urban IDPs. Yet the fact that the Representative does not make any concrete recommendations concerning the social and psychological dimensions of internal displacement can be seen as an important shortcoming.

Human Rights Watch, Kurdish Human Rights Project, and The European Court of Human Rights on Internal Displacement in Turkey

DİLEK KURBAN

This article addresses the reflections of Turkey's internal displacement issue in international human rights organizations. It focuses on the activities and reports of organizations that have been monitoring forced migration in Turkey since the outset, that have reported on or have issued decisions regarding the rights violations occurring during this process, and that, therefore, have significant knowledge and authority on the subject. The first part of the article deals with the reports of international non-governmental organizations ("NGOs"), examining the assessments and recommendations by Human Rights Watch ("HRW") and the Kurdish Human Rights Project ("KHRP"). The second part evaluates the decisions that the European Court of Human Rights ("ECtHR"), the most influential international human rights organization for Turkey, has issued regarding the rights violations that have occurred during the process of internal displacement and the measures adopted by the government to address the problem.

1. REPORTS BY INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS

HRW and KHRP are the most prominent non-governmental human rights organizations that have closely followed Turkey's internal displacement problem and contributed to keeping it on the proverbial radar screen of international public opinion through publishing reports. Both organizations have declared that the measures taken by the government are insufficient for the realization of return and they have emphasized that durable return cannot take place unless the village guard system is abolished, the security forces' activities preventing the return of the displaced are stopped, and the landmines are cleared. Another matter of interest in the reports of these two organizations is their emphasis on the Kurdish identity of the internally displaced persons ("IDPs"). One of the most important differences between international non-governmental human rights organizations such as HRW and KHRP and inter-governmental organizations such as the United Nations ("UN"), the European Union ("EU") and the ECtHR is the emphasis of the former on the political aspect of forced migration and the ethnic identity of forced migrants in Turkey.

1.1. HUMAN RIGHTS WATCH

HRW is one of the main international human rights organizations monitoring internal displacement in Turkey. With this aim, HRW published a report in October 2002, a briefing in October 2004 and another report in March 2005.¹ As can be inferred from these reports, although all observations, critical analyzes, and policy suggestions made by HRW up to the present also address the concerns of IDPs living in cities, they predominantly concern the return to villages. HRW reports also contain an evaluation of Law No. 5233 entitled “Law on Compensation for Losses Resulting from Terrorism and the Fight against Terrorism” (“Compensation Law”), mainly from the perspective of the return process.

A. THE 2002 REPORT AND THE 2004 BRIEFING PAPER

The report prepared by HRW in October 2002 entitled “Displaced and Disregarded: Turkey’s Failing Village Return Program” draws attention to poverty and shelter-related problems suffered by IDPs living in cities. It includes many points of criticism about the obstacles to return and the government’s policies regarding return.² This section of the article examines HRW’s briefing paper dated 4 October 2004 entitled “Last Chance for Turkey’s Displaced” which contains similar criticism but is more current.³ The briefing paper states that a series of projects - central villages, model villages, the Return to Villages Program, the Return to Villages and Rehabilitation Project (“RVRP”)⁴ - launched by the Turkish government since 1995 “supposedly to assist return... were badly conceived, under-funded, and lacking in genuine political will.”⁵ It argues that, rather than providing shelter and protection for IDPs, the above measures were taken to avoid criticism directed at the government. The briefing paper lists the obstacles preventing IDPs from returning to their villages as follows: the presence of village guards who have played a role in the displacement of villagers, who have committed crimes such as murder and kidnapping, and who still occupy the houses of IDPs and make use of their lands; landmines; the continuing eviction of villagers; the environment of violence arising from the resumption of clashes between the security forces and the armed militants; and the overall inadequacy of the Turkish government in dealing with the issue.

1 These reports were prepared by Jonathan Sugden, Rapporteur for Europe and Central Asia, HRW.

2 HRW (2002).

3 HRW (2004).

4 These are the names of successive government projects adopted with the stated aim of facilitating the return of the displaced to rural areas. Designed through a top-down policy making process without consulting the displaced, they have been criticized for being undemocratic, non-transparent, and ineffective. The projects of “central villages” and “model villages” have been particularly controversial in that they foresaw the resettlement of the displaced to rural areas selected for return by the government rather than to their original villages or hamlets.

5 HRW (2004).

The briefing paper states that the most convincing proof of government support for return would be a transparent policy providing financial and in-kind aid to the displaced for the reconstruction of houses and the redevelopment of agriculture. It claims that there is a lack of evidence substantiating that the high amounts of money the government asserts to have spent have actually reached IDPs, and, furthermore, it claims that the figures provided by the government are inconsistent and conflicting. The damage assessment commissions to be established in accordance with the Compensation Law - which later came into force on 27 July 2004 - are also criticized because they would not be made up of independent members and instead be composed of public officials headed by deputy governors, that is to say, by representatives of the administration which is ultimately responsible for the evictions of the displaced.

HRW emphasizes that for the return process to be successful, the Turkish government needs to develop an action plan where international organizations like the UN High Commissioner for Refugees (“UNHCR”) and the UN Development Programme (“UNDP”) are assigned specific duties. The report also states that including the UN, the Organization for Security and Cooperation in Europe (“OSCE”), and the EU in the process will ensure that return to village projects are conducted in accordance with the “Guiding Principles on Internal Displacement” (“Guiding Principles”) and that they are feasible. HRW considers the government’s assignment of the study for the assessment of the nature and scope of the issue to the Hacettepe University Institute of Population Studies (“HIPS”) - rather than executing it in cooperation with the UN - as an example of the government’s resistance to address the issue through international cooperation. In this context, the report draws attention to the fact that the assignment of important roles to international organizations in the process of the return of internally displaced Serbians was influential in the EU’s June 2004 decision to initiate accession negotiations with Croatia, which has applied for membership to the EU in 2003. HRW claims that as long as the government does not establish official cooperation with international organizations, it may continue to pursue the postponement policy it has been implementing for the last ten years and that the return of IDPs will therefore not be achieved.

B. THE 2005 REPORT

The report entitled “Still Critical: Prospects in 2005 for Internally Displaced Kurds in Turkey” and dated March 2005 focuses predominantly on the return process.⁶ The most important contribution the report brings to the literature concerning Turkey’s internal displacement issue is that it is the first study that attempts to verify the figures declared by the government regarding the return process. Another feature of

■ 6 HRW (2005).

the report, as can be inferred from its title, is that it highlights, for the first time, the Kurdish identity of IDPs.

According to the report, HRW contacted the Turkish Embassy in Brussels on 7 October 2004 and requested the breakdown of statistics on IDP return provided by the Ministry of Foreign Affairs to the European Commission. On 25 November 2004, the report states, the Ministry of Foreign Affairs sent HRW a list containing information on the pre and post-internal displacement population of villages and hamlets where return has occurred. The HRW rapporteur drew a small sampling from the list and at the end of November visited the selected villages and hamlets to compare the official figures with information provided by villagers and to examine the living conditions as well as the support services that IDPs have received from the government.

HRW states that the figures provided by the government concerning return are unrealistic, that the government consistently understates the scale of the issue by under-recording the pre-displacement population of the areas, and that it makes the RVRP appear more successful than it actually is by overstating the number of people who have returned. HRW reports that the names of certain villages whose residents were forcibly evicted are not on the list provided by the government, while some other villages are shown not to have had any population at all even before the eviction. In other words, both the original population of rural areas and the scope of eviction are understated. The report also states that in some villages where return has been recorded, either the number of returnees has been inflated or those returning on a provisional basis are also shown as permanent returnees. In some cases, the report concludes, people living in villages where return is claimed to have occurred in actuality consist of civilians or village guards who have confiscated the property of evicted villagers upon the displacement of the latter. In other words, individuals who appear to be “returnees” in official records are actually individuals who have caused the eviction of the displaced in the first place, and who now unlawfully occupy their properties. Another contributing factor to the inflation of the number of returnees consists in the inclusion of villages whose residents were never evicted. These villages are often those which host Kurdish civilians who have become village guards to avoid displacement, to benefit from the political or economic rent of the armed conflict, or to take advantage of their military power to gain the upper hand in tribal conflicts or blood feuds. Therefore, the report reaches the conclusion that the government’s claim that one third of the displaced have returned to their villages is based on erroneous data and that it paints a picture of successful return that is only partially true.⁷

Anticipating that the HIPS study will include the number of villages whose residents have been evicted and that this number will be based on official data, HRW draws

■ 7 For the figures on return supplied by the government, see Chapter III in this book.

attention to the fact that if currently available information is used in this study without prior verification by independent sources, the reality of the issue will be even more egregiously under-documented. The report emphasizes that a sound evaluation of the return process can only be realized through a qualitative study examining the conditions of returnees, the infrastructure of places where return is taking place, and the aid provided by the state. The report points out that research to determine whether people returning to their villages live there continually or only intermittently is of particular importance.

The HRW report argues that the government now seems to be approaching the return of IDPs from a new and more constructive angle. It refers to two positive developments: the establishment of a new government office for the coordination of policies on IDPs and the plans for the development of a pilot project in cooperation with the UNDP. However, the report draws attention to the fact that these initiatives remain unrealized and that the performance that the government will demonstrate in implementing the Compensation Law will be a fundamental indicator of how successful this new approach will be. The report states that the damage assessment commissions introduced by the Compensation Law to provide compensation for IDPs promises to be a much stronger mechanism than previous government measures, but that it leaves ample scope for the rejection of petitions and the delay and reduction of payments. Other points of criticism are the non-independent nature of these commissions, the automatic exclusion of, *inter alia*, petitions by individuals who have committed offences under the Anti-Terror Law, the limitations brought upon admissible evidence in establishing damages, the lack of compensation for non-pecuniary damages, the lack of legal aid for indigent IDPs, and the lack of sufficient legal remedies for the review of erroneous commission decisions.

The report draws attention to the fact that there remain serious obstacles to return and lists them as follows: serious damages in infrastructure, the failure to ensure security, the continuation of the village guard system, and armed attacks by security forces on returning villagers. The following are some of the proposals that HRW makes to the government: the establishment of a new organization for the coordination of policies on return, the approval and implementation of the pilot project planned in coordination with the UNDP, the reform of the RVRP, the disarmament and demobilization of village guards, the amendment of the Compensation Law and the monitoring of its implementation, and the provision of infrastructure to returnee communities.

1.2. KURDISH HUMAN RIGHTS PROJECT

Like HRW, KHRP also emphasizes the Kurdish identity of IDPs in its reports entitled “People Who Were Forced to Migrate: the Kurds in Turkey” and “Human Rights Violations Against Kurds in Turkey.”⁸ The 2004 dated report, which is analyzed here

■ 8 KHRP (2002 and 2004).

due to its more current nature, states, at the onset, that four million Kurdish citizens have been displaced in Turkey. One of the most striking features of this report is its statement that the eviction of villagers was carried out by the Governor of the State of Emergency upon the authority conferred to him under the “Law on the State of Emergency.”⁹ However, both the Turkish Grand National Assembly (“Turkish Parliament”) and the Human Rights Association (*İnsan Hakları Derneği* - “İHD”) state in their reports that the eviction of villagers by security forces was not based on any legal grounds.¹⁰

The report draws attention to the fact that the OSCE member states have committed to avoid displacing their citizens *en masse* and to ensuring that refugees and IDPs are able to return to their places of settlement. It also expresses concern that Turkey will not be able to fulfil this duty. The report claims that internal displacement is continuing to occur in Southeastern Turkey due to the environment of conflict. It further states that dam projects constitute another important reason behind internal displacement in the region.

The report draws attention to the delays and obstacles preventing the return of villagers and calls on Turkey to take international initiatives in accordance with the OSCE Helsinki Document to facilitate return. Discrimination in the implementation of government projects on return and the inability to ensure safe return are indicated as factors making return more difficult. The report states that the government’s preference for a minimum of 30 households at the place of return in order to make economic and financial investments “has the potential to disconnect Kurdish people from their former lands and can therefore be classified as discriminatory.”¹¹

Moreover, KHRP draws attention to the allegations that, as a condition for return, male IDPs are forced to become village guards, and it views as discriminatory the pressure exercised to that effect by the Gendarmerie and condoned by public officials in the districts of Şemdinli and Kızıltepe.¹² Obstacles to a safe return are listed as follows: the continuation of the village guard system; landmines; the difficulties encountered by villagers in accessing policies to facilitate their return because official data on IDPs and on people who are permitted to return is not transparent; the fact that people who were permitted to return to their villages were made to lose their right to compensation by being forced to sign documents eliminating the government’s responsibility in the matter of internal displacement, and declaring that they were displaced due to terrorism or that they had abandoned their village

9 The “Law on the State of Emergency” referred to in the report is the State of Emergency declared under the Decree Law No. 285, enacted on 19 July 1987 and abolished on 30 November 2002.

10 See Yüksekler: “Research Findings on Internal Displacement in Turkey: National Reports” in this chapter.

11 KHRP (2004).

12 The Kurdish Human Rights Project (“KHRP”) bases this view on a report dated April 2004 by the Turkish Human Rights Foundation (*Türkiye İnsan Hakları Vakfı* - “TİHV”).

voluntarily.¹³ The report draws attention to an important point regarding the village guard system: in accordance with Article 5 of the new regulation that was published in the Official Gazette on 16 May 2003, the “licence to carry guns” carried by former village guards can be transformed into a “licence to possess guns,” allowing their continuing armament. The report claims that that this situation constitutes a serious obstacle to the safe return of IDPs.

The report makes the following recommendations to the Turkish Government: 1) to hold meetings with NGOs, international organizations, and IDPs in order to ensure the sustainability of return; 2) to abolish the village guard system and to clear landmines and other explosive ordnance; 3) to disclose the names of villages where return is permitted and to regularly update statistics regarding the return process; 4) to cease the practice whereby villagers are forced to declare that they have abandoned their villages voluntarily or as a result of terrorism; and 5) to adopt a regulation towards implementing the Compensation Law.¹⁴ The report also contains recommendations addressed to the OSCE, such as the formal adoption of the Guiding Principles in order to facilitate cooperation among international organizations and the urgent provision of assistance to both to the Turkish Government and Kurdish IDPs.

1.3. EVALUATION

Both HRW and KHRP have been closely monitoring Turkey’s internal displacement problem and have made a great contribution towards keeping the issue on the radar screen of international public opinion. Unlike inter-governmental organizations such as the EU and the UN, which consider the armed struggle between the state and the Kurdistan Workers’ Party (*Partiya Karkerên Kurdistan* - “PKK”) as an “internal security issue” and who, although frequently expressing concern about the rights violations that have taken place during this process, avoid emphasizing the political dimension of internal displacement in Turkey, HRW and KHRP have drawn attention to the political aspect of the issue by emphasizing the Kurdish identity of IDPs.

On the other hand, the main shortcoming in these organizations’ reports is that, rather than considering internal displacement as an “urban issue” which affects the whole of Turkey and especially metropolises in the west of the country, they present it as a predominantly regional issue. The main indication of this approach is seen in the fact that the reports focus on the obstacles to return and largely ignore the problems facing urban IDPs who are unable or unwilling to return to their original

13 In previous years people who filed petitions under the RVRP were known to have been made to complete forms where they had to mark options which included statements such as “we left our village voluntarily” or “we left because of the terrorist organization.” However, according to lawyers from the region, the belief that people who have completed these forms are automatically prevented from applying to the Compensation Law is not correct.

14 The regulation was adopted on 4 October 2004 and came into force on 20 October 2004. Official Gazette (2004b).

places of settlement. Another indication of this approach is that the implementation of the Compensation Law is also dealt with in terms of whether it facilitates or hinders return. However, internal displacement is not only a political issue that concerns Eastern and Southeastern Anatolia where the majority of the population is Kurdish, but also a political, sociological, legal, demographic, and psychosocial issue affecting the whole of the nation.

2. ECtHR JURISPRUDENCE REGARDING INTERNAL DISPLACEMENT IN TURKEY

Since the 1990s the ECtHR has issued numerous decisions on human rights violations that occurred during the State of Emergency in Turkey. It is possible to classify these decisions into two groups. The first group consists of decisions made in petitions concerning rights violations committed by the security forces in the first half of the 1990s during the process of internal displacement. In these cases, although the ECtHR has reached the decision that actions like the burning and destruction of villages by the security forces violated the European Convention on Human Rights (“ECHR”), it has not engaged in an analysis which shows that such violations occurred as part of the process of internal displacement. This situation arose from the low number of similar petitions during that period and from the fact that, at the time, ECtHR’s mandate was limited to ruling on the individual cases that came before the Court rather than making general judgments about similar cases. Therefore the Court has not been able to evaluate the human rights violations that have occurred during the State of Emergency in Turkey within the framework of internal displacement.

In its June 2004 decision in the case of *Doğan and Others v. Turkey*,¹⁵ the ECtHR, for the first time, identified a “structural issue” regarding IDPs in Turkey and has handled the issue with a comprehensive approach. In this sense, *Doğan and Others* constitutes a turning point in the ECtHR jurisprudence on rights violations arising from internal displacement in Turkey. This development cannot be considered independently from the general political transformation in the Council of Europe. The sudden increase in the number of petitions to the ECtHR following the enlargement of the Council of Europe in the second half of the 1990s, and especially the collective petitions from former Eastern Bloc countries arising from similar problems, resulted in the Committee of Ministers giving the ECtHR the authority to request that member states undertake radical measures in cases that it considers to have arisen from “structural issues.” Having decided to use this new authority conferred to it in 2004, the ECtHR developed the “pilot case” procedure, and made use of it in the case of Turkey for the first time in *Doğan and Others*, where it decided that internal displacement was a “systematic and structural issue.” On the other hand, the *İçyer v. Turkey* (“İçyer”) decision of January 2006 indicates another turning point in the ECtHR jurisprudence.

■ 15 ECtHR (2004f).

With this decision, the ECtHR found that by enacting the Compensation Law in July 2004, Turkey has developed an “effective” domestic legal remedy in the solution of internal displacement. The Court has thus rejected thousands of similar petitions claiming that they have not yet exhausted this domestic legal remedy.

Although all cases examined in this article concern internal displacement in Turkey, they are classified and analyzed in two groups in light of the ECtHR jurisprudence. The article first looks at decisions regarding rights violations such as the eviction of villagers, the burning and destruction of villages, and death and injuries which resulted from internal displacement. It then discusses two ECtHR decisions which dealt more directly with internal displacement: the *Doğan and Others* decision where the RVRP was analyzed and the *İçyer* decision where the Court gave a ruling on the Compensation Law. This is followed by a discussion of the implications of these two decisions for the solution of Turkey’s internal displacement problem.

2.1. DECISIONS CONCERNING RIGHTS VIOLATIONS THAT OCCURRED DURING THE EVICTION OF VILLAGES

The ECtHR has issued dozens of decisions regarding the human rights violations - such as the burning /demolishing of villages and the eviction of villagers - which took place predominantly during the internal displacement process in the first half of the 1990s in Eastern and Southeastern Turkey. In many of these decisions, while the ECtHR found that Turkey has violated the ECHR, as mentioned earlier, it treated the petitions as isolated cases. Thereby, these decisions, which actually concerned rights violations committed during internal displacement, were considered simply to relate to individual cases of rights violations by security forces and were not linked to internal displacement. This was the approach not only of the ECtHR and the Turkish government but also the international community.¹⁶

A. PROCEDURAL MATTERS: THE AKDIVAR PRINCIPLE

One of the main procedural objections made by Turkey in the ECtHR cases concerning damages arising from internal displacement was the claim that petitioners had not exhausted domestic legal remedies. Pointing out that both administrative and criminal cases can be brought to court in the Turkish legal system, the government claimed that petitioners’ application to the ECtHR without having resorted to these

¹⁶ In fact, in its interim decision dated 7 June 2005 where the European Court of Human Rights (ECtHR) evaluates the progress made in the implementation of 74 decisions and decides that the European Convention on Human Rights (ECHR) had been violated by the actions of the security forces in Turkey, the Council of Europe’s Committee of Ministers has examined the rights violations arising from the burning/ destruction of villages and the eviction of villagers along with other violations for which the security forces were responsible. That is to say, just as in the case of the ECtHR jurisprudence, the Committee of Ministers’ monitoring mechanism also did not deal with the rights violations committed during the process of internal displacement as a separate category but evaluated them as “violations of the ECHR arising from the actions of the security forces.” Council of Ministers (2005).

remedies violated former Article 26 of the ECHR. The ECtHR rejected this objection and introduced to former Article 26 - which requires the exhaustion of domestic legal remedies - two important exceptions known as the “*Akdivar* principle:” 1) the insufficiency or inefficiency of remedies available in the member state’s domestic legal system; or 2) the demonstration of the existence of an administrative practice condoned by official authorities, whereby actions in conflict with the ECHR recur continuously, rendering domestic legal remedies ineffective or futile.¹⁷

Evaluating this principle in the context of Turkey, the ECtHR has drawn attention to the fact that, in spite of the gravity of village destructions and the high number of claims that security forces had intentionally damaged villagers’ property, the government had not provided a domestic legal remedy to either compensate the villagers for the damages arising from these violations or to hold the security forces accountable. The ECtHR also stated that officials from the Turkish government were reluctant in acknowledging that security forces had carried out such actions.¹⁸ Emphasizing that the obligation to exhaust domestic legal remedies in accordance with former Article 26 of the ECHR should be interpreted within the framework of human rights and implemented with a certain flexibility, the ECtHR has stated nevertheless that while doing this, the special circumstances of the case - both legal and political conditions of the country and subjective conditions of the petitioner - should be taken into account.¹⁹ However, the ECtHR has emphasized that these assessments do not constitute a general conclusion that domestic legal remedies in Eastern and Southeastern Turkey are ineffective, and that they do not save petitioners from their obligations under former Article 26. Thus, the ECtHR set the limits of the *Akdivar* principle.²⁰

B. SUBSTANTIVE MATTERS

i. ECHR Articles the ECtHR Found Turkey to have Violated

In its decisions regarding the burning and destruction of villages and the eviction of villagers during internal displacement, the ECtHR found that the Turkish government had violated Article 8 (the protection of private and family life), Article 3 (the ban on torture, inhumane or degrading treatment or punishment), and Article 13 (the right to apply to an effective remedy before a national authority) of the ECHR, and Article 1 (the protection of the inviolability of property) of Protocol No. 1.

Evaluating the petitions in light of Article 8 of the ECHR and Article 1 of Protocol No.1, the ECtHR has determined that the intentional burning of property by security forces

17 ECtHR (1996).

18 ECtHR (1997).

19 ECtHR (1996) and ECtHR (1997).

20 ECtHR (1996).

constituted a serious disruption to the protection of IDPs' private and family lives and to the inviolability of their property.²¹ At first the ECtHR did not deem it necessary to evaluate petitioners' claims that Article 3 had been violated, on the grounds that Article 8 of the ECHR and Article 1 of Protocol No. 1 had been violated.²² However, the ECtHR later changed its view and decided that the planned and intentional burning of property before the very eyes of IDPs constituted inhumane treatment.²³ The ECtHR reached this decision later again in subsequent cases, emphasizing that even if in carrying out these actions, the security forces were not intending to punish IDPs but to prevent terrorists from making use of these houses later on, this did not justify the inhumane treatment the villagers have received.²⁴

The ECtHR has interpreted the right to an "effective legal remedy" protected under Article 13, which it found to have been violated in almost all cases, as follows: legal remedies available in domestic legal systems of member states to ensure the protection of rights and freedoms guaranteed under the ECHR must not only be available in law, but also effective in practice;²⁵ these remedies should not be unfairly prevented by state officials;²⁶ and if a petitioner makes a sustainable claim that his house and property has been intentionally damaged by state officials, the state is not only responsible for granting compensation where appropriate but also for carrying out a comprehensive and effective investigation capable of ensuring the identification and prosecution of perpetrators.²⁷ In this context, administrative court decisions granting of compensation based on the principle of "social risk," which does not require proof of fault in Turkey, does not constitute an "effective legal remedy" because lawsuits filed within the framework of administrative law foresee strict liability on the part of the state and do not require the identification of perpetrators.²⁸ Yet, an effective legal remedy should require the identification and punishment of perpetrators.²⁹

ii. Claims that the ECtHR has not Found Necessary to Examine and Claims where the Court has not Found Violations

The ECtHR has not found it necessary to examine separately the claims based on Article 6(1) (the right to a fair hearing) of the ECHR on the grounds that this issue was already covered by Article 13.³⁰ A factor that played a role in this decision was the fact

21 ECtHR (1996), ECtHR (1997), ECtHR (1998b), ECtHR (2000), ECtHR (2003c), and ECtHR (2004a).

22 ECtHR (1996) and ECtHR (1997).

23 ECtHR (1998b).

24 *Ibid.*

25 ECtHR (1997).

26 ECtHR (2004d).

27 *Ibid.*

28 ECtHR (2004a).

29 *Ibid.*

30 ECtHR (1997).

that the insufficient and ineffective investigations carried out by Turkish authorities were terminated without the filing of lawsuits, rendering the exercise of the right to a fair hearing practically inaccessible.³¹

The ECtHR has also not felt it necessary to take into consideration the claim that the Turkish state had developed a policy aimed at intentionally damaging goods and property and to forcefully evict villagers from their homes.³² As an example of judicial restraint, in each decision where it has found a violation, the Court limited its assessments and judgments to the facts of the case at hand, avoiding engaging in a discussion as to whether Turkey had indeed developed a systematic policy of village destruction and eviction. As aforementioned and as will be discussed in detail below, with the increase of petitions concerning rights violations incurred during the process of internal displacement and with the new authority conferred on it by the Committee of Ministers of the Council of Europe, the ECtHR would later establish in its *Doğan and Others* decision in 2004 that there was a problem of internal displacement in Turkey which affected hundreds of thousands of people.

The Court has also always rejected claims by petitioners that the burning and destruction of villages and the eviction of villagers that took place in the process of internal displacement were part of an intentional and unfair policy that targeted Kurdish people in violation of Article 14 (the prohibition of discrimination) of the ECHR.

The ECtHR has also rejected petitioners' demands for a declaratory judgement for the restitution of their rights, namely ensuring that they can return to their villages and to their lives before rights were violated.³³ The ECtHR made this decision on the grounds that a decision which finds a violation of rights ascribes the respondent state the responsibility to cease the violation and to compensate damages, but that if it is not possible in practice, to reinstate the applicant to his/her original condition (*restitutio in integrum*) - states are free to decide how to implement court decisions.³⁴ The Court has stated that in cases where the restitution of rights is not possible, the discretion on how to implement the decision belongs to the Turkish government, that the ECtHR cannot make a declaratory judgment, and that the responsibility of monitoring whether Turkey fulfils its responsibility lies with the Committee of Ministers of the Council of Europe.³⁵

31 *Ibid.*

32 ECtHR (1997) and ECtHR (2000).

33 ECtHR (1996), ECtHR (1997), and ECtHR (1998b).

34 ECtHR (1996), ECtHR (1997), and ECtHR (1998b).

35 *Ibid.* However, as will be reported below, following the Committee of Ministers' decision dated 2004 which conferred to it the right to develop "pilot cases," the ECtHR has begun making leading decisions for the solution of issues in cases where it has established "structural issues" in accordance with Article 46 of the ECHR. Article 46 states that final judgments are binding on member states and that the monitoring of whether these judgments are fulfilled is carried out by the Committee of Ministers.

Therefore, the sanctions imposed by the ECtHR on Turkey concerning the lawsuits brought for the burning and destruction of villages and the eviction of villagers have been limited to requiring it to pay compensation. The necessity to develop legal, administrative, and social policies to ensure that IDPs are reinstated to their pre-violation conditions has not been foreseen. Although the ECtHR explains the limitation it has adopted in defining the scope of its authority on the basis of separation of powers between itself and the Committee of Ministers, its reasoning that the requested declaratory judgment falls outside of its mandate is questionable. This approach, which raises the possibility that the ECtHR may be taking into account the political balances within the Council of Europe and/or that it may be showing judicial conservatism by adopting a narrow interpretation of Article 46 of the ECHR can be seen as an example of how a court can restrain itself in exercising jurisdiction.

C. COMPENSATION

i. Cases Resulting in Turkey's Conviction

In its decisions where the ECtHR has found violation of the ECHR, it ordered Turkey to compensate the pecuniary and non-pecuniary damages incurred by petitioners and to pay for their legal fees and expenses. On the other hand, it rejected petitioners' demands for punitive and aggravated damages.³⁶

In cases where the amount of damage to movable and immovable property has not been established by independent experts, the ECtHR determined compensation amounts it deemed to be appropriate on the basis of the principle of equity. Pecuniary damages that the ECtHR has agreed to compensate are generally classified in four groups: 1) houses and other external structures; 2) other goods and property (household goods, cultivated lands, large and small cattle, food, etc.); 3) loss of income arising from internal displacement (due to the inability to live off agriculture and animal husbandry); and 4) accommodation expenses in new places of settlement (rent, fuel, electricity, water expenses, etc.). It is thus clear that financial damages incurred by IDPs were not limited to damages incurred in their villages, but the compensation of expenses made during and after internal displacement was also considered necessary. Although compensation amounts awarded for pecuniary damages vary from case to case, the following figures can be cited as examples of awards identified by the ECtHR on the basis of the principle of equity: 1) houses and other external structures: Euro 8,000-10,000; 2) other goods and property: Euro 6,000-10,000; 3) loss of income: Euro 6,000-9,000; and 4) expenses for alternative accommodation: Euro 6,000-6,500.

■ 36 ECtHR (1997) and ECtHR (1998b).

In cases of disappearances under custody, death, or injuries, the ECtHR has indemnified financial damages to the life and body of a person as a separate item.³⁷ For example, in a case concerning disappearance under custody, the Court had ruled that the victims had died in custody and awarded the father a compensation of Euro 7,000 for each of his sons.³⁸ In the case of pecuniary damages awarded for injuries, the Court has taken into account the loss of future income.³⁹

The compensation amount foreseen by the ECtHR for non-pecuniary damages is an average of Euro 15,000 for most cases.⁴⁰ In cases of murders by unidentified perpetrators or disappearances under custody, the Court ordered the compensation of non-pecuniary damages for emotional pain and suffering that relatives of the deceased or disappeared have incurred for losing their loved ones and due to the ineffective investigation of these incidents.⁴¹ For example, in the case of two brothers who disappeared under custody, the court awarded their parents Euro 10,000 for each son in compensation of the worry and sorrow they have suffered due to the arrest and subsequent death of their sons, and Euro 8,000 in compensation for the psychological distress they have suffered due to the authorities' failure to effectively investigate the disappearance of their sons.⁴² In another case of disappearance under custody, where the court did not find the government to be accountable, relatives of the deceased were not given compensation for the stress arising from the death of their relatives, but were awarded Euro 15,000 per deceased person in compensation for the pain and sorrow resulting from ineffective investigation.⁴³

ii. Cases Resulting in Friendly Settlements

In cases that have resulted in friendly settlements, Turkey has accepted to compensate the pecuniary and non-pecuniary damages of IDPs as well as their court fees and expenses. As a result of these settlements, the government paid petitioners compensation amounts varying between GBP 10,000⁴⁴ and GBP 68,000.⁴⁵ The difference among compensation amounts may be explained by the degree of pecuniary or non-pecuniary damages incurred by petitioners, including the occurrence of incidents of death, disappearance under custody, or murder by unidentified perpetrators during the process of internal displacement. For example, while claims of rights violations in cases resulting in low compensation amounts are

37 ECtHR (2004b).

38 *Ibid.*

39 ECtHR (2004c).

40 ECtHR (2004b) and ECtHR (2004c).

41 ECtHR (2004b) and ECtHR (2005).

42 ECtHR (2004b).

43 ECtHR (2005).

44 ECtHR (2001d), ECtHR (2001c), ECtHR (2001b), ECtHR (2001a), and ECtHR (2001e).

45 ECtHR (2001f).

limited to the burning of houses and the eviction of villagers, one of the claims in the *Aydın* case is that there was also disappearance under custody.

A variation appearing over time in petitions resulting in friendly settlements lies in the approach of the government in acknowledging its responsibility for human rights abuses. Although Turkey accepted to pay compensation in the first five petitions resulting in friendly settlements, it did not make any reference to the rights violations that had been alleged.⁴⁶ As can be inferred from the official investigation reports presented to the ECtHR, the state's official defence in those years was based on the assertion that said violations were carried out not by the security forces, but by the PKK.⁴⁷ This assertion is in accordance with the defence Turkey has made on the basis of Article 125 of the constitution in earlier cases concerning the burning of villages and the eviction of civilians. According to Article 125, which is based on the concept of collective responsibility also known as the "social risk principle," on the basis of the principle of strict (administrative) liability, the state is responsible for compensating all damages taking place in the territory under its jurisdiction regardless of whether it is at fault.⁴⁸ Stating that the state's strict (administrative) liability also extends to compensating damages caused by the PKK, Turkey has in a sense emphasized that its acceptance to pay compensation does not mean that it gives up its argument that the PKK is responsible for the damages incurred.⁴⁹

However, it seems that over time Turkey has given up its policy to pay compensation on the basis of strict (administrative) liability. Following the *Aydın* petition, which resulted in friendly settlement in July 2001,⁵⁰ the government has published a declaration acknowledging the rights violations that have occurred, expressing regret for the events, and committing to take all necessary measures in order to avoid similar incidents in the future, and to conduct an effective investigation.⁵¹ In later friendly settlements, it has taken another step forward and has accepted that damages to goods and properties that caused petitioners to leave their villages had been brought by security forces.⁵² Although these declarations constitute an important turning point in that the state acknowledged its negligence, it is necessary to draw attention to two points. First, although Turkey accepted its responsibility for the burning and destruction of villages by security forces, the statement, in friendly declarations, that these events "caused civilians to leave their villages" shows that the government still does not accept that the security forces *evicted* villagers. That is to

46 ECtHR (2001d), ECtHR (2001c), ECtHR (2001b), ECtHR (2001a), and ECtHR (2001e).

47 ECtHR (2001a).

48 ECtHR (1996), ECtHR (1997), ECtHR (1998b), ECtHR (2000), ECtHR (2003c), and ECtHR (2004a).

49 ECtHR (1996).

50 However the *İşçi* case which resulted in a friendly settlement in September 2001 does not reflect this change of policy.

51 ECtHR (2001f).

52 ECtHR (2002c).

say, although over time Turkey has reached the point of accepting that the security forces burned and destroyed villages, it is continuing to deny its responsibility in the eviction of villagers. Secondly, the government portrays the burning and destruction of villages as “isolated incidents,” therefore, covertly rejecting the existence of a state policy along these lines.⁵³ This sensitivity displayed by Turkey has also been shared by the ECtHR, as evident in the Court’s repeated rejection of petitioners’ requests for declaratory judgment for the restitution of their rights.

Moreover, the government has also declared that it has begun taking legal and administrative measures to ensure the protection of rights guaranteed by the ECHR and that as a result there has been a decrease in violations of this kind.⁵⁴ The change in policy in the last few years concerning the return to villages has also been reflected in these declarations. In fact, the government has drawn attention to the RVRP, declaring that there are no more obstacles preventing IDPs from returning to their villages and that the necessary resources for the reconstruction of their homes would be provided under the scope of the RVRP.⁵⁵

2.2. DECISIONS REGARDING INTERNAL DISPLACEMENT

The most important factor separating the ECtHR’s *Doğan and Others* decision of 29 June 2004 from other cases examined above is that it was the first instance in which the Court examined a petition in the context of internal displacement. In fact, from the point of view of the reasons behind the rights violations referred to in the petition, the way the violations occurred, and their consequences, the *Doğan and Others* case is no different from the other cases examined above. As in *Akdivar and Others* and subsequent cases, the question in *Doğan and Others* is that the internal displacement that arose from the eviction of villagers under the State of Emergency, the rights violations that occurred during this process, and the damages incurred by IDPs have not been compensated, and perpetrators have not been identified and punished. Why is it then, that *Doğan and Others*, which is accepted as the first ECtHR decision concerning internal displacement in Turkey, is different from others? Although the ECtHR has been making decisions in these kinds of cases since 1996, why was it only able to evaluate these violations within the context of forced migration and refer to Turkey’s internal displacement problem in 2004?

The answer to these questions lie in an important political development: In a decision dated 12 May 2004,⁵⁶ the Committee of Ministers of the Council of Europe enabled the ECtHR to issue a new type of judgment, defined as “pilot judgment.”⁵⁷

53 *Ibid.*: para. 22.

54 ECtHR (2002c), ECtHR (2003a), ECtHR (2003b).

55 ECtHR (2004a).

56 Decision No. 2004/3, dated 12 May 2004, made by the Committee of Ministers of the Council of Europe.

57 ECtHR (2004e): para. 190.

This decision, which was among the reformist measures taken by the Council of Europe in order to diminish the workload of the ECtHR,⁵⁸ asked the Court, where possible, to point to the “systemic issue and to the source of this issue” in cases where it was decided that the ECHR had been violated.⁵⁹ Thus, the ECtHR, which had rejected petitioners’ demands for “declaratory judgments” in many of the cases examined above⁶⁰ on the grounds that they were beyond its authority, was conferred by the Committee of Ministers the authority necessary to guide member states in executing the jurisprudence of the Court. In another decision dated 12 May 2004, in order to prevent similar petitions from being brought to court, the Committee of Ministers asked member states to take into consideration in their laws and policies the ECtHR’s decisions pointing to structural or general problems and to develop effective domestic legal remedies.⁶¹

The ECtHR made use for the first time of the authority to issue a “pilot judgment” in the *Broniowski* decision, and defined the limits of this procedure as follows: in order to amend rights violations which the Court has decided to have arisen from a structural problem that affects a high number of people, member states should develop national remedies to compensate not only the loss of the petitioner, but that of everyone who suffers from this problem and such remedies should, if necessary, also be retroactive.⁶² Countries are free to decide on the type of remedies to fulfil their responsibility regarding decisions taken by the ECtHR in accordance with Article 46 of the ECHR; however, to ensure the implementation of its decisions which have identified a structural problem, the ECtHR reserves the right to monitor whether member states develop national measures to cover all people who incurred damages.⁶³ In other words, member states are free to decide how to implement decisions of the ECtHR, but the legal remedies they will develop with this aim are subject to monitoring by Strasbourg.

The ECtHR had the opportunity to implement the pilot judgment procedure for Turkey for the first time in the *Doğan and Others* case, which it handled a week after the *Broniowski* decision. It assessed the rights violations incurred by the petitioner within the context of Turkey’s internal displacement issue, which constitutes a structural and general situation. In *Doğan and Others*, the ECtHR reached a decision taking into consideration not only the case at hand but also thousands of other

58 In fact, the ECtHR has stated that this decision of the Committee of Ministers “needs to be evaluated within the framework of the increasing workload [of the ECtHR], caused by a series of cases that arise from the same structural or systemic reasons.” ECtHR (2004e): para. 190.

59 *Ibid.*

60 ECtHR (1996), ECtHR (1997), and ECtHR (1998b).

61 ECtHR (2004e): para. 191. Decision No. 2004/6, dated 12 May 2004, made by the Committee of Ministers of the Council of Europe.

62 *Ibid.*: para. 193.

63 *Ibid.*

similar pending cases. In doing this, it evaluated the RVRP- the only measure taken by Turkey up to then to address the issue of internal displacement. Although the government drew attention to the draft of the Compensation Law - which at the time was being deliberated in the Turkish Parliament⁶⁴ - the ECtHR refused to take into consideration as a domestic legal remedy a law that had not yet come into force. Thereby, while *Doğan and Others* became a pilot case on the RVRP, in 2006 the *İçyer* decision also became a pilot judgment on the Compensation Law - another measure taken by the government to address the issue of internal displacement. An important feature of the *İçyer* decision is that it was the pilot case where the ECtHR decided whether or not the Compensation Law constituted an “effective domestic legal remedy.”

A. A TURNING POINT IN THE ECtHR JURISPRUDENCE: DOĞAN AND OTHERS

Unlike previous petitions that were filed between 1993 and 1996 - when a higher number of villagers were evicted from their villages - the petition date of *Doğan and Others* to the ECtHR was 3 December 2001. In previous cases, petitioners’ demands for compensation were based on the legal claim that their rights had been violated because they had been evicted from their villages and because legal authorities had not conducted effective investigations. However, the petitioners in *Doğan and Others* referred to rights violations arising from the fact that although they had made numerous petitions to administrative authorities between 1994 and 2001, *they were not permitted to return to their village* and, therefore, could not access their property. In this case, the petitioners had attempted to return to their villages *after* 1999, when the RVRP had begun to be implemented - at a time when the government claimed that there were no more obstacles to return to villages - but had been prevented from doing so. Therefore the legal question in *Doğan and Others* was whether the RVRP, a policy aimed at aiding the IDPs, was an effective domestic legal remedy. In other words, what was on trial in the case was the RVRP itself.

The fundamental claim of the petitioners, who were from the village of Boydaş in the Hozat district of the province of Tunceli, was that they were forced by the security forces to leave their village in 1994 and that, although they petitioned the administrative authorities numerous times until 2001, they were not permitted to return to their village or to access their property.⁶⁵ Therefore, what constitutes the basis of the complaint by the petitioners was “their inability to return to their homes in the Boydaş village, not their inability to recover damages from the authorities.”⁶⁶ The ECtHR therefore evaluated the petition within the framework of Turkey’s

64 Official Gazette (2004a).

65 ECtHR (2004f).

66 *Ibid.*: para. 108.

internal displacement problem and analyzed in detail the RVRP - the only measure taken by the government until that date to address the issue. Referring to decisions, observations, and recommendations made in national and international reports on internal displacement in Turkey, the ECtHR also widely featured the report authored by Francis Deng, the Representative of the UN Secretary-General on Internally Displaced Persons.⁶⁷

The principal observations made by the ECtHR can be listed as follows: 1) In spite of the high numbers of destroyed villages and evicted villagers, the government has not been able to cite an example of a compensation decision or criminal investigation regarding *the claims that the security forces evicted villagers and intentionally damaged their properties*.⁶⁸ Compensation granted by administrative courts was based upon the “principle of social risk” which rests on the government’s strict liability. Yet, the “effective legal remedy” referred to in Article 13 of the ECHR requires, not only that IDPs are paid compensation where appropriate, but also that a comprehensive and effective investigation be carried out for the identification and punishment of the perpetrators.⁶⁹ The government has, therefore, not been able to prove that the domestic legal remedies are “effective.” 2) Moreover, the complaints of petitioners are not based on their not receiving compensation but on their having been evicted and their being unable to return to their villages.⁷⁰ 3) Within the framework of the ECHR, “ownership” is not limited to property. The fact that petitioners do not have title deeds for the lands where they carried out agriculture and forestry activities does not mean that they do not possess the right to property. Activities such as woodcutting, animal husbandry, and livestock grazing and the income earned from these activities themselves constitute “right of ownership.”⁷¹ Because petitioners had been living in the village of Boydaş until 1994 and because they lived in the homes and lands belonging to their fathers, they possess the right to ownership arising from possessory rights. 4) Not permitting petitioners to return to their villages violates their rights to ownership.⁷² 5) The measures taken by the government to improve the conditions of IDPs are “insufficient and ineffective.”⁷³ The RVRP has not made it possible for the petitioners to return to their villages, the villages of the petitioners are still dilapidated and lack infrastructure, petitioners were not provided with employment and housing after the displacement, and the government has not fulfilled its duties and responsibilities to ensure that the petitioners make a voluntary, safe, and dignified return to their villages or settle voluntarily in another

67 Deng (2002).

68 ECtHR (2004f): para 105. Emphasis added by the author.

69 *Ibid.*: para. 106.

70 *Ibid.*: para. 108.

71 *Ibid.*: para. 138-139.

72 *Ibid.*: para. 143.

73 *Ibid.*: para. 154.

part of the country (the reference here is to the Guiding Principles).⁷⁴ Article 8, which guarantees the protection of private and family life, and Article 13, which protects the right to apply to an effective remedy before a national authority, of the ECtHR and Article 1 of Protocol No. 1, which protects the right to property have therefore been violated.

The importance of *Doğan and Others* lies in the fact that the ECtHR has, for the first time, implemented the “pilot judgment” procedure in the context of internal displacement in Turkey on the basis of the authority conferred to it by the Committee of Ministers, which it had used for the first time in *Broniowski*. The Court pointed out that Turkey needs to develop a domestic legal remedy to cover all IDPs in order to fulfill its obligations under Article 46 of the ECHR. One month after *Doğan and Others*, the government enacted the Compensation Law.

B. A STEP BACKWARDS FOR THE ECtHR: İÇYER

As aforementioned, when *Doğan and Others* was under deliberation by the ECtHR, the Compensation Law had not yet been adopted in Turkey. Therefore, the ECtHR had declined to rule on whether this law was an “effective domestic legal remedy.” However, the Court had indicated that it would also make use of the procedure of “pilot judgment” in the case of the Compensation Law. This foresight motivated the government to prioritize the assessment of applications made to the Compensation Law by petitioners who had previously filed petitions with the ECtHR. These applications were made predominantly by individuals from villages of the provinces of Tunceli and Diyarbakır, including the village of Boydaş which was the root of the controversy in the case of *Doğan and Others*.⁷⁵ In fact, the petitioners in *İçyer*, which was chosen by the ECtHR as the pilot case in evaluating the Compensation Law, were also from the province of Tunceli.

The controversy in *İçyer* concerns the eviction of the petitioner from the village of Eğrikavak in the Ovacık district of the province of Tunceli in 1994, the burning of his

74 *Ibid.*

75 Many lawyers and even some public officials interviewed in the course of the fieldwork have stated that in the interim period between the *Doğan and Others* and the *İçyer* decisions, the Ministry of Foreign Affairs sent circulars via the Ministry of Interior to damage-assessment commissions responsible for implementing the Compensation Law, instructing them to work faster and to assign higher compensation amounts. In fact, a circular sent by the Ministry of Foreign Affairs to the Ministry of Justice and the Ministry of Interior in the summer of 2005 was featured in the press. *Akşam* (2005). An official from the Diyarbakır Governorship stated that an official from the Ministry of Foreign Affairs asked him to give priority to petitions from villages which were the matter of controversy in cases pending at the ECtHR among the petitions filed with the damage assessment commission under his mandate (May 2006). In fact, the existence of a separate category entitled “Cases Pending at the ECtHR” in a table Deniz Yüksek, member of the TESEV Working Group, obtained from the Diyarbakır Governorship, showing the results of the implementation of the Compensation Law, indicates that petitions concerning files pending at the ECtHR were evaluated separately. For the implementation of the Compensation Law in Batman, Diyarbakır, and Hakkâri, see Chapter V in this book.

house, the non-compensation of his damages, and the rejection of his petitions to administrative authorities for the identification and prosecution of perpetrators. Immediately after having been evicted from his village, the petitioner had applied to the public prosecutor claiming that his house had been burned by the security forces. The public prosecutor had issued a decision of lack of jurisdiction and had forwarded his file to the district administrative council, which had declared that it was unable to investigate the matter because the perpetrators could not be identified. Therefore, as in the “classic” ECtHR petitions examined above (Section 2.1.), the legal claim on which the case was based is that the damages incurred by the petitioner and caused by the security forces have not been compensated. In fact, as of the date the *İçyer* decision was made, the petitioner accepted that there were no obstacles to his return to his village.⁷⁶ Therefore, unlike in *Doğan and Others*, the ECtHR did not evaluate the RVRP in this decision. Instead, the question in *İçyer* was to what degree the Compensation Law is an “effective” domestic legal remedy in meeting the petitioner’s demand for compensation.

The government’s defence in *İçyer* was based on the assertion that the Compensation Law, which began to be implemented in October 2004, constituted a new domestic legal remedy for the petitioner and for thousands of IDPs who have petitioned the ECtHR. The government stated that commissions formed to implement the Compensation Law were operating in 76 provinces, that people who had incurred damages because of the activities of the security forces could apply to these commissions, that there were no longer any obstacles to return, that in fact - as could be seen from the residence addresses on the petitions of 100 villagers who had applied to the law in Diyarbakır - return to villages had already begun. The government also cited as examples compensations paid by the commissions in Diyarbakır and Tunceli to people who incurred damages because they could not access their homes and lands. On the other hand, the petitioner stated that the procedure applied by the commissions was not “adversarial,” that the commissions were not independent and impartial because they consisted predominantly of public officials, that the law did not compensate all types of damages, that it was in conflict with *Doğan and Others* by bringing a narrow interpretation to the concept of “ownership,” and that it did not foresee compensation of non-pecuniary damages.⁷⁷

The ECtHR decided that the Compensation Law was an “effective” domestic legal remedy which provided “sufficient” compensation for complaints about rights violations and rejected the petition on the grounds of not having exhausted this remedy. In other words, it decided that the petitioner did not have the right to benefit from the *Akdivar* exception. The main assessments made by the ECtHR are as follows: 1) As the petitioner himself acknowledged, there are no obstacles to his

76 ECtHR (2006): para. 75.

77 ECtHR (2006): para. 64 and para. 66.

return to his village.⁷⁸ 2) According to the new law, the petitioner has the right to compensation for the damages he claims to have incurred.⁷⁹ 3) 170,000 petitions have been filed with the commissions operating in 76 provinces, and, as can be seen in the sample decisions cited by the government, individuals who have incurred damages because of inability to access their property, damages to their property, and death or injury have the right to receive compensation.⁸⁰ 4) “Although the Compensation Law foresees the request for compensation of pecuniary damages only..., Article 12 of the law seems to leave the door open for requests for compensation of non-pecuniary damages in administrative courts.”⁸¹ 5) Under normal circumstances, the evaluation regarding the exhaustion of domestic legal remedies is made on the basis of the date of petition. Here, *İçyer* filed his petition before the Compensation Law was enacted. However, there may be certain circumstances in exceptional situations when a different approach is required. Such circumstances are present in this case: the Compensation Law meets the kind of damages incurred by the petitioner, it is a measure taken on a national level in order to compensate the losses of those who apply to the ECtHR for reasons similar to the issues on which *Doğan and Others* is based, and it provides a legal remedy which is accessible and has been reasonably successful.⁸²

In fact, the ECtHR could not be expected to ignore such an important measure taken by the government to compensate damages arising from rights violations and to implement the *Doğan and Others* decision. However, what is problematic in the *İçyer* decision is not that the ECtHR gave the Compensation Law a chance, but that it should make a decision based solely on the examples cited by the government to show that the domestic legal remedy developed by law is “effective and sufficient,” without making an on-site investigation and without waiting for sufficient time to pass in order to make a sound evaluation. Moreover, the ECtHR also conflicted with its jurisprudence where it stated that it reserves the right to monitor national remedies developed to implement the ECtHR decisions.⁸³ A court of human rights is expected not to declare as “effective” from the outset a measure taken by a member state to implement the court’s previous decision, but to take a more cautious and pro-petitioner approach, by welcoming such a step, but monitoring the conformity of the implementation with principles of human rights.

The *İçyer* decision can be criticized from many points of view. First, although there are examples concerning the compensation of damages to immovable property

78 *Ibid.*: para. 75.

79 *Ibid.*: para. 76.

80 *Ibid.*: para. 77.

81 *Ibid.*: para. 81.

82 *Ibid.*: para. 83.

83 ECtHR (2004e): para. 193.

among the 440 decisions made by commissions in Diyarbakır and Tunceli and presented by the government to the ECtHR, there is no acknowledgement in these decisions that damages arising from the eviction of villagers and the intentional destruction of property were caused by *the security forces*. Although the government has cited as an example the decision to compensate damages that occurred in the village of Boydaş, which was a matter of controversy in *Doğan and Others*, there is no reference in *İçyer* to the role of the security forces, who the ECtHR had found in *Doğan and Others* to have evicted the villagers in Boydaş. Moreover, the government has also rejected the claim that the villagers of the Eğrikavak village, which was the matter of controversy in *İçyer*, were evicted by the security forces and has claimed that the perpetrators were from the PKK. Therefore, although the government compensated damages caused by the security forces, it did not openly acknowledge this fact and most importantly, it did not cite any examples of criminal investigations against security forces accused of committing human rights abuses.⁸⁴ In *İçyer*, the ECtHR ignored the fact that no investigation has been conducted for the identification and punishment of the security forces who committed rights violations, which was a shortcoming that it had repetitively emphasized in its previous decisions. Second, although the ECtHR analyzed the substance of the Compensation Law in detail, it did not make any reference to the “social risk” principle based on the strict liability of the administration. However, in all of its previous decisions, the ECtHR repeatedly emphasized that the compensation decisions of administrative courts in Turkey, based on the principle of social risk, were not “effective.” According to the ECHR, an “effective legal remedy” should ensure not only that compensation is granted when appropriate, but also that a *comprehensive and effective investigation be carried out in order to identify and punish the perpetrators*.⁸⁵ Otherwise, “it will result in the dissolution of the state’s obligation to punish the perpetrators of serious rights violations.”⁸⁶ However, the *İçyer* decision has created exactly that risk. Instead of stating that the Compensation Law is a positive step whose implementation needs close monitoring, the ECtHR has prematurely decided - based merely on a small number of select examples unlikely to reflect the general situation around the country - that the implementation of the law was “effective and sufficient.” It has thus precluded the emergence of a *political will*, which could have developed in future, to ensure the identification and prosecution of the perpetrators of rights violations that occurred under the State of Emergency.

Third, by stating that “Article 12 seems to open a door to the possibility of demanding compensation for non-pecuniary damages in administrative courts,” the ECtHR not only makes an ambiguous statement not to be expected of a court, it

84 ECtHR (2004f): para. 105.

85 ECtHR (2004f) and ECtHR (1998d).

86 ECtHR (2004f): para. 106.

actually *misinterprets* the Compensation Law. Article 12 allows petitioners to opt for judicial review in cases where they cannot reach a friendly settlement with the commissions.⁸⁷ However, if petitioners choose this option, all that the administrative courts will do is to review whether the relevant damage assessment commission had implemented the Compensation Law correctly. They cannot be expected to grant petitioners non-pecuniary compensation that is not foreseen by law. Even if administrative courts were to decide to implement the general principles of domestic law, rather than the Compensation Law; as the one year period allowed for this kind of law suit will have passed, the request for non-pecuniary compensation will be rejected because of the statute of limitations.⁸⁸ The ECtHR ignored this factor although the petitioner had drawn attention to it,⁸⁹ which is probably the major weakness of this decision from a legal point of view. Fourth, among the claims brought by the petitioner to prove that the Compensation Law is not an effective domestic legal remedy, was the fact that damage assessment commissions - whose six out of seven members are public officials - are not independent and impartial.⁹⁰ The ECtHR's response to this claim points to another problematic feature of the decision. The Court distinguished *Xenides-Arestis v. Turkey* (2004), where the ECtHR had expressed concern that the compensation commissions formed by the Northern Cyprus government for the payment of compensation to South Cyprus citizens who could not access their immovable property in Northern Cyprus were not impartial.⁹¹ According to the ECtHR, what cast a shadow on the impartiality of the commissions in Cyprus was that most commission members lived in houses belonging to Southern Cypriots and that the potential conflict of interest arising from this situation could negatively affect the decisions of the commissions.⁹² However, the plausibility of the distinction made by the ECtHR between the commissions in Northern Cyprus and the damage-assessment commissions in Turkey is questionable. Most importantly, it is quite difficult to say that there is no potential conflict of interest between the duty to effectively implement the Compensation Law and the personal career

87 Official Gazette (2004a).

88 Many lawyers interviewed in the course of the fieldwork expressed this opinion. For detailed views on this subject, see Chapter V, Kurban: "Internal Displacement and Reparative Justice: Implementation of the Compensation Law in the Province of Batman," and "Internal Displacement and Reparative Justice: Implementation of the Compensation Law in the Province of Hakkâri" and Chapter V, Yüksek: "Internal Displacement in the Province of Diyarbakır: Return, Urban Issues, and Implementation of the Compensation Law" in this book.

89 ECtHR (2006): para. 66.

90 *Ibid.*: para 64. For the structure of the damage assessment commissions, see Chapter III in this book. For how this structure affects the impartiality and independence of the commissions, see Chapter V, Kurban: "Internal Displacement and Reparative Justice: Implementation of the Compensation Law in the Province of Batman" and "Internal Displacement and Reparative Justice: Implementation of the Compensation Law in the Province of Hakkâri" and Chapter V, Yüksek: "Internal Displacement in the Province of Diyarbakır: Return, Urban Issues, and Implementation of the Compensation Law" in this book.

91 *Ibid.*: para 78.

92 *Ibid.*

expectations of the six commission members who are public officials subject to the authority of the Ministry of Interior, and therefore the state.⁹³

According to lawyers representing the petitioners, *İçyer* is a premature and political decision.⁹⁴ One lawyer stated that this decision was a product “of the wish to give Turkey a chance, in accordance with the agreement reached between the government and the EU.”⁹⁵ Another lawyer considers *İçyer* a “partial” decision made by the ECtHR “to get rid of” cases of displacement.⁹⁶ The *İçyer* decision - which is the application of the “pilot case” procedure that the ECtHR has developed to decrease its workload in the context of the Compensation Law - is a premature decision made in the absence of sufficient monitoring. Although the implementation of the law in Diyarbakır and Tunceli is relatively successful, as a result also of the pressure by the government in order to achieve a successful outcome before the ECtHR, there are provinces where commissions issued a high number of rejections and imposed on petitioners a high evidentiary burden of proof they cannot cope with.⁹⁷ At this point, it is necessary to also draw attention to the responsibility of the lawyers in *İçyer* who could have brought these types of examples to the attention of the court in order to refute the government’s claim that the law was implemented effectively.

İçyer has not only already negatively affected the implementation of the Compensation Law⁹⁸ but has also cast a shadow on the ECtHR’s legitimacy and reliability in the eyes of the public opinion in Turkey. The unconditional support the Court has given to the government has also resulted in leaving “at the mercy” of the damage-assessment commissions many IDPs who will have to agree to the compensation amounts offered by the commissions, rather than choosing the long, difficult, and expensive option of going to court.⁹⁹

93 In fact, a governorship official interviewed during the course of the fieldwork stated that because he and other governorship officials who lead different damage assessment commissions within the same province were expecting to be posted to other provinces within a few months, they had stopped evaluating petitions and they had not made any other compensation decisions. (May 2006).

94 In a declaration issued in the aftermath of an evaluation meeting, 50 lawyers from the Diyarbakır Bar Association stated that *İçyer* was a “premature” decision made with “political motives” and that the ECtHR “acted out of concern that petitions against Turkey would increase its workload.” Diyarbakır Bar Association (2006).

95 Phone interview with a lawyer who closely follows the implementation of the Compensation Law in Hakkâri. 31 January 2006.

96 Interview with a lawyer in Diyarbakır. 8 May 2006.

97 For an example of this situation, see Chapter V, Kurban: “Internal Displacement and Reparative Justice: Implementation of the Compensation Law in the Province of Hakkâri” in this book.

98 For information on the effect of the *İçyer* decision on implementation on the ground, see Chapter V, Kurban: “Internal Displacement and Reparative Justice: Implementation of the Compensation Law in the Province of Batman” and Chapter V, Yüksekler: “Internal Displacement in the Province of Diyarbakır: Return, Urban Issues, and Implementation of the Compensation Law” in this book.

99 For a discussion that seeking relief in administrative courts is not a realistic option for most petitioners, see Chapter V, Kurban: “Internal Displacement and Reparative Justice: Implementation of the Compensation Law in the Province of Batman” and “Internal Displacement and Reparative Justice: Implementation of the Compensation Law in the Province of Hakkâri” and Chapter V, Yüksekler: “Internal Displacement in the Province of Diyarbakır: Return, Urban Issues, and Implementation of the Compensation Law” in this book.

2.3. EVALUATION

All of the ECtHR decisions examined above concern the rights violations arising from forced migration in Turkey. However, instead of taking these cases as a whole within the framework of Turkey's internal displacement problem, it was not until *Doğan and Others* that the ECtHR situated its decision within a political framework. *İçyer*, where the ECtHR's judgment lacks the in-depth analysis and comprehensive view it has adopted in *Doğan and Others*, is a step backwards for the ECtHR in this sense.

The fact that a court, whose duty is to protect human rights, accepts a national measure which solely provides compensation for pecuniary damages as "effective and sufficient" in addressing internal displacement in the absence of the identification and punishment of perpetrators of human rights violations is disappointing from the perspective of Kurdish IDPs who are still expecting justice to be served. The ECtHR's decision that the government has developed an effective national remedy to solve the "structural and systemic" issue of internal displacement in Turkey¹⁰⁰ shows that the court does not take into consideration the voices of IDPs and civil society who demand a solution based on reconciliation and justice rather than mere compensation.

■ 100 ECtHR (2006): para 67.

Research Findings on Internal Displacement in Turkey: National Reports

DENİZ YÜKSEKER

Internal displacement in Eastern and Southeastern Anatolia during the State of Emergency between 1987 and 2002 was not acknowledged by official institutions for many years. However, non-governmental organizations (“NGOs”) have been trying to draw the attention of the public to the issue since 1994. Most important of all, the Turkish Grand National Assembly (“Turkish Parliament”) formed an investigation commission in 1997 and brought this matter before the parliament. Reports prepared by the Turkish Parliament and by other organizations have emphasized that the eviction of civilians from villages is a violation of constitutional rights and of basic human rights. Most of these reports also said that displaced families were suffering from very serious livelihood, shelter, health, and education problems. The aim of this article is to provide information on reports prepared by NGOs and by the Turkish Parliament on the issue of internal displacement in Eastern and Southeastern Anatolia, and on academic studies undertaken in this field.

1. WORK BY NON-GOVERNMENTAL ORGANIZATIONS

Human rights organizations were the first to draw attention to internal displacement. The Association for Human Rights and Solidarity with the Oppressed (*İnsan Hakları ve Mazlumlar için Dayanışma Derneği* - “MAZLUMDER”) declared in a report following a fact-finding trip to the region that a very high number of villagers were evicted from their villages between 1992 and 1994, that many villages were burned in the process, and that the association had the impression that evictions were carried out *en-masse* in some regions.¹ Officials from MAZLUMDER have also stated that people who were forced to migrate to provincial and district centers received help from no one except their relatives, and that housing and food aid provided by the municipalities of some cities was extremely insufficient.²

In the “Shadow Report” it prepared for the HABITAT II meeting held in Istanbul in 1996, the Human Rights Association (*İnsan Hakları Derneği* - “İHD”) stressed

1 MAZLUMDER (1994).

2 MAZLUMDER (1995).

that the eviction of villagers occurred in a region that was inhabited by people of a particular ethnic group.³ The report stated that a policy of “depopulation of places of settlement inhabited by citizens of Kurdish origin” was pursued, that this policy aimed at depriving the Kurdistan Workers’ Party (*Partiya Karkerên Kurdistan* - “PKK”) of logistic support, and that it was based on the notion that the civilian population was a potential party to the conflict. The Turkish Human Rights Report published by the Turkish Human Rights Foundation (*Türkiye İnsan Hakları Vakfı* - “TİHV”) in 1995 reported that villagers in Southeastern Anatolia who refused to become village guards were subject to pressure and that some had their villages burned down.⁴

2. REPORTS BY THE TURKISH PARLIAMENT AND BY THE REPUBLICAN PEOPLE’S PARTY

The report prepared by an investigation commission formed in 1997 at the behest of a group of members of the Turkish Parliament is a very significant resource on internal displacement. Published in 1998, the report emphasized that the eviction of villagers by the security forces constituted one of the reasons behind displacement and that it was carried out unlawfully. The report also examined the problems of both those who wished to return to their villages and of those who wish to remain in their new settlements in the cities.⁵

The chairman of the investigation commission, which consisted of 13 members of parliament (“MPs”) from different political parties, was Seyyit Haşim Haşimi, MP for the Welfare Party (*Refah Partisi* - “RP”); the deputy chairman was Sebgetullah Seydaoğlu, MP for the Motherland Party (*Anavatan Partisi* - “ANAP”); and the spokesperson was Algan Hacaloğlu, MP for the Republican People’s Party (*Cumhuriyet Halk Partisi* - “CHP”). The report was prepared in light of information obtained from State of Emergency regional governors, provincial governors, mayors, officials from human rights organizations, representatives of professional organizations, villagers, and village headmen. Their findings were made public in May 1998. The parliament met to discuss the report on 2 June 1998. Although the then Minister of Interior, Murat Başesgioğlu, and some MPs from the ruling parties criticized the report during the meeting, it was accepted by the commission (with a number of dissenting opinions) and qualifies as the most comprehensive “official”⁶ document on this subject. The report is also important because some of the legal and political assessments and solution proposals it contains have also later been expressed by NGOs working in the field of internal displacement. The most important findings of the report can be summarized as follows:

3 İHD (1996).

4 TİHV (1995).

5 Turkish Parliament (1998).

6 The word “official” is in quotes because, although this report is an official document of the parliament, its findings were never accepted by any government.

- i. Up to 1997, and particularly between 1992 and 1994, villagers were evicted from 820 villages and 2,345 hamlets in provinces which constituted the State of Emergency region and contiguous areas. The number of people who migrated from these villages is 378,335. Villagers were also evicted from 85 villages and 178 hamlets in 9 provinces outside of the State of Emergency region and contiguous areas. Thus, the total number of places of settlement whose residents were evicted is 3,428.⁷ While there are claims that these numbers, provided by the State of Emergency regional governorship and other provincial governorships, are low, under current security conditions these claims could not be explored. However, it is worth emphasizing that, villages and hamlets from which not all of the residents were evicted are not included in the said figure.
- ii. There were three main reasons for the migration that took place in Eastern and Southeastern Anatolia during the 1990s: 1) The collapse of animal husbandry and agriculture because of the ban the use of pastures and because of the environment of clashes/military operations; pressure exercised by the PKK on villagers who were village guards; the fact that security forces regarded with suspicion those villagers who did not accept to become village guards and, thus, intensified their operations on these villages, causing the villagers to desert their villages; 2) The PKK's eviction of villagers who accepted to become village guards; and 3) The eviction by the security forces of villagers who did not accept to become village guards and who were thought to side with the PKK, the evacuation by the security forces of villagers whose security could not be ensured.⁸
- iii. Very serious problems related to education, health, and employment have emerged in the cities where there has been an inflow of migrants, as outlined in the reports of the Turkish Union of Chambers of Engineers and Architects (*Türkiye Mimar ve Mühendis Odaları Birliği* - "TMMOB"), İHD, MAZLUMDER, and the Diyarbakır Chamber of Physicians.
- iv. The eviction of villagers was a "*de facto* action carried out by the security forces and it was unlawful."⁹ Law No. 2935 on the State of Emergency and the government decrees no. 285 and no. 430 gave the State of Emergency governors the authority to evacuate and relocate villages when necessary. However, past and current [at the time of the report] State of Emergency governors interviewed by the commission have clearly stated that they never resorted to this authority and that "no villagers were evacuated by legal order of the regional governorship."

7 In some parts of the report the number of people who migrated as a result of the evictions is given as "more than 400,000."

8 Turkish Parliament (1998), 31. Although not directly stated in the report, it can be conjectured that the figure of 378,335 covers the places of settlement mentioned in (b) and (c) above.

9 *Ibid.*, 31.

- v. It is the local population who pays the highest price for the conflict between the state and the terrorist organization; the actions of the security forces constituted “unnecessary and random pressure which at times reached the level of violence.”¹⁰ The security forces’ declaration of a vast region as “a hot zone of conflict” has affected 400,000 people directly and hundreds of thousands of citizens indirectly.
- vi. The eviction of villagers has resulted in the violation of their certain constitutional rights either directly or indirectly: “a violation of law has taken place with the eviction of villagers.”¹¹ The articles of the constitution that have been violated are as follows: equality before the law (Article 10); the right of all citizens to protect and develop their lives (Article 17); the principle of respect for private and family life (Article 20); the principle of respect for the residence (Article 21); the right to property (Article 35); the principle of the protection of basic rights and freedoms (Article 40); the right to education and training (Article 42); and the right to compensation for deprivation of private property (Article 46).¹²
- vii. Similarly, these practices also violated the relevant articles of the Universal Declaration of Human Rights and of the European Convention on Human Rights (“ECHR”), such as the right to apply to national courts regarding illegal actions, the right not to be arbitrarily detained or exiled, the right not to be arbitrarily deprived of goods and property, the principle of respect for private and family life, the right to apply to national courts to seek remedy for the violation of rights, and the right to be compensated for damages in cases of deprivation of property in a legal setting.¹³
- viii. Some clauses of the government decrees no. 425 and no. 430 preclude prosecution of the State of Emergency governor and provincial governors for actions they undertake within the scope of the authority vested in them by these decrees. Thus, these decrees prevent conducting criminal procedures against authorities on the grounds of the illegality of their actions pertaining to evictions.¹⁴ Local legal bodies’ inability on security grounds to conduct on-site investigations in response to petitions filed for the compensation of damages “encourages certain public officials who, though unauthorized, claim to act on behalf of the state, to act arbitrarily; and this facilitates extra-legal practices.”¹⁵
- ix. In light of these assessments, whatever the grounds for the eviction of villagers may be, “the citizens in question have the right to expect and demand from the

¹⁰ *Ibid.*, 57.

¹¹ *Ibid.*, 63.

¹² *Ibid.*, 58.

¹³ *Ibid.*, 59-60.

¹⁴ The State of Emergency is considered to have suspended the rule of law to a certain extent in the region.

¹⁵ Turkish Parliament (1998), 60-61.

state the compensation of damages arising from the violation of basic rights and freedoms such as life, shelter, health and education.”¹⁶

- x. **“General Assessments:”** The migration that occurred in the 1990s in Eastern and Southeastern Anatolia should be considered “forced migration” and not “voluntary migration.”
- xi. **“General Principles:”**

Rural areas: Evictions should come to an end. The rule of law should be instituted in the region. The village guard system should be abolished within the purview of a “provisional employment project.” Persons owning property in villages where return cannot take place must be compensated. Living conditions should be improved in villages where return can take place, and the state must ensure that villagers who return can conduct a normal life. Return to villages must be supported by the state within the framework of a comprehensive project. Returns should take place in a democratic environment and in accordance with people’s free will and choice. The decision about which villages can be resettled must be made by the residents of those villages and not by security forces. Resettlement of hamlets must be excluded from the return project due to the difficulty of bringing public services to very small places of settlement. On the condition that the necessary feasibility studies are carried out and the principle of voluntariness is respected, “central villages” can be formed in certain areas by combining a few villages. The socio-economic and urban infrastructure can thus be provided in a more rational way. Educational opportunities as well as preventive and restorative healthcare services in the region need to be established urgently. Animal husbandry must be reinvigorated in rural areas and reforestation must be carried out.¹⁷

Urban areas: The shelter, employment, healthcare, and education problems of internally displaced persons (“IDPs”) who do not wish to return to their villages and who wish to remain in cities must be solved urgently. The state has the duty to meet the shelter needs of those who do not wish to return to their villages. Public housing projects on appropriate terms need to be developed for migrants. Vocational and skill development courses must be opened in areas where IDPs have migrated. Resources that municipalities, special provincial administrations, social aid and solidarity foundations, and other social funds receive from the state must be increased.

- i. **“General Policies:”** The state’s long-standing approach to issues in Southeastern Anatolia as solely a security problem, without sufficiently taking into

¹⁶ *Ibid.*, 63.

¹⁷ *Ibid.*, 74-75, 77.

consideration “democratic rights, the rule of law, equality, identity, culture and socio-economic development” has caused the problem to reach a deadlock.¹⁸ The solution to the problems must be developed within the Turkish Parliament and a nationwide public forum needs to be created in order to discuss these issues. An environment of tolerance, peace and solidarity covering all ethnic and cultural groups has to be developed. Extralegal activities within the state apparatus must come to an end. Amnesty must be granted for those who have been arrested or convicted on the grounds of aiding and abetting the PKK and for expressing political opinions deemed illegal by the state. The rule of law and the independence of the judiciary must be ensured. “Legal, institutional and social obstacles preventing the expression of identities by all groups with different ethnicities, beliefs, and origins that form the richness of Turkey’s cultural mosaic should be abolished; the Kurdish identity should be recognized in this context.”¹⁹

Many of the assessments and suggestions made in the parliament report are still relevant today. However, especially when evaluated in light of the “Guiding Principles on Internal Displacement” (“Guiding Principles”), some of the proposals in the report are problematic. For example, the proposal to form central villages conflicts with the principle that return should be based on choice. On the other hand, the proposal to nationalize property in villages where returns are not permitted due to security reasons, is not an acceptable one, as it would make permanent the inability to return and would give public officials the authority to arbitrarily disallow returns to certain areas.

“The Eastern and Southeastern Preliminary Report” (1998), prepared by a working group within the CHP, presents a similar analysis to that of the Turkish Parliamentary Investigation Commission. The report says that pressure, lack of security, and problems of livelihood in the region have resulted in intensive migration. It states that the army’s quest to wage a fight against the PKK “in a very vast and depopulated region constitutes one of the main, but not openly expressed, reasons behind the forced eviction of people from villages.” The report cites 450,000 as the number of displaced persons. Quoting official data, the report also points out that there has been an increase in cases of typhoid fever and dysentery along with serious inadequacies in healthcare and educational services in the region.

3. REPORTS ON IDPS

3.1 THE TMMOB REPORT

The study by the TMMOB, based on the results of research carried out in Diyarbakır, qualifies as the first serious study concerning the urban consequences of forced

¹⁸ *Ibid.*, 80.

¹⁹ *Ibid.*, 81.

migration.²⁰ The study is based on a survey conducted among 1,072 households in Diyarbakır in 1996 (no information has been supplied on the sampling method). Of people who responded to the survey, 34.4 percent consisted of the “forced migration” group that migrated after 1990; 29.83 percent of the respondents were people who migrated before 1990; and the rest were “native” to the area. According to the research, people who migrated after 1990 cited the burning of their villages (58 percent), the clashes in the region (43.6 percent) and problems of livelihood (18.7 percent) as the most important reasons for their migration (choosing more than one answer was permitted). According to the estimate of population increase made on the basis of the survey, the population of the city was 381,000 in 1991 and rose to approximately 800,000 as of 1996. In response to the question “Are you planning to migrate elsewhere from Diyarbakır?” 41 percent of the forced migration group said “yes” and 44 percent said “I will/can not go anywhere.” Of the people in the forced migration group who were thinking of migrating elsewhere, about 44 percent said they would go to “their village.” 68.5 percent of the same group said that they would want to return home if their safety and the safety of their property were ensured, 17.5 percent if they were given land, and 11 percent if family and community-related problems were solved. Approximately 95 percent of the forced migration group stated that they were unhappy with living conditions in the city. In response to a question regarding problems related to urban life, 81 percent of the forced migration group cited unemployment, 70 percent housing problems, 50 percent an increase in health problems, 41 percent their children’s inability to attend school, 38.5 percent not receiving any aid, 35 percent hunger (more than one answer was permitted). In reply to a question regarding property left behind, 74.5 percent of the forced migration group said they left their homes behind, 62 percent their fields, 58 percent their vineyards and orchards, and 41 percent their livestock. Only 15 percent said that they left nothing behind; 48 percent of the same group said that the property they left behind was burned, 23 percent that their property was left unattended, and 15 percent that they did not know what happened to their property.

The TMMOB report also examines the urban problems that emerged in Diyarbakır as a result of forced migration. These can be listed as the extreme inadequacy of potable water and sewer systems, of the transportation system, of green areas, and of the energy system.

3.2. THE MIGRATION REPORT BY THE FAMILY RESEARCH INSTITUTION OF THE PRIME MINISTER’S OFFICE

A report published by the Family Research Institution of the Prime Minister’s Office qualifies as the first official survey on the internal displacement of the 1990s.²¹

20 Dağ *et al.* (1998).

21 Türkyılmaz *et al.* (1998). This research was carried out by a project team consisting of Ahmet Türkyılmaz, Prof. Abdülhalik Çay, Assoc. Prof. Zakir Avşar, and Dr. Mustafa Aksoy.

Although the study does not have much analytical value, it is significant for it mentions “pressure by the state” as well as by the PKK as the reasons behind forced migration.

3,089 households in 15 provinces in Eastern and Southeastern Anatolia as well as 1,847 households in six provinces (Adana, Antalya, Aydın, İçel, İzmir, Manisa) that received migrants from these areas were surveyed. The methodology states that the size of the sample was determined using statistical methods and giving predominance to provinces in accordance to their rates of migration inflow and outflow. However, there is no information as to whether the sampling is random or not. Respondents were chosen among people who migrated after 1983. Women constituted only 7.1 percent of the respondents, 76.6 percent of the surveyed people were over 41 years of age, 41 percent were illiterate, and 39 percent had completed primary school. About 50 percent of the respondents migrated between 1990 and 1994 and about 35 percent between 1983 and 1990.

A notable finding of the research is that the proportion of responses that point to the state as the reason behind their migration is significant. Of those who responded to the question “what is the most important reason why you migrated?” approximately 34 percent said it was because of the PKK (“the armed organization”), approximately 24.4 percent said because of the state, approximately 13 percent because of the deterioration of economic conditions, 12 percent due to unemployment, and 11 percent due to the pressure of village guards. In response to another question, 35.9 percent of the respondents held the PKK (“the armed organization”) responsible for their being forced to migrate, 26 percent held the state responsible, 10.6 percent held village guards responsible, and 8.3 percent considered the army/police to be responsible. Thus, a total of 44.9 percent of the respondents pointed at the state or its security forces as the responsible party. The report also states that the migration in the region should be defined as “forced migration.” Of the survey participants, 60.5 percent said that there was no one left in their village after the migration while 38 percent said that some people still live in their village. Of those who said that no one was left in the village 78 percent were surveyed in southeastern and eastern provinces. In other words, it appears that the majority of the people whose villages were completely deserted have stayed in the region as of 1997.

Responding to the question “where would you prefer to live if you had the resources to do so?” 39 percent of the survey respondents said “in my village,” approximately 22 percent said “here,” and 22.6 percent said “in the city.”²² To the question “Do you want to return to your village?” 57.3 percent replied “no” while 41.2 percent replied “yes.” To the question “Would you return to your village if the reasons behind migration were eliminated?” 63.3 percent replied “no,” 25 percent replied “I don’t

■ 22 The report did not specify the difference between “living here” and “living in the city.”

know,” and only 8 percent replied “yes.” In response to the question “Under what circumstances would you return to the village?” 50.5 percent said “if the state gives us money and jobs,” 17 percent “if the state ensures our security,” and 13.5 percent “if the state helps us.” Of those who said they did not want to return to their village, 54.5 percent said “we have established a life here,” 21.7 percent “I have a good job,” and 18.5 percent “our village is not safe.”

3.3. REPORT BY THE MIGRANTS’ ASSOCIATION FOR SOCIAL SOLIDARITY AND CULTURE

Migrants’ Association for Social Solidarity and Culture (*Göç Edenler Sosyal Yardımlaşma ve Kültür Derneği* - “Göç-Der”) is an NGO carrying out advocacy on the problems of IDPs. In 2002, Göç-Der made public a survey that aimed to display the demographic profile and the problems of IDPs which was conducted by Mehmet Barut, at the time a research assistant and sociologist at Mersin University.²³ The report is based on a survey of 2,000 households in the provinces of Diyarbakır, Van, Batman, İstanbul, İzmir, and İçel. The sample was selected using the snowball technique, and, therefore, it is not statistically representative of the IDP population. Men constituted about three quarters of the respondents to the questionnaire, which consisted of 127 questions. About half of the respondents were between 18 to 35 years of age. No gender breakdown was provided for the responses.

The introduction of the report stated that forced migration was against the will of the migrants, who were described as “citizens of the Turkish Republic whose native language is Kurdish.” Although the sampling is not random and there are various methodical problems such as the ambiguity of many of the questions, the Göç-Der survey provides important findings. Some of the research findings are as follows:

- i. **Reasons behind migration:** Of the respondents to the survey, 47 percent cited fear for their lives as the primary reason for migrating, 44 percent eviction from their villages and hamlets, 53 percent the pressure to become village guards, 30 percent the ban on pastures, 22 percent the control of food supplies,²⁴ 0.8 percent pressure by the PKK and 71 percent problems of livelihood (choosing more than one answer was permitted). As can be inferred from these replies, Göç-Der defines forced migration not only as a consequence of the eviction of villagers from their villages, but also takes into consideration other factors such as the environment of conflict that caused life in rural areas to become intolerable.
- ii. **Demographic findings:** The level of education of the internally displaced population is very low (61 percent of women and 28.5 percent of men are illiterate).

²³ Barut (1999-2001).

²⁴ During the State of Emergency, in some provinces such as Tunceli, the military limited the amount of food supplies that villagers could carry in and out of their villages under the pretext of cutting off logistical support to PKK militants.

More than 90 percent have no social security. Of the people who were employed at the time of the survey, 83 percent worked in temporary jobs or intermittently. Before the migration, 87 percent earned their livelihood from agriculture.

- iii. **Seeking their rights:** Regarding the oppression that they suffered, 90 percent of the respondents in the survey said that they did not apply to legal, administrative, or military authorities or to NGOs for aid.
- iv. **Damages and losses:** 75 percent of respondents said that their vineyards and orchards had been damaged, 64 percent that their livestock had been damaged, 84 percent that they had been forced to abandon their lands, 72 percent that their homes were damaged, 47 percent that their families had broken up, 80 percent that they were psychologically affected (choosing more than one answer was permitted).
- v. **Post-migration problems:** Poor housing conditions, urban infrastructure problems, inability to send children to school, inability to adapt to the present environment, language and cultural differences, being perceived as potential criminals, lack of security, psychological anxiety, feeling of loneliness, diseases, etc.
- vi. **Social integration:** A remarkable finding of the research is that almost all of the respondents to the survey had identity cards issued by the state, that 96 percent participated in the 1997 population count, and that 91 percent were registered with the headmen of the neighbourhoods where they settled after migration.
- vii. **Return:** 93.7 percent of the respondents stated that they wish to return to their villages. 72.4 percent of respondents said that they had been unable to adapt to their new places of settlement following migration. The main reasons for the inability to adapt were listed as problems of livelihood, the lack of employment opportunities, inadequate housing, education problems, and health and security problems.

Following the publication of this report, Mehmet Barut and the Chairwoman of Göç-Der Şefika Gürbüz were prosecuted in the State Security Court. Gürbüz was given a one year prison sentence for “inciting the population to enmity by discriminating among regions” under article 312/2 of the Penal Code; the verdict was then converted into a heavy fine of YTL²⁵ 2,180.²⁶ It can be guessed that the rationale for the verdict was that the Göç-Der report defined IDPs in terms of ethnicity. This court ruling demonstrates the state’s longstanding reluctance to publicly discuss internal displacement, its reasons, and consequences.

25 As of June 2007, YTL 1 (Yeni Türk Lirası - New Turkish Lira) equals to USD 0.755.

26 Radikal (2004a).

3.4. FIELDWORK IN DIYARBAKIR BY THE MIDDLE EAST TECHNICAL UNIVERSITY

Another study that examines the urban dimension of the problems caused by internal displacement is a book published by the Urban Policy Planning and Local Administrations Department of the Middle East Technical University.²⁷ The research is based on fieldwork conducted in the Seyrantepe, Suriçi, and Şehitlik neighbourhoods of Diyarbakır, which are impoverished areas that have received a high influx of migrants. The survey shows that the population of said neighbourhoods has increased several-fold after 1985. Of those who responded to the survey and who came to Diyarbakır after 1985, 66 percent said that they had to migrate for security reasons and 28 percent stated that they migrated as a result of economic problems. Among those who came to Diyarbakır before 1985, economic problems were the main cause for 50 percent of respondents, while only 18.4 percent said that they migrated due to security reasons.

Of those who responded to the survey in Seyrantepe, 71 percent said that they were unemployed or that they rarely had a job; this rate was 64 percent in Şehitlik and 40 percent in Suriçi. Almost all of the homes of survey respondents in these neighbourhoods qualify as shanty houses. The research also explored urban infrastructure problems in the said neighbourhoods.

4. SOCIOLOGICAL STUDIES CONCERNING INTERNAL DISPLACEMENT

Social science literature in Turkey about internal displacement has only recently begun to emerge. However, some studies on migration, exploitation of child labor, and urban poverty show how all of these issues were intertwined with internal displacement during the 1990s.

4.1. URBAN PROBLEMS

In the 1990s, neo-liberal economic policies based on market competition bid the price of available urban land up by encouraging upscale commercial and residential real estate development. Therefore, families who had recently migrated from rural to urban areas did not have much opportunity to build their own informal homes (*gecekondus*). Similarly, in an urban economy where the informal sector was gradually expanding, regular jobs with social security were not available for the newcomers. Thus, unlike the previous migrant generation who had enjoyed a certain amount of social mobility, new migrants quickly joined the ranks of the urban poor. For example, in her book based on research on the Ümraniye district of Istanbul,²⁸ stated that population movements in the 1990s consisted mainly of forced migration

27 Ersoy and Şengül (2000).

28 Erder (1996).

from the Southeast and that survival in the city was more difficult for this group whose relationship with their villages had been completely severed and whose migration was a sudden and involuntary decision. IDPs therefore became part of the urban poor.²⁹ A similar observation about the link between forced migration and urban poverty is made by Oğuz Işık and Melih Pınarcıoğlu³⁰ in their book based on research in the Sultanbeyli district of Istanbul. Studies conducted on urban poverty following the economic crisis of 2001 also show that IDPs constitute a noteworthy group among the poorest urban groups.³¹

Women and children constitute the most disadvantaged groups on the path from forced migration to urban poverty. Women and children are forced to become part of the paid labor force; and because of male unemployment, women have had to undertake the greatest responsibility in meeting the family's basic needs.³² In the urban environment where there are limited opportunities to find paying jobs, economic problems and new social and cultural pressures can strain the relationships between the male and female members of families and, therefore, can result in an increase in domestic violence.³³

4.2. POVERTY AND CHILD LABOR

Some studies conducted in large urban centers show that internal displacement is one of the most significant reasons behind the increase in the incidences of child labor in the 1990s. For example, a study concerning children working on the streets of Beyoğlu³⁴ shows that they are generally children of internally displaced families and that they are forced to work on the streets because their parents cannot find employment. A survey carried out by the Başak Culture and Art Foundation (*Başak Kültür ve Sanat Vakfı* - "BSV"), with internally displaced families and their children in nine districts of Istanbul show that children are obliged to work because of their families' economic problems and that many are forced to drop out of school for this reason.³⁵ In her book about children working on the streets of Ankara, Betül Altuntaş³⁶ states that a large number of these school-age children come from internally displaced families. These children have to work on the streets in order to contribute to their very poor families. It is clear from these studies that there is a direct relationship between urban poverty, the inability of adults to find regular

29 Erder (1998).

30 Işık and Pınarcıoğlu (2001).

31 Erdoğan (2002) and M. Şen (2002).

32 Bora (2002).

33 L. Şen (2005).

34 Karatay et al. (2003).

35 BSV (2004).

36 Altuntaş (2003).

employment, and children having to work on the streets. There is, therefore, a direct relationship between urban poverty and the fact that school-age children do not or cannot attend school.

Another important point that researchers underline is that the press and public institutions refer to children living on the streets and children working on the streets as if they were indistinguishable. However, children who live on the streets and who have a high tendency to develop substance addiction or to commit crimes constitute a much smaller group than children who have to work on the streets for economic reasons, but who live with their families.³⁷ The portrayal of children who work on the streets as “muggers” or “glue-sniffers” by the media causes them to be targeted as a social danger or a risk factor by the public opinion. Instead of discussing the reasons that push these children to work on the streets (internal displacement and urban poverty), the children themselves are represented as dangerous groups, and social policies in this field seem to aim at putting this group “out of sight” rather than working on developing radical solutions to the problem.³⁸

Children working on the streets constitute only the tip of the iceberg. While children who work on the streets cause public outcry and become the object of discussion because they are highly visible and are the target of social policy proposals, children working in sweatshops or other workshops fail to attract much public attention. However, children working in workshops are probably both more numerous and are as open to exploitation as children working on the streets.³⁹

In conclusion, the reports and academic studies discussed above have a common feature although they were carried out in different periods and with different motives and approaches. Internal displacement during the 1990s has caused indelible sociological realities in Turkey whose effects can still be felt. These realities include urban poverty, deprivation of educational opportunities, participation of women and children in the labor force under very unfavourable conditions, lack of access to healthcare services, and health problems related to migration and to sudden urbanization.

37 Karatay *et al.* (2003).

38 Altuntaş (2003).

39 *Ibid.*

Internal Displacement and Psychological and Public Health in Turkey: Past Studies, Expectations, and Obstacles

A. TAMER AKER

The internal displacement in Eastern and Southeastern Turkey in the 1990s not only had socio-economic, political, and legal ramifications, but also resulted in physical and mental health problems for internally displaced persons (“IDPs”). It also brought to the front issues relating to poor access to healthcare services. This article aims to summarize the results of research carried out up to the present in this area and to emphasize what needs to be done about the psychological health of IDPs in particular, and more generally, in the field of public health as a whole. As will be explored below, the inequality in healthcare already existing in the said region has worsened following forced migration. It is therefore necessary to develop comprehensive and community-based service models in order to address the health issues of IDPs. With this in mind, this article also aims to put forward principles on which psychosocial healthcare service models should be based.

1. FORCED MIGRATION STUDIES IN TURKEY

At the outset, it should be noted that studies carried out in Turkey to assess the mental health of IDPs are quite inadequate. The few studies conducted in this field concentrate on the mental health of IDPs in the provinces of Van, Diyarbakır, and Istanbul.

One of these studies deals with the prevalence of mental illnesses among people who had to migrate for security reasons from the villages and hamlets of Van to the provincial center. Of those who participated in the study, 30 percent were diagnosed with depression, 15 percent with panic disorders, and 19 percent with somatization disorders. The study relates the number of these findings to various factors: IDPs live in an environment where their lives are under threat, they have lost their jobs, their economic conditions have deteriorated, their community life has disintegrated, they have been forced to migrate, they have had to live in inadequate conditions after the migration, and they have lost their community support system. It has been observed that IDPs living in an environment of mistrust, despair, and repressed anger have developed distrustful, reticent, and introverted behavioral patterns

against a background of depression.¹ Another study on forced migration and torture covers 31 people (a group forced to migrate from Southeastern Anatolia and another group which was politically active and lived in Istanbul). The findings of this research show that when subjected to torture, IDPs develop greater psychological problems. Symptoms such as lack of concentration, feelings of uneasiness and irritation, and continuously but involuntarily remembering painful memories were observed in 70 percent of the participants.²

In a study conducted in Diyarbakır, interviews were held with 100 people who were forced to migrate from the districts and hamlets of Diyarbakır to the provincial center and with 80 people who were not migrants. The study found that 66 percent of the migrants had been diagnosed with Post-traumatic Stress Disorder (“PTSD”).³

Another study carried out in Istanbul compares 1) groups that were subjected to torture; 2) groups that were subjected to torture and internal displacement; 3) groups that suffered internal displacement only; and 4) groups that were not subjected to either of these events, in order to better understand the psychiatric consequences of internal displacement and the degree of traumatization.⁴ The vast majority of the participants in this research project consisted of young, single Kurdish men with low levels of education and income. According to the research findings, depression and PTSD are the disorders most frequently found among participants. The most important finding of this research consisted in establishing that internal displacement creates a tendency to develop mental illness, and if people who have been subjected to torture have also suffered internal displacement, the rate of psychopathology increases. Moreover, traumatic events suffered during displacement increase the frequency of psychopathology. From this point of view, it will be useful to also mention reactions to loss and mourning behavior. The loss of a place of settlement, as much as the loss of a loved one, can shape psychopathology and cause depressive symptoms. However, it is difficult to observe clearly in IDPs the stages of shock, denial, negotiation, and acceptance, which are processes of mourning. People generally undergo a stage of intense denial, which is shaped by anger. What is noteworthy is that in the case of IDPs, the anger is generally directed at the state, the government, and the authorities.⁵

Culturally, traumatic stress can be expressed in different ways. Somatization, for example, is a particularly evident phenomenon among “eastern” cultures in Turkey and it is particularly common among women. Many women have difficulty expressing the problems they encounter and they somatize them (for example by developing

1 Kara (1997).

2 Karalı and Yüksel (1997).

3 Sır *et al.* (1998).

4 Aker *et al.* (2002).

5 *Ibid.*

neck pain, headaches, backaches, gastrointestinal complaints) and, thus, express them through their bodies.⁶ At times, people may have developed somatization symptoms prior to internal displacement. In such cases, internal displacement may aggravate their already existing problems. Moreover, internal displacement can cause despair and a serious loss of control among those who are internally displaced. Therefore, it is clear that there is a need for diagnostic approaches other than PTSD in the conceptualization of psychiatric problems related to internal displacement.

2. INEQUALITY IN HEALTHCARE

In order to discuss psychological problems that develop during and following internal displacement, it is necessary to approach the subject of healthcare from a more general perspective. Eastern and Southeastern Anatolia - the site of origin of the internally displaced - presented negative indicators in healthcare even before internal displacement occurred. The environment of clashes and internal displacement has further fuelled inequality in healthcare in these regions. Therefore, the concept of equality in healthcare needs to be addressed.

This concept can be examined from two perspectives: health and healthcare. Equality in the level or quality of health means that everyone has the right to health and that no one should be in a less advantageous position than others in the access to care. Equality requires the development of equal opportunities and the reduction of disparities in healthcare to the minimum possible level. In a sense, the aim is not only to reduce disparities in order to allow everyone to reach the same level of health, but also to abolish disparities arising from preventable and unfair circumstances. In regions that both receive and send out high numbers of migrants, it is possible to observe many unfair and preventable circumstances that result in inequality.⁷

Equality in healthcare means equal access to available healthcare services to meet equal needs and equal quality in healthcare services for everyone. Healthcare services need to be uniformly distributed nationwide in accordance with needs, individuals should have easy access to healthcare in all regions, and the causes preventing such access need to be established. Inequality in access is based on the inability to benefit from healthcare services due to factors such as income level, gender, age, religion, and language. Inequality in access to healthcare arises when resources and organizations are distributed unequally, and are concentrated in cities and more prosperous regions and are sparse in rural areas.⁸ What results is that those who are most in need of healthcare are the ones who benefit the least from it. It is clear that health problems are more concentrated, and the benefit rate from healthcare service is lower in those regions that receive and send out high numbers of migrants

6 *Ibid.*

7 Dedeoğlu (1998) and TTB (2000).

8 Belek (1998).

and/or where resettlement takes place. If there is a restriction in services as a result of negative social and economic conditions, equal benefit for equal needs is out of the question.

3. INTERNAL DISPLACEMENT AND PUBLIC HEALTH

If the concept of inequality in health regarding internal displacement is examined, a more comprehensive opinion about the dimension of the issue in the region can be formed. Serious public health problems exist in regions inhabited by IDPs. These health problems can be classified in the following ways: unhealthy housing conditions (crowded houses, polluted drinking water, the presence of hazardous waste materials, etc.); malnutrition and insufficient nutrition; inadequate health organizations and healthcare services; inability to access healthcare services due to economic reasons; and lack of insurance.⁹ While these kinds of problems create inequality in health matters for IDPs, they also cause IDPs to benefit less from healthcare services than they otherwise would have.

The unhealthy conditions in places where IDPs migrate contribute to the most important health problems that they encounter. Lack of the necessary urban infrastructure for health, that is to say life in shanty towns, and lack of potable water constitute the main elements contributing to unhealthy conditions. Unlike in rural areas, houses in urban centers can be much more crowded. Ten people living in the same household in shanty towns on the outskirts of cities in Eastern and Southeastern Anatolia, or 2-3 families living in the same house, were commonly encountered especially in the first years of internal displacement.¹⁰ In brief, the region's living standards encourage illness and make recuperation difficult.

Not only did healthcare organizations become inadequate as a result of urbanization and a fast increase in the population, but healthcare services in general also became inadequate because many state-run primary health clinics and health centers in Eastern and Southeastern Anatolia were shut down during the period of clashes. At that time, even field visits to those state-run primary health clinics were conditional on obtaining permission from the security forces. As a consequence of this situation, in Diyarbakır the rate of the DBT-1 (Diphtheria/Whooping Cough/Tetanus) inoculation dropped from 88 percent in 1990 to 35 percent in 1995 and the rate of measles inoculation from 58 percent to 26 percent. As of 2004, in Eastern and Southeastern Anatolia the rate of state-run primary health clinics lacking doctors was 21 percent while the percentage of village health centers lacking midwives was 90 percent.¹¹

Another obstacle to accessing healthcare services is the lack of health insurance. It had been discovered that in Diyarbakır family members share their cards

9 TTB (2000) and Soyer (2001).

10 Dedeoğlu (1998) and Aker (in print).

11 Etiler (2004).

issued by the Social Security Institution (*Sosyal Sigortalar Kurumu* - “SSK”) and their Green Cards, and that poverty is the main reason for IDPs’ attempts to make use of traditional treatment methods. 80 percent of women who migrated from rural areas to Diyarbakır gave birth to their children with the help of midwives. This rate was 85 percent before internal displacement. The fact that this figure has not undergone any significant change in the second half of the 1980s serves to show that women are also unable to benefit from healthcare services in urban environments.¹²

General health conditions of IDPs deteriorate following internal displacement. Many social factors, such as the distressing and traumatizing effect of events that IDPs have lived through, the loss to a great extent of their community support systems, economic hardships, and the changing roles within the family may facilitate the emergence of mental illness. An increase in physical as well as mental complaints is also to be expected. These factors also facilitate the emergence of physical illness. Moreover, physical and psychological complaints may also trigger one another. Deprivation and poverty may also contribute to the deterioration of health conditions. The main health problems related to migration consist of unhealthy housing conditions, malnutrition and insufficient nutrition, inadequacy of healthcare organizations and healthcare services, economic inability to access healthcare services, and lack of health insurance.¹³ Considering that health conditions of the regions from where IDPs originate are much worse than the nationwide average, it can be inferred that as people who have suffered distressing events and have experienced distressing circumstances, IDPs constitute a group at high risk for illness.¹⁴

4. PROPOSALS FOR A PSYCHOSOCIAL SOLUTION TO INTERNAL DISPLACEMENT

Considering the size of the population affected, it will be useful to define internal displacement as an “extraordinary situation” or a “disaster” and to develop psychosocial solution proposals along these lines. A special approach is required in order to meet the mental health needs of internally displaced masses. As there may be an increase in needs in the areas where IDPs settle, inadequacies may also develop in the organization of mental healthcare services. The effects of an individual psychiatric approach might therefore be very limited. In this kind of situation, a community-based approach should constitute an important part of the healthcare system. Such an approach would be expected to create a decrease in psychiatric illness and an increase in psychosocial wellness.

However, one of the main problems is that theories regarding such an approach are mostly articulated in western countries and the majority does not have the

¹² Elmacı *et al.* (1997).

¹³ İpekyüz (1996) and Can (2002).

¹⁴ Etiler (2004).

potential for cultural adaptation. A successful approach in one region may not yield the same results in another. The fact that these models are not sustainable thus constitutes another problem. This can prevent attempts to develop local capacity, and in a sense, make the country “dependent on foreign countries.” There is need here for an approach which is multi-disciplinary and which takes the criteria of fairness into account.

Rather than unilateral approaches, it is necessary for mental healthcare workers to work in a multi-disciplinary way and alongside IDPs, for psychiatric approaches to be supported by psychosocial practices, and for a participatory structure or system to be developed. When developing service models, the following points need to be addressed:

- i. **Acknowledgement and support by the state:** In order to develop psychosocial support programs for IDPs, the phenomenon of internal displacement needs to be acknowledged and defined by the state and by non-governmental organizations (“NGOs”). For example, following the Marmara Earthquake of 1999, the importance of this phenomenon (acknowledgment, acceptance, and support) emerged during the provision of aid to earthquake survivors.
- ii. **NGO organizing:** Although places specializing in trauma, such as torture rehabilitation centers, might be necessary at the beginning, the services offered in such places may be transferred in time to hospitals or to state-run primary health clinics.
- iii. **Capacity-building in fundamental healthcare services:** Healthcare workers in these regions should be given information and training on the subject of internal displacement, and capacity-building should be carried out. State support is of primary importance here as well. Further measures need to be taken in order for IDPs to access healthcare services.
- iv. **Social security:** Social security is necessary in order to enable access to healthcare services. State support or NGOs organizing are also of primary importance here, as well. NGOs can provide support regarding access to hospitals and the provision of treatment services.
- v. **The use of social resources:** It is important that key people working in organizations dealing with internal displacement receive training regarding mental healthcare and access to healthcare services. Those who are able to identify certain problems more easily may therefore be able to direct sick relatives and acquaintances to get help.
- vi. **Benefit from healthcare services in Eastern and Southeastern Anatolia:** There is need for epidemiological studies to identify this issue in Turkey. The language problem constitutes a significant barrier in any approach to treatment in these

regions where the population is predominantly Kurdish. It is generally women who do not speak Turkish. Patients' relatives generally act as interpreters during doctor-patient interviews. However, conducting a professional relationship under such circumstances may be difficult. It may be feasible to develop some interview schedules or questionnaires in Kurdish.

- vii. **Increasing the interaction between the state and IDPs:** Anger towards public institutions and authorities may also worsen existing problems. Such situations can be encountered following natural disasters such as earthquakes. People blame the government about insufficient conditions and buildings. There is no clear distinction between disaster-induced and man-made traumas. A similar state of anger can also be observed among IDPs who have suffered from man-made traumas. In such cases there is deterioration in the relationship with public institutions, which are already weak to begin with. Serious responsibilities lie with public institutions and NGOs as well.
- viii. **Improvement of public health indicators:** Public health indicators in regions where internal displacement took place need to be improved. As for regions where there is an influx of IDPs; it is necessary to establish the indicators in these areas and to plan required services accordingly.
- ix. **The establishment of multi-functional community centers:** The proposed centers should deal not only with the treatment of patients, but also with many issues unique to this region, such as physical and mental health problems arising from the explosion of landmines. Moreover, such centers can deal with special areas of interest such as substance addiction, the rehabilitation of street children, and women's issues.
- x. **The achievement of justice and reconciliation:** The establishment of justice, the punishment of perpetrators, activities, and symbols of remembrance qualify as auxiliary factors in the improvement of mental health. The fulfillment of these objectives does not fall within the responsibility of mental health providers; however, the feeling of justice and the collective remembrance of past negative events can contribute to mental wellness. Still, it is important to bear in mind that such measures will not achieve complete recovery from trauma-related problems.
- xi. **Ensuring sustainability:** It is also important to bear in mind that psychological problems can persist for several decades. All preparatory work must be carried out with the idea of developing durable programs.

When developing service models for psychosocial intervention in light of the above principles, areas from where people were forcefully migrated and to which return is now taking place must be taken into consideration, as well as urban areas currently inhabited by IDPs.

In conclusion, inequality in health and healthcare services can aggravate IDPs' physical and mental health problems during and following internal displacement, and can create new problems. Internal displacement can also worsen existing inequalities in access to healthcare. From this point of view, inequality in health and internal displacement are phenomena that are mutually related. A multilateral approach is therefore needed in order to cope with the health problems created by internal displacement.

First, inequalities in access to healthcare services should be abolished. Healthcare services should be organized both vertically and horizontally, giving priority to community-based and fundamental healthcare services. The organization and insertion of these services requires team work and it is very important that the general population participates in this work. In this context, the insertion of mental healthcare services in regions that receive and send out high numbers of migrants should be developed, taking into consideration regional differences; it also needs to be based on durable, sustainable, community-based, and horizontal models, and supported by basic healthcare services.

**CHAPTER V
FIELDWORK
BY THE TESEV WORKING GROUP
ON INTERNAL DISPLACEMENT IN TURKEY**

Introduction

Understanding the causes and consequences of a social problem, determining the obstacles to its solution, and developing policy proposals aimed at removing the said obstacles is only possible through dialogue with parties to the problem. Using this as the starting point, the TESEV Working and Monitoring Group on Internal Displacement in Turkey (“TESEV Working Group”) carried out four separate fieldwork projects between February and September 2005 with the aim of observing, on the ground, the implementation of government policies examined in Chapter III; assessing how the Return to Villages and Rehabilitation Project (“RVRP”) and Law no. 5233 titled “Law on Compensation for Losses Resulting from Terrorism and the Fight against Terrorism” (“Compensation Law”) are implemented by authorities, how they are perceived by internally displaced persons (“IDPs”) and how effective they are in addressing the problem; determining on-site IDPs’ needs, demands and future tendencies; identifying the obstacles to return, understanding which IDPs wish to return and why, who has or has not been able to return and why, and who prefers to remain in urban centres and why; determining the social and psychological problems resulting from internal displacement; and meeting with the stakeholders of the problem - namely public officials, non-governmental organizations (“NGOs”), municipality representatives, and IDPs - in order to identify the obstacles preventing a solution to the problem.

In its fieldwork, the TESEV Working Group employed a qualitative method, which helped to understand the various dimensions of internal displacement. This method allowed conducting comprehensive in-depth interviews with all of the stakeholders about their views regarding the scope of the problem, the policies of the government, and the solution of the issue. IDPs were reached through relevant NGOs, municipal officials, and journalists. The provincial neighborhoods and villages to visit were selected in light of the recommendations of the aforementioned and with the goal of diversifying data through interviewing IDPs in different circumstances. The internally displaced households were selected randomly. In-depth interviews were held with IDPs in their homes or in public places such as coffeehouses, village squares, and community centres. In these group interviews, participants who did not speak Turkish were communicated with through their bilingual family members and acquaintances, or with the aid of NGO representatives, journalists, or municipality officials.

The fieldwork was carried out by four members of the TESEV Working Group and their assistants. While the field studies in Istanbul and Diyarbakır were carried out

by one member of the group, the fieldwork in Batman and in Hakkâri were each undertaken by two members of the group. Reports of the Batman and the Hakkâri fieldwork consist of two articles each, written separately by the two members of the TESEV Working Group in accordance with a previously agreed distribution of labor.

The rationale behind choosing Diyarbakır as the venue for the first fieldwork, carried out by Deniz Yüksek in February 2005, was the fact that the city was taking the lead in the implementation of the Compensation Law, which at the time had recently come into effect nationwide. Therefore, in the Diyarbakır fieldwork, emphasis was placed on the city-center, interviews were held with public officials, lawyers, and NGOs in order to assess how the law was implemented and what results were obtained. Interviews were also held with IDPs living in the city-center in order to assess their current situation and with municipal officials and NGOs in order to determine the urban issues arising from internal displacement in Diyarbakır.

The rationale behind choosing Batman as the venue for the second fieldwork, carried out in June-July 2005 was twofold. First, Batman is among the provinces that received the highest number of forced migrants in the region. Second, the high number of NGOs working on internal displacement in this city facilitated access to IDPs. Since this research project aimed at closely monitoring the implementation of the Compensation Law from the very beginning, the TESEV Working Group wanted to examine, in a comparative manner, the practice in Batman in light of the research findings obtained from the fieldwork in Diyarbakır. With this objective, group members Ayşe Betül Çelik and Dilek Kurban carried out a fieldwork in Batman where in-depth interviews were held with public officials responsible for the implementation of the Compensation Law, members of the bar association, lawyers serving in compensation commissions, lawyers holding power of attorney for petitions, NGOs that acted as intermediaries for these petitions, and IDPs. The TESEV Working Group undertook its most comprehensive fieldwork in Batman, where both the IDP neighborhoods in the provincial center and rural areas where there has been partial IDP return were visited. This provided the opportunity to examine on-site the obstacles to return, as well as the problems and needs of IDPs who have returned and of those who have remained in cities. These observations were supplemented with interviews conducted with public officials, municipal officials, NGOs, social care experts, and healthcare workers. The report written as a result of the fieldwork consists of two parts: The first part deals with the socio-economic consequences arising from internal displacement in Batman and with the obstacles to return. The second part assesses how the Compensation Law is perceived and implemented in Batman.

In the summer months of 2005, the third fieldwork was carried out by Deniz Yüksek and a group of assistants in Istanbul. As a city that received a considerable wave of migration in the 1990s and now hosts a significant number of IDPs, Istanbul was a

natural choice of venue for research on internal displacement in Turkey. A significant part of IDPs currently live in large urban centers in western Turkey. Taking as a starting point its belief that a substantial segment of IDPs either do not wish to or cannot return home and that internal displacement is now an urban issue, the TESEV Working Group decided to concentrate on the urban problems of IDPs in Istanbul. The fieldwork report combines the impressions obtained from in-depth interviews held in different parts of Istanbul with the findings of the fieldwork carried out in Diyarbakır, and analyzes the urban problems encountered by IDPs living in these two cities.

The TESEV Working Group chose Hakkâri as the venue for its last fieldwork carried out by A. Tamer Aker and Dilek Kurban in October 2005. The major reason for this choice centered on the hearsay information concerning the problematic implementation of the Compensation Law in this province. Following research in Diyarbakır and Batman, both of which represented at the time relatively good practices in terms of the implementation of the Compensation Law, conducting fieldwork in a province where the implementation was problematic would provide a comparative understanding of the reasons for the variation in practice among provinces. Another reason for choosing Hakkâri was that it is among the provinces where massive displacement had taken place in the 1990s and which, as a result, has suffered considerably from problems arising from internal displacement. As part of work carried out in the provincial center of Hakkâri and the district of Çukurca, interviews were conducted with similar participants to those observed above. The TESEV Working Group was unable to visit villages both because security forces did not allow access to rural areas for security reasons and because there was no meaningful return to villages. The Hakkâri fieldwork report consists of two parts: the first part assesses the causes and economic, social, and psychological consequences of internal displacement, as well as obstacles to return. The second part examines the implementation of the Compensation Law and assesses the protection of human rights in the province.

Internal Displacement in the Province of Diyarbakır: Return, Urban Issues, and Implementation of the Compensation Law

DENİZ YÜKSEKER

One of the largest cities in Southeastern Anatolia in terms of population, Diyarbakır was also one of the provinces hardest hit by internal displacement in the 1990s. The city is the most important provincial center to receive internally displaced persons (“IDPs”) from villages and hamlets in its own districts and from rural settlements in neighboring provinces. However, rural areas and district centers of Diyarbakır have also been the source of migration towards large cities in Western and Southern Turkey, as a result of both economic hardships and internal displacement. The aim of this article is to present the issues that have arisen in Diyarbakır as a result of internal displacement. Within this framework, the article will examine the implementation of the Return to Villages and Rehabilitation Project (“RVRP”); the obstacles to return; the attitude of IDPs and of the government towards returns; problems encountered by IDPs’ children; and the implementation of Law no. 5233 titled “The Law on Compensation for Losses Arising from Terrorism and the Fight against Terrorism” (“Compensation Law”) in Diyarbakır.¹

One of the main themes of this article is that, because approximately 15 years have passed since the eviction of villagers from their homes, return to villages is contingent on many different elements, such as security, the village guard system, the structure of families, living conditions in urban and rural areas, and the attitude of the government. It is therefore impossible to make any predictions on which

1 This article is based on findings from research carried out in Diyarbakır by TESEV Working Group member Deniz Yüksek and her assistant Şefika Kumral. Within the framework of the research, TESEV Working Group conducted interviews in Diyarbakır with relevant deputy governors, the Metropolitan Mayor, representatives of the Diyarbakır Bar Association, representatives of the Diyarbakır branch of the Human Rights Association (*İnsan Hakları Derneği* - “İHD”) and of the Diyarbakır Migrants’ Association for Social Solidarity and Culture (*Göç Edenler Sosyal Yardımlaşma ve Kültür Derneği* - “Diyar Göç-Der”), employees from the Women’s Center (*Kadın Merkezi* - “KA-MER”) and representatives of the departments dealing with women’s issues at the Metropolitan Municipality and Yenışehir Municipality. The research team also interviewed members of 15 internally displaced families reached through KA-MER and the Diyarbakır Center for Research and Application on Women’s Issues (*Diyarbakır Kadın Sorunlarını Araştırma ve Uygulama Merkezi* - “DİKASUM”). As the implementation of the Compensation Law has accelerated in the past year, information on this subject and on the implementation of the Return to Villages and Rehabilitation Project (“RVRP”) has been updated with additional information gathered in February, March, and May 2006 from the governorship, Diyar Göç-Der and the Diyarbakır Bar Association.

groups and how many people will return. The article also emphasizes how the civil unrest incidents in Diyarbakır in March-April 2006 have underlined that internal displacement has become a very important social issue. The vulnerability of children is particularly important in this respect. In addition, following the *İçyer*² decision taken in 12 February 2006 by the European Court of Human Rights (“ECtHR”), the review of the implementation of the Compensation Law has become more difficult.

1. THE EVICTION OF VILLAGERS AND THE RETURN TO VILLAGES

Conflicting figures exist regarding the quantitative dimension of internal displacement in Diyarbakır in the first half of the 1990s. A memorandum entitled “Work on Return to Villages and Rehabilitation” prepared by the Governorship of Diyarbakır states that “especially in the years 1992-94, some citizens living in villages and hamlets were obliged to leave their places of residence due to acts of terrorism” and that a total of 90 villages and 304 hamlets in the province were “deserted.”³ According to updated information received in February 2006 from Diyarbakır Deputy Governor Erol Özer, returns have taken place in 74 of the villages and 155 of the hamlets.⁴ Özer stated that of the 43,664 people (7,600 households) who left their places of residence, 19,800 (3,500 households) had returned.⁵

Officials from the governorship interviewed in February 2005 stated that 14 villages and about 150 hamlets which remain empty are settlements where return cannot take place for security reasons. Representatives of the Diyarbakır Migrants’ Association for Social Solidarity and Culture (*Göç Edenler Sosyal Yardımlaşma ve Kültür Derneği* - “Diyar Göç-Der”) and the Diyarbakır Bar Association, contacted in March 2006, stated that no returns had taken place in some hamlets of the Alaca village in the district of Kulp and in the Kurşunlu village in the district of Dicle, but returns had taken place in all settlements apart from these. According to information provided by representatives of Göç-Der and the bar association, security forces are indirectly discouraging returns in the mentioned villages in Kulp and Dicle on security grounds. According to figures provided by the governorship in early 2005, the village of Kurşunlu was deserted for “security reasons” and is still listed as empty. The village of Alaca

2 In the case of *İçyer v. Turkey*, the European Court of Human Rights (“ECtHR”) ruled that the compensation commissions established pursuant to the Compensation Law provide an effective domestic remedy which the applicants must exhaust before filing an action in Strasbourg. Based on this reasoning, the Court held *İçyer*’s application inadmissible. For detailed information on this decision by the ECtHR, see Chapter IV, Kurban: “Human Rights Watch, Kurdish Human Rights Project, and the European Court of Human Rights on Internal Displacement in Turkey” in this book.

3 Diyarbakır Governorship (2005).

4 The expression “returns have taken place” does not mean that the entire population of the village or hamlet in question has returned.

5 What is interesting here is that the number of people who deserted their villages according to the governorship memorandum dated 2005 is lower. In the memorandum titled “Work on Return to Villages and Rehabilitation,” the number of persons whose “places of residence were “emptied” appears as 38,666.

and its 31 hamlets are listed as deserted due to “acts of terrorism” and are displayed in the table as empty.

Two separate lists attached to the aforementioned governorship memorandum are respectively titled “The Situation of Completely or Partially Deserted Villages and Hamlets” and “Completely Deserted Settlements where Return has Happened.” In the first of these lists, two different reasons stand out as “reasons for deserting” (*boşalma nedenleri*) places of settlement. While the reason for the “deserting” of villages and hamlets in the districts of Lice and Kulp - both districts where the highest number of people left their homes - as well as the districts of Silvan and Merkez, is given as “acts of terrorism,” the cause for the desertion of rural settlements in other districts is given as “security reasons.” That two different reasons for desertion of settlements are provided in the list raises the possibility that, when classifying evicted villages, military and administrative authorities may have used criteria that were not transparent. On the other hand, there are also indications that some official institutions harbor prejudices against the population of “deserted” or evicted villages. For example, in a list sent by the sub-provincial governorship of a district in Diyarbakır (and prepared by the Gendarmerie Command of the district) to a lawyer in Diyarbakır, in response to the latter’s request under the Right to Information Law, the words “neutral,” “supporter of the state,” and “supporter of the terrorist organization” appeared in boxes next to evicted villages and hamlets where return had taken place.⁶ Although this is a single example, it can be seen as a reflection of the fact that the state has not yet accepted its responsibility for the village evictions. Since the inhabitants of many villages and hamlets were evicted from their homes for refusing to become village guards, it is likely that such settlements have been labeled as for or against the state by military and administrative institutions in the region.

Information regarding the numbers of IDPs is also conflicting. The Governorship of Diyarbakır provided the figures cited above. However, according to representatives of Diyar Göç-Der, on the basis of conjectural research carried out in August 2003 - which they themselves define as being not “scientific” - more than 133,000 people were obliged to leave their villages and hamlets and more than 41,000 of them have returned as of 2003. According to research based on a sampling of settlements in several provinces whose residents were evicted conducted by the Southeast Anatolia Regional Representation of the Human Rights Association (*İnsan Hakları Derneği* - “İHD”) - whose findings were shared with the TESEV Working and Monitoring Group on Internal Displacement in Turkey (“TESEV Working Group”) - the number of IDPs who have returned to their homes in Diyarbakır appears as being 45 percent lower than official figures.⁷ It is not known how many people migrated to the provincial

6 According to the document that this lawyer showed the TESEV Working Group, returns had also taken place to those villages that had been labelled as “supporters of the terrorist organization.”

7 In this research İHD formed a sample consisting of six villages and seven hamlets that were previously evicted in five districts of Diyarbakır, and compared the official figure of returnees with its own observations about the number of returnees.

center of Diyarbakır in the first half of the 1990s, when village evictions were at their most intense. According to the 1990 and 2000 censuses, the “urban population” (a term referring to the total population within the borders of the metropolitan and district municipalities) of Diyarbakır rose from 595,440 to 817,692. People living in the provincial center say that the city was much more crowded in 1995 than it is today. Yet, as no census was conducted in 1995 and questions regarding migration in the 2000 census refer only to the period between 1995 and 2000, it will never be possible to have reliable figures on the dimension of migration between 1990 and 1995.

As explained in Chapter III, the inconsistencies in these figures result from the methods used by Ministry of Interior and the governorships to calculate the number of IDPs which are not in accordance with the definition of IDPs in the “Guiding Principles on Internal Displacement” (“Guiding Principles”). In fact, an official from the governorship of Diyarbakır stated that there were even inconsistencies between the numbers compiled by the sub-provincial governorships and local gendarmerie commands, because in some cases only villages that were completely evicted were taken into consideration, whereas in other instances villages from which only a few families had migrated were also included in the calculation of the figures.

The discussion above also gives an indication about the inconsistencies concerning the number of returnees. It is impossible to understand from the figures supplied by NGOs and by the governorship whether those classified as returnees are spending the entire year in their villages or if they are able to only spend the summer season there. It is not clear whether those who have returned without applying to the RVRP are included in these numbers. Similarly, the numbers may also include people who have not returned despite having applied to the RVRP.

2. RETURN TO VILLAGES AND REHABILITATION PROJECT

According to information provided by Deputy Governor Erol Özer, between 2000, when the RVRP was put into effect, and 2006, YTL⁸ 9,800,000 was spent in Diyarbakır from the state budget and the Special Provincial Administration budget on this project. In-kind aid, such as construction materials, was provided to returnees through the allocation covered by the state budget. The expenses made from the Special Provincial Administration’s budget included providing piped water to 37 villages and 23 hamlets which had been evicted and where return has taken place, giving beehives to some families, constructing electrical infrastructure, and carrying out 324 km. of road repair.

Apart from these, within the framework of the RVRP, “centers of attraction”⁹ were built in the İslamköy village in the Kulp district and in the Buçuktepe Aşağı Beyan

8 As of June 2007, YTL 1 (Yeni Türk Lirası - New Turkish Lira) equals to USD 0.755.

9 “Centers of attraction” refer to the provision of public services and the building of infrastructure in a rural settlement for the purpose of encouraging resettlement in this place as well as the immediately surrounding villages or hamlets.

hamlet in the Merkez district. In İslamköy and in the Tur hamlet of Kulp, a total of 50 houses were built and delivered to their rightful owners in 2001. The “Work on Return to Villages and Rehabilitation” memorandum states that this project administered by the Diyarbakır Governorship, the GAP Administration, and the General Directorate of Rural Services will cover drinking water, sewage systems, electricity and telephone infrastructure, road construction, and school repairs.¹⁰ Before the enactment of the RVRP, a housing complex known as “500 houses” was built for IDPs in the Merkez district of Diyarbakır and a housing complex known as “450 houses” which had previously been built as post-disaster housing was given over to IDPs. The “Work on Return to Villages and Rehabilitation” memorandum also states that letting IDPs “benefit” from the resources of the Social Aid and Solidarity Foundation (*Şösyal Yardımlaşma ve Dayanışma Vakfı* - “SYDV”) is considered part of the RVRP. The memorandum states that, apart from the budget of the Special Provincial Administration, the realization of these activities has also benefited from the financial contributions of the General Directorate of Rural Services and from the Electricity Distribution Corporation of Turkey (*Türkiye Elektrik Dağıtım Anonim Şirketi* - “TEDAŞ”). But there is no clear breakdown showing itemized expenditures or the distribution of the money according to districts.

Deputy Governor Erol Özer stated in February 2005 that in villages where there were collective petitions for return, RVRP funds were spent on projects such as infrastructure work, as well as on providing people with material supplies for the construction of houses. Özer said that criteria such as closeness to district centers, absence of security issues, and the existence of a significant number of households wishing to return, were used in the selection of villages where infrastructure investment (roads, water, electricity, etc.) would be made.

The following impressions can be derived from the information on RVRP provided by the Governorship: until the year 2000, there were no aid programs for IDPs apart from housing projects such as the “450 Houses” and “500 Houses” projects, which only a limited number of people could benefit from, and aid for some individuals from SYDV. After 2000, RVRP activities intensified, especially in the form of construction material aid and infrastructure work in villages where a relatively higher number of people have returned. However, it is obvious at this stage that the said infrastructure work is still very insufficient since, as will be described below, an important problem encountered by IDPs is that they cannot return to their villages because the villages are not in livable condition.

3. RETURNS

Return is the most emphasized point in policies addressing internal displacement in Turkey, not only for the government but also for the United Nations (“UN”) and the

■ 10 Diyarbakır Governorship (2005).

European Union (“EU”), both of which have an interest in the internal displacement issue in Turkey.¹¹ However, at a stage where more than 10 years have passed since the displacement occurred, return now presents the characteristics of a complex sociological phenomenon, rather than a simple choice on the part of households. There are five principal elements that will influence individuals’ and households’ decision to return in the near future: 1) what return means; 2) who wants to return; 3) whether returns are economically viable; 4) obstacles to return such as the village guard system and security concerns; and 5) the attitude of the government concerning returns. These five elements will be examined below in light of the findings from the Diyarbakır fieldwork and the data from the field study held in Istanbul.¹²

Responses to the question “do you want to return to your village?” by members of internally displaced households in Diyarbakır and Istanbul show how complex the issue actually is. First of all, the concept of “return to villages” has different meanings for different people. Moreover, the answers to this question show significant differences according to variables such as the interviewee’s age, sex, socio-economic status, position within the household, and place of residence.

3.1. WHAT DOES “RETURN” REALLY MEAN?

The first point that needs to be emphasized is that return must be seen as return not only to *villages*, but also to *places of residence*. As stated in Chapter III, internal displacement occurred not only in rural settlements but also in district centers in the Southeast where there was intensive armed conflict. Diyarbakır is important in this respect. The district center of Lice especially (to a certain extent also some other districts such as Kulp and Hani) was the stage for intensive armed clashes between the armed forces and the Kurdistan Workers’ Party (*Partiya Karkerên Kurdistan - “PKK”*) in the first half of the 1990s. As a consequence, fearing for their lives, many people who lived in district centers migrated to the provincial center or to provinces in Western Turkey. One of the most crucial points emphasized in this book is that, although their villages were not directly evicted, these people are included, all the same, in the definition of “internally displaced person” in the Guiding Principles. In fact, among the IDPs interviewed in Diyarbakır and Istanbul were members of households who had been obliged to leave their places of residence because of fear for their lives rather than due to being evicted.

The second point to emphasize is that return has different meanings for people who left their living spaces involuntarily, suddenly, and in a traumatic way.¹³ While some

11 See for example Council of Ministers (2005).

12 Although this article is about the situation in Diyarbakır, it will also include references to the requests and wishes of IDPs from Diyarbakır who were interviewed during the field study held in İstanbul in July–August 2005.

13 The analysis of returns by Ayata and Yüksek (2005), 34–36; was used as a basis for this part of the article.

regard return to the village as spending the rest of their lives in the village, some regard it as spending the summer in the village, some older people regard it as being able to visit the graves of deceased family members, while others regard it as being able to bury their dead in the village. In some cases, return to village is expressed as a political imperative, and, therefore, the wish to return is actually the wish to have the *right* to return. The fact that people were evicted from their villages suddenly, without any assistance or any other alternative, meant the violation of certain constitutional rights.¹⁴ Therefore, if the objective is to re-establish the citizenship rights of IDPs, they must be enabled to re-establish spiritual and material ties with their homeland, regardless of whether they wish to live continuously in their villages.

3.2. WHO WISHES TO RETURN?

The field studies carried out in Diyarbakır and Istanbul were not based on statistical sampling methods. From this point of view, the answers given by interviewees do not make it possible to make generalizations for the whole of the internally displaced population. However, there are certain prominent elements concerning wishes and expectations regarding return. In comparison to IDPs living in Istanbul, IDPs living in the provincial center of Diyarbakır are more willing to return to their villages, as long as certain conditions are fulfilled. On the whole, older people form the group that is most willing to return. Household members who are young adults form the group that is least willing to do so. Teenagers and young adults who were children when their villages were evicted or who were born and raised in cities are not eager to return. Adult men are more inclined to return than adult women.¹⁵ Overall, families that have “integrated” to the urban economy through wage labor are less willing to return, whereas those who have not adapted economically or socially to city life consider the possibility of returning more favorably.

Moreover, the balance of power within households arising from generational, gender-based, and economic realities can offer conflicting clues as to whether a family wishes to return or not, or on which members might wish to return.¹⁶ For example, families whose children attend school are not willing to return to villages without schools, but older members of the same family might wish to return regardless. Or, young people who have regular jobs in the city often wish to remain in the city, while their parents are more inclined to return. In such cases, there may be seasonal

14 Turkish Parliament (1998).

15 The fact that women are not willing to return overlaps with findings from researches carried out on economic migrations. See for example Erman (2001).

16 In social science research carried out in the past concerning economic migration, individuals were assumed to be the decisive factor. In research carried out after the 1970s, households began to be considered as the decisive factor. However, academic research in recent years indicates that households are not uniform, that there may not always be collaboration within households, and that at times conflicts or disagreements may exist. See for example Sen (1990).

returns, the return of part of the household, or a periodical migration by young members even if the entire household returns, all of which parallels the balance of power within the household. In fact, if one recalls the period when evictions of villagers occurred, it can be inferred that, at times, economic migration and forced migration happened successively or simultaneously. Some families interviewed explained that when the village was evicted only the elderly, women, and children remained. Young people and adult men had already left their villages either out of fear for their personal safety (considering that both the PKK and the armed forces concentrated their pressures on men) or in order to find work. In this region where a periodic/seasonal migration has been common for a long time and where the migration of men of working age accelerated from the beginning of the 1990s, it can be said that first the internal displacement and then the return process are closely connected to economic migration.

However, the fact that internal displacement and economic migration are intertwined does not eliminate the uniqueness of the internal displacement phenomenon. On the contrary, families that have migrated for reasons such as concern for their safety, pressure by the PKK or by the armed forces, eviction from their villages, and the collapse of the agricultural economy in the region, have encountered many problems in the places where they have moved or in the course of the return process that people migrating for economic reasons do not normally encounter.¹⁷

3.3. IS “RETURN” A REALISTIC OPTION? ECONOMIC ISSUES AND DIFFERENCES WITHIN HOUSEHOLDS

IDPs’ views on returning present concrete information on both how complex a process return is from a socio-economic point of view and also on socio-economic obstacles faced by people who are willing to return. This section is based on interviews held with the members of 15 internally displaced households¹⁸ in the Benusen and Aziziye neighborhoods - which are the poorest slum areas of Diyarbakır - and on the views of members of households that migrated from the districts of Hani, Kulp, Silvan, and Lice in Diyarbakır, who were interviewed in Istanbul.¹⁹

17 For a detailed discussion of these problems, see Yüksekler: “Internal Displacement and Social Exclusion: Problems Encountered by Internally Displaced Persons in the Provinces of Istanbul and Diyarbakır” in this chapter.

18 Of the household representatives interviewed, 12 were women between 19-60 years of age and 3 were men between 24-40 years of age. Two of the women were single, and the others were either married or were widows and had children. Apart from the two unmarried young girls, none of the women had gone to school and they knew very little Turkish. Two of the men who were 34 and 40 years old were married, had children, and had gone to primary school. The fact that most of the people interviewed were women can lend the sampling a certain bias, but this biased sampling could be considered positive when it is recalled that similar surveys in the past dealt with a majority of male subjects. See for example Barut (1999-2001).

19 Of those, two were a young woman and a young man, both 20 years of age and unmarried, two were married women with children, and one was a married man.

Of the eight women in Diyarbakır who replied “no” to the question “do you want to return to the village?,” some said that they had no such wish, while some said that, for one reason or other, their return would not be realistic. Those who replied by saying they “might return,” qualified their statement by saying they would return to the village only if certain conditions were met. The most important of these conditions were that “their houses be rebuilt” and that public services such as electricity, water, and roads be brought to the village. A 19-year-old young woman, who said she very much wanted to return and who spoke at length about the beauty of the village (she and her family were evicted from their village when she was 7 years old), stated later in the conversation that as long as she could find a job she would like to stay in the city, that she felt distanced from life in the village, but that if her parents returned she would be obligated to return in order to take care of them.

Some people whose relatives had returned to the village but who did not do so themselves, explained that they did not have the financial means for return. The most important reason why they had not returned to their villages was that they did not have capital to build/repair their homes in the village. It is clear here that aid given within the framework of the RVRP is insufficient, because several people emphasized that the offer of aid in the form of cement, iron, and bricks was insufficient by itself, and that money was needed to carry that material to the village and to build a house. Most people, both women and men, felt that those who benefited from the RVRP were families who had already returned to the villages and were relatively wealthy to begin with. Therefore, it may be that the poorest of the internally displaced population is unable to benefit from the RVRP because the aid is insufficient.

Two women who said that they did not want to return to the village said later in the conversation that they would indeed wish to return “if they owned land.” What does “not owning land” mean here? One of the women actually stated that her father-in-law had agricultural land in the village, and the other woman said the same about her own father. Yet, when households were divided as a result of marriage, they had lost the possibility of farming on that land and of getting a share of the produce. The second woman also explained that after the death of her father, her uncle had confiscated their land and her brother had consequently been unable to return to the village. On the other hand, considering that the distribution of land in most parts of Southeastern Turkey is very unbalanced with a few people owning majority of the land, the return of “landless villagers” will be very difficult.²⁰

Some women who said that they did not want to return to the village complained about the hardships of village life. One of them said that her children did not want to return to the village. This woman explained that after they came to the city she sent her younger children to school, but that it was too late for the older ones who

■ 20 For the social consequences of the unbalanced distribution of land, see Karapınar (2005).

had never attended school before. In addition, all three of the men said that their wives/mothers did not want to return to the village because life in the city was not as difficult for them.

The heads of households and young people from Diyarbakır interviewed in Istanbul expressed complex tendencies concerning return. Those who had an income in Istanbul, even if it was informal, and those who sent their children to school were not eager to return. For example, a 27-year-old woman from Kulp who has four children stated that she has no desire to return at all. This woman had migrated with her family to Diyarbakır when they were evicted from their village in 1991. In the meantime she had married and moved to Istanbul and her husband was now in prison. She did embroidery work at home, while her children attended school and worked on the streets. Although she was very poor in Istanbul, she emphasized that she “would have nothing to do” in the village and that she had no reason to return. A 20-year-old woman from Lice who migrated to Istanbul with her family and who worked in an apparel workshop with her sisters, said that it would be out of the question to return to Lice, where she lived a socially closeted life and where there was no possibility of work. On the other hand, the situation of the 20-year-old son of a family of eight that migrated to Manisa after they were evicted from their village in Silvan and that returned to the village in 2000, constitutes a different example. This family had rebuilt their house in the village with the money that their children working in the western provinces had sent them. While the whole family was now living in the village, the young man we spoke to had been working in an apparel business in Istanbul for two years and was sending money to his family.

Another example of the interconnectedness between internal displacement and economic migration deserves mention. A family from Silvan that was obliged to leave their hamlet because of pressure brought on them to become village guards and that was obliged once again to leave their village in 1994 for the same reason, had lived in the district center until they migrated to Istanbul in 2001. The 39-year-old male leader of the household said that their village was never completely evicted and that for a while he earned a living by renting his field in the village to a sharecropper. However, when their economic situation deteriorated, the family had to migrate to Istanbul in 2001. Of the family’s eleven children, the adolescent boys worked in garment workshops, while the younger children attended school. The man, who is unemployed, said that they were not thinking of going back to the hamlet or to the village, that “there was nothing” in the village, and that they were better off in Istanbul. On the other hand, a married woman in her forties from the district of Hani said that she wished to return to the village, so that her children would not acquire bad habits or would not get involved in crime, and that earning a living was easier in the village. Yet, she said that she had sold their property in Hani, had bought an old house in Istanbul with a bank loan, and that her children worked on the streets

in order to pay off their debts. Her principal condition for returning to her village was that there should be peace and security in the region.

Does this information allow us to reach conclusions about whether IDPs will or will not return from this stage onwards? As claimed in the previous section, the most definitive finding is that after more than 10 years since the internal displacement process, the problem of return has become a sociologically complex phenomenon. Especially for people living in the provincial center of Diyarbakır, return might be viewed as a desirable option, but serious doubts remain as to whether return at this stage would be economically sustainable. In fact, views such as “we will return if the state builds houses for us and gives us animals” and “there are no schools and no roads, that is the reason I cannot return, though I would like to” have been expressed in the interviews.

3.4. THE SECURITY SITUATION AND THE VILLAGE GUARDS

There is one other important issue that is independent from economic conditions, from conflicts within households, and from the reconstruction of rural areas where internal displacement took place. The *sine qua non* condition for existing returns to be sustainable and for those willing to return to be able to do so, is the provision of security. The men that the research team spoke to in Diyarbakır thought that one of the most important obstacles to return was the lack of security and added that people would not want to go back unless the clashes and the military operations end completely. A man who had migrated from a village in the district of Silvan to Diyarbakır said that a relative of his who had returned to the village had been beaten up by village guards from a neighboring village and had been obliged to leave his village. A man from a village in the district of Hazro said that armed forces were still carrying out operations in the vicinity of his village, and that he had heard that some villagers who had returned had been tortured by them.

İHD representatives interviewed in February 2005 believed, on the basis of information and petitions they had received, that returns had decreased in 2004. Mihdi Perinçek, the Southeast Representative of İHD believed that the increase in clashes between the armed forces and the PKK within that year could explain this decrease. Selahattin Demirtaş, chair of the Diyarbakır branch of İHD, stated that whenever an event concerning the village guards or a clash occurred, news spread quickly among local people and people lost the will to return to their villages. Demirtaş emphasized that İHD and other NGOs who had won local people’s trust could play a constructive role in dispelling such suspicion and in building trust between citizens and the state, provided that measures encouraging return are taken. In one of the interviews, members of a family that returned in the summer of 2004 to their village in the district of Kulp for the first time in 12 years, said that village guards from a neighboring village came and damaged the family’s field by grazing their animals

there. A fight erupted between the villagers and the village guards as a result, but no armed clash occurred. A member of the family thought that, if they had not visited their village last summer, the following year they would have found their lands confiscated by village guards.

A young man from Silvan interviewed in Istanbul said that when returns to the village began in 2000, village guards from a neighboring village came from time to time, but that they stopped doing so when the number of households in the village increased. Therefore, the villagers had no problems with village guards. Another man from Silvan also interviewed in Istanbul said that he had been visiting his village as a “guest” for a few years, that his village had no problems with village guards because all the residents of the villages in the vicinity had been evicted (and there were no village guards around), but that they remained under the influence of a “psychology of fear.” This 39-year-old man felt that, for people to return to their villages, the state should first provide for safety.

This information, based on personal observations and experience, indicates the presence of two problems. The first is threats to people’s lives and their property, and the second concerns problems created by the perpetuation of the village guard system. Two areas of concern remain from the point of view of safety of life and property. On the one hand, following 15 years of armed clashes, the citizenry has developed a very negative idea concerning safety. For example, although in Diyarbakır there are very few villages where returns are not permitted for security reasons, many people interviewed in the city center and in Istanbul said that they “would not return if security measures were not taken.” The second element within the scope of this issue concerns the deteriorating situation in the region of Diyarbakır, seemingly confirming the local population’s negative perceptions. The possibility that the clashes, which ended in 1999, might begin anew is a serious source of concern for many people. Over the past two years the PKK has resumed activity such as the mining of roads and bomb attacks; the armed forces are likewise continuing their operations in the region. Although it may seem that, in comparison to rural areas in other provinces, the rural areas of Diyarbakır have been less affected by these activities, these might still prevent returns that could occur in the future.²¹

The village guard system continues to constitute a complex problem. According to information supplied by the Ministry of Interior, as of April 2006, there are 57,174 provisional village guards in the provinces within the State of Emergency Region and contiguous areas.²² Moreover, there are more than 12,000 voluntary village guards.²³

21 The lawyers interviewed in May 2006 said that although military operations had taken place within the province’s borders, nothing had occurred that could prevent returns or that would cause another wave of internal displacement. However, the probability of such an increase in PKK activity in the summer months and of an intensification of military operations might bring about such a possibility.

22 Ministry of Interior (2006a).

23 Aksu (2003).

5,141 of the provisional village guards are employed in Diyarbakır;²⁴ however this data does not indicate the distribution of these guards according to district. When compared with data from the 2000 General Census, these figures show that provisional village guards constitute 1 percent of Diyarbakır's rural population. However in Hakkâri, Siirt, and Şırnak, where the highest number of village guards reside, the ratios are respectively 7.8, 4.2, and 4.7 percent.²⁵ Of course, when the numbers of the village guards are considered along with their families, their presence within the rural population is much higher. Considering that in the period from 1985 to April 2006, 5,139 provisional village guards were involved in various crimes,²⁶ that they were armed, and that the arms remained with their families even if they quit their jobs or died,²⁷ it is obvious that, in comparison to their ratio to the rest of the rural population, village guards' "social standing" is disproportionately larger.

NGO representatives in Diyarbakır claimed that the continuation of the village guard system constituted one of the main obstacles to return. However, it is not possible to make a definitive statement about the extent to which the existence of village guards, their threatening behavior towards individuals, and their behavior regarding property (occupation of agricultural land, gathering of other people's produce, the cutting of trees, reaping of grass, grazing animals in other people's fields, etc.) affect return to evicted villages in Diyarbakır.²⁸ In some areas where the populations of villages collectively refused to become village guards and were consequently evicted, there might not be a significant presence of village guards. However, since there is no information regarding the distribution of provisional village guards in districts and rural areas, it is not possible to draw definitive conclusions on this subject.²⁹ Over the last few years, incidents have occurred in which village guards have attacked returning families and a total of six people have died. In an incident in September 2002 in the Bismil district of Diyarbakır, village guards opened fire on eight families that had returned to the village. Three people died and a few were injured. After the

24 Ministry of Interior (2006a).

25 These percentages were calculated on the basis of the rural population numbers from the 2000 General Census and of the number of provisional village guards stated in the answer given by the Ministry of Interior Social Relations Department to Deniz Yüksek's question on behalf of the TESEV Working Group within the framework of the Right to Information Law. Ministry of Interior (2006a).

26 To calculate the total number of crimes committed by provisional village guards, the numbers in the reply given by the Minister of Interior Aksu to the written question by MP Türkan Miçooğulları. Aksu (2005), and the numbers given by the Ministry of Interior's Social Relations Department were summed. Ministry of Interior (2006a).

27 Official Gazette (2003a).

28 For example, İHD's annual 2005 human rights report, states that provisional village guards active in 22 provinces committed 14 crimes of torture and maltreatment, but there is no breakdown according to provinces. İHD (2005b).

29 The regulation concerning the provisional village guard system is confidential and is not published in the Official Gazette, on the grounds that it concerns matters of "national security." Çiçek (2005). The information available on the village guard system is generally limited to the answers given by government members to written questions in the Turkish Parliament.

incident was covered by the press, the Gendarmerie took some measures to ensure the safety of returning families and caught the perpetrators.³⁰ Although drawing a definite conclusion is tenuous, it can be said that in the last few years, partly due to press influence, both the armed forces and the public authorities have become more sensitive towards such incidents involving village guards.

However, apart from incidents resulting in death or injury, other smaller incidents involving village guards are generally not covered by the press. Therefore, village guards continue to constitute concrete threats to returnees. In fact, Osman Baydemir, Mayor of the Metropolitan Municipality of Diyarbakır, stated that land confiscation by village guards is a widespread problem, and that clashes occur only when people returning to the village stand their ground. That is to say, it is probable that there are many more incidents, not covered by the press or that İHD is not aware of, which do not turn into armed clashes but where returning villagers submit to the village guards who confront them.

In fact, the village guard system is a social issue that, not only prevents return to villages, but affects the region in a more general way. Civil society representatives interviewed in Diyarbakır along with the Metropolitan Mayor of Diyarbakır agreed that this system needs to be abolished. However, it was also emphasized that disarming the village guards proves to be insufficient in solving this social issue. Political and personal hostility has existed between village guards and the other villagers since the system was initiated in 1985 and village guards have taken advantage of their social status to become involved in various illegal actions such as the abduction of women, extortion, and aggravated battery. However, if the village guards are disarmed and their salaries suspended, they could then become vulnerable, and should therefore be given employment in the agricultural sector as part of a more general social solution to the problem. Baydemir, Demirtaş, and Nebahat Akkoç, president of the Women's Center (*Kadın Merkezi* - "KA-MER"), stressed that, firstly, all village guards should be disarmed and that, in the following stage, attempts should be made with the participation of the state, local opinion leaders, NGOs, and political parties to reconcile hostile groups.

3.5. THE GOVERNMENT'S ATTITUDE TOWARD RETURNS

As demonstrated by the discussions above, the importance and sustainability of return to villages as part of the solution of the internal displacement issue in Southeastern Anatolia engenders many other arguments. Another issue that needs to be taken into

30 Çakan and Şık (2002). In another incident in the village of Nurettin, in the Malazgirt district of the Muş province, three IDPs who returned to the village in the summer of 2002 to reap their crops were killed by village guards who had occupied the village. Başlangıç (2002). In two other incidents that were covered by the press, Assyrian Christian families that wanted to return to their villages in the İdil district of Şırnak and the Midyat district of Mardin, and whose lands were occupied by village guards, had their lands returned to them by the Gendarmerie. Balıkcı and Duru (2004) and İflazoğlu (2004).

account within this framework is the government's attitude towards this situation. With a decision adopted in August 2005, the Council of Ministers has committed itself vis-à-vis the international community and the national public opinion, to implement the RVRP in an effective way and to realize voluntary and safe returns.³¹

This decision is important as a declaration of intention. At the same time, in comparison to five years ago, the government is more sincere in its efforts to encourage returns. Even though return to villages seemingly began in 1994 in Eastern and Southeastern Anatolia, regulation concerning the RVRP was only adopted in 1998,³² with the concrete implementation of the project in Diyarbakır beginning only in 2000.³³ It is clear that in the last few years a connection has been recognized - though not openly stated - between internal displacement and the recent increase in crime rates and also with the demonstrations in Diyarbakır and other cities of the region. The indications of this can be seen, both in the press, and in the fact that "migration" and "crime and terror" were among the subjects discussed in two meetings held by the National Security Council in 2005.³⁴ It is therefore possible to say that the state has finally become aware of the problems and difficult living conditions that IDPs are routinely encountering in cities, and to assert that at this stage the state would prefer, from a political point of view, that internally displaced families return to their villages with the objective of preventing "an increase in crime" and "acts of terrorism." However, due to the probable intensification of military operations and attacks by the PKK, such a desire might not be practically feasible. Furthermore, at this stage, returns may also not be a socio-economically viable alternative due to the ongoing decline in agriculture and animal husbandry. In fact, some lawyers in Diyarbakır state that many of their clients were not considering returning.

4. URBAN PROBLEMS ARISING FROM INTERNAL DISPLACEMENT AND THE CONDITION OF CHILDREN

All of the issues mentioned above raise the question of what will become of the *urban conditions* of those who have been living in the city center of Diyarbakır for approximately 10 years. In fact, NGOs and municipal officials in Diyarbakır, directly or indirectly, have articulated that it would not be realistic to expect most IDPs to return to their villages.

For example, Diyarbakır Metropolitan Mayor Osman Baydemir opined that, in spite of living in very difficult economic conditions, most IDPs would still prefer to live in the provincial center. Baydemir emphasized that it was necessary for some of the funds which the EU was expected to allocate for the solution of the issue of

31 Council of Ministers (2005).

32 Ministry of Interior (2004).

33 Diyarbakır Governorship (2005).

34 Akıner and Köylü (2005) and Radikal (2005).

internal displacement in the next few years to be earmarked for the solution of urban problems rather than for rural development.

The said urban problems are quite obvious. Unemployment, poverty, the related exploitation of children, lack of housing, domestic violence, and increase in crime committed by children are among the most important issues that Diyarbakır has been trying to cope with for the past 15 years. While talking about municipal projects (in which NGOs participate and which are partly supported by the governorship) such as the provision of housing for the poor, prevention of the exploitation of children, and protection for abused women, Baydemir underlined that none of these proposals would be capable of solving the problem single-handedly, because he believed that the main problem in Diyarbakır involves providing employment for adults.

The problems in Diyarbakır that stand out the most and determine the dimension of other problems are unemployment and poverty. The rate of unemployment in Diyarbakır, especially among migrants, is said to be roughly 60-70 percent.³⁵ In fact, most of the people interviewed in Diyarbakır (as well as their spouses) were either unemployed or held sporadic employment. A few people said that no one in their home was employed and that they subsisted on help from neighbors. The three people with the most regular incomes were a man who had recently begun work as a cleaner earning minimum wage and social security benefits, a young woman who was a child caretaker in military lodgings, and a man who collected garbage together with his children. The others reported the following forms of work: traveling as a family in the summer to the provinces of Adana, Mersin, and Bolu for seasonal employment in the agriculture sector, working in cotton gin factories as seasonal workers, working in construction sites (for men), working as apprentices with green grocers (for male children).

Looking at the situation from this point of view, it is obvious that social aid programs (in-kind and cash payments by SYDV, conditional cash transfers for families whose children go to school, green card,³⁶ etc.) are superficial and that, even if they become more extensive, they will remain insufficient for the fight against poverty.

Almost all of the IDPs spoken to in Diyarbakır were aware of SYDV and most had received in-kind aid at least once. Almost all families had Green Cards or were about to renew their old cards. Yet, apart from one person, none of them or their families received social security. When asked about their expectations from either the state or the municipality, they most frequently said: “we want a job.” What was particularly striking, was that women asked for the creation of new fields of employment for them and that they would be looking for remunerated work. One of the main complaints

35 See for example Ersoy and Şengül (2000) and Dağ *et al.* (1998).

36 Green Card is a generic poverty alleviation government program that provides free health care and meets 80 percent of the medication costs of citizens below a certain income level.

coming from women was that their husbands were not working. Although it is not possible to make generalizations based on this limited number of interviews, one can say that women had taken or were ready to take an important role in the livelihood of their families.

Women's unwillingness to return to villages is partly due to the difficult conditions in the village, and partly to the hope of building a new life in the city. As KA-MER's president Akkoç also underlines, however difficult life in the city may be, it has upset the patriarchal balance of power within families. Sometimes this results in domestic violence. However, social programs (literacy courses, healthcare, income earning opportunities, skill development courses, etc.) aimed at women can alleviate the negative aspects of the changes in the structure of households. From this point of view, if women and families are made to return to villages without any social investment, serious problems can arise in rural areas. Nebahat Akkoç pointed out that not dealing with problems (such as violence within the family, oppression of women, lack of education, crime, etc.) created in the cities by internal displacement would mean transferring these problems back to the villages.

Apart from these, there is one other issue related to urban problems: the situation of internally displaced children. Children working on streets and sweatshops due to their families' poverty and their lack of access to education are discussed in another article within this chapter.³⁷ This article raises another concern, namely violations of children's rights.

Mass demonstrations took place at the funeral of PKK members in Diyarbakır at the end of March 2006 and lasted several days. The presence of large numbers of children at the forefront of these demonstrations caused strong reactions in the public opinion. Of the people who died following interventions by the security forces in the demonstrations in Diyarbakır, five were children. 213 children were taken into custody, of which 94 were arrested. As of 31 May 2006, all of the children have been released. Twenty-four of them have been charged with "being members of an armed organization, damaging public buildings, establishments, and other property, preventing public officials from carrying out their duty, and opposition to Law no. 2911 on "Meetings and Protest Demonstrations."³⁸ There were reports that children's rights were violated during the detentions and that they had been subjected to maltreatment in custody.³⁹

At the same time, there were accusations directed at children. The Minister of Agriculture, Mehdi Eker, said that children had been given "5 liras [YTL] and a molotov

37 See Yüksekler: "Internal Displacement and Social Exclusion: Problems Encountered by Internally Displaced Persons in the Provinces of Istanbul and Diyarbakır" in this chapter.

38 Özmen (2006).

39 MAZLUMDER *et al.* (2006).

cocktail each” by the demonstration organizers in Diyarbakır.⁴⁰ Likewise, the press argued that children had been used in the demonstrations, but only a small group of politicians and journalists mentioned that these children were internally displaced. In one of the few articles about this phenomenon, a direct link was found between “migration” in Diyarbakır and mugging incidents and the presence of children in PKK demonstrations.⁴¹ Apart from some columnists,⁴² either no one spoke about the reasons for this “migration” or only indirect reference was made to it.⁴³ In most commentaries in the press, the fact that these villagers had been evicted and that they were not economic migrants was ignored.⁴⁴

There are a few elements worthy of attention in the way that the press, the NGOs, and the government have dealt with the incidents. First of all, as some columnists pointed out, the children in internally displaced families living in Diyarbakır and other areas in the region have been living in an environment of “hopelessness” born of poverty, their parents’ unemployment, and poor schooling in crowded classrooms for nearly two decades. Bearing in mind post-migration living conditions, it is easy to understand why these children participate in demonstrations motivated by social “indignation” and why they stone workplaces.⁴⁵ Therefore, public outcry on these incidents raised the possibility that this long-running and invisible problem might finally get public attention. The incidents also made it possible for local NGOs and business peoples’ associations to call on the authorities and the society at large to invest in the region’s cities, for the creation of new job opportunities, for an increase in the number of classrooms in schools, etc.

Yet, there is still cause for concern. IDPs are often only mentioned in news about crimes, especially muggings and “terrorist” acts. That some IDPs have been involved in mugging or in the demonstrations in Diyarbakır does not mean that all of them are criminally-inclined. What is interesting is that some NGO representatives and municipal officials interviewed in Diyarbakır in February 2005 also said that the city was “exporting criminals to Istanbul” because of internal displacement. In fact no research findings have established a correlation between internal displacement and the tendency to commit crimes. The fact that, discursively, a connection is being established between the increasing crime rate and Kurdish migration without relying on any scientific data - as it has been done in the National Security Council reports mentioned above - poses a great danger. If this discursive statement is generally

40 Radikal (2006a).

41 Soykan and Aktaş (2006).

42 See for example DüNDAR (2006) and Cemal (2006).

43 See for example Temelkuran (2006).

44 The commentary by Ayata and Yüксеker on the connection between the demonstrations in Diyarbakır and internal displacement and migration was used as a basis for this part of the article (2006).

45 DüNDAR (2006).

accepted by the public opinion, it is possible that a whole group of people will be perceived as “potential criminals.”

There is another frequently overlooked point in critiques against the participation of children in acts of “violence.” The families of these children suffered great trauma when they were evicted from their villages in the early 1990s. Many of the families interviewed showed evidence of this trauma. People spoke of how their houses and their animals had been burnt and how they had been forced to leave their homes by the armed forces or by the PKK. When they migrated to the city, their trauma took on a new dimension. Inability to find housing or employment and the ensuing hunger and poverty also caused trauma. These affected children in particular. That many children were taken into custody, arrested, and subjected to maltreatment under custody in the events of March-April 2006, exposed the children once again to violence and trauma.

However, the government, local administrations, and NGOs have not done sufficient work to address the problems and traumas accumulated over the years and which mostly affect children and women. The Diyarbakır Research and Implementation Center for Women’s Issues (*Diyarbakır Kadın Sorunlarını Araştırma ve Uygulama Merkezi* - “DİKASUM”) founded by the Diyarbakır Metropolitan Municipality, the Yenişehir Municipality Women’s Education and Psychological Counseling Center (*Kadın Eğitim ve Psikolojik Danışmanlık Merkezi* - “EPİDEM”), and the Kardelen Women’s Home are critical in providing this service. Especially the public laundries built by DİKASUM in neighborhoods where poor IDPs and migrants live constitute a noteworthy service model that could be implemented in other cities as well. Workshops for women can be organized in these laundrettes, where presently literacy courses take place. Moreover, existing efforts by the Metropolitan Municipality, the Governorship, and NGOs for the rehabilitation of children working or living on the streets should be developed and expanded. Considering that women and children are the most seriously affected by the traumas of internal displacement, services targeting women and children should become widespread, and NGOs and public authorities should collaborate more effectively in this field.

It is hoped that more awareness can be raised in the near future about internal displacement as a problem whose solution concerns all of the society. In order to eliminate the danger that migrant or internally displaced Kurds will be collectively labeled as “potential criminals,” there is a need to raise awareness in the public opinion about the process and consequences of displacement. Academics, NGOs, and the media have significant responsibility in the creation of this awareness.

5. THE COMPENSATION LAW AND ITS IMPLEMENTATION

According to information supplied by the Governorship of Diyarbakır, as of 28 April 2006, 35,569 petitions have been filed within the scope of the Compensation Law. As

of the same date, 3,797 of those petitions have been finalized, 2,759 were accepted and 1,003 were rejected (See Table 4).⁴⁶ According to another table obtained by the TESEV Working Group that assesses the country-wide situation of petitions filed under the Compensation Law, as of 31 December 2005, the acceptance and rejection status of finalized petitions in Diyarbakır were as follows:⁴⁷ of 31,157 petitions, 1,974 were finalized; in 1,232 of these, request for compensation for damages incurred was granted, whereas in 742, the request was rejected. The 742 petitions were rejected for the following reasons: 70 for falling outside the scope of the law, 487 because the petitioners had received earlier compensation, 2 because the incident subject to the petition fell outside the time period covered by the Compensation Law and 183 for “other” reasons (See Table 2). As of that date no petitions in Diyarbakır had been rejected for “lack of information and supporting documents.”

The largest number of petitions to the Compensation Law has been received in Diyarbakır. For the government, the implementation of the law in this province serves as a “showcase.” The ECtHR, as well as domestic and foreign NGOs, are also carefully observing the law’s implementation in this province. This section of the article covers the substance and the implementation of the law in light of the fieldwork conducted in February 2005 as well as follow-up interviews conducted in February and March 2006.

5.1. PETITIONS

In Diyarbakır, petitions to the Compensation Law can and have been filed in several ways: 1) petitioners can file their petitions individually at the governor’s office; 2) lawyers with power of attorney can submit their clients’ petitions to the governorship. In these cases, lawyers generally have power of attorney for many people from one village; 3) a few hundred petitioners applied via legal aid provided by the Diyarbakır Bar Association under the Justice for Everyone Project (*Herkes için Adalet Projesi* - “HAP”) funded by the EU; and 4) several thousand people applied via a joint commission established by İHD and Diyar Göç-Der. These petitioners are assisted by lawyers with power of attorney assigned with the mediation of İHD and Göç-Der. The deadline for filing a petition under the Compensation Law had been extended to 3 January 2007 through an amendment to the law on 28 December

46 The total number of petitions and the number of finalized petitions include those concerning damages incurred as a result of acts of terrorism and of the fight against terrorism as of the date the law was enforced.

47 Attention must be paid to the fact that, as the dates of these two tables are different, the numbers are not consistent.

48 Official Gazette (2006a). A further amendment which entered into force on 30 May 2007, after the publication of the Turkish edition of this book in June 2006, extended the deadline for applications until 30 May 2008. Official Gazette (2007a). For detailed information on the amendment to the law, see Chapter III in this book.

2005.⁴⁸ Therefore petitions continue to be filed in Diyarbakır. A total of four damage assessment commissions have been formed in Diyarbakır as of May 2006; of these, three were active.

Lawyers are highly critical of the substance of the law⁴⁹ and the impartiality of regulation⁵⁰ as well as the implementation.

5.2. SUBSTANCE OF THE COMPENSATION LAW

The fact that the law foresees only material compensation for damages to both property and bodily integrity, and excludes compensation for pain and suffering, is most adamantly criticized by both the Diyarbakır Bar Association and İHD. Mahsuni Karaman, the Coordinator for Legal Support to IDPs within HAP, stated that, considering the eviction of villagers, the burning of houses, and the difficulties arising from internal displacement in cities, compensation for pain and suffering must also be addressed and that Turkish laws foresee compensation for both material and non-pecuniary damages. From this point of view, Karaman believes that the Compensation Law is legally problematic.⁵¹

Selahattin Demirtaş, Diyarbakır Branch President for İHD, criticized the omission of compensation for pain and suffering. Demirtaş said that, on the whole, the law gave a very “cold” impression, making it seem that it was enacted in a hurry in order to fulfill the legal reforms to which Turkey had committed for the EU accession process rather than to address the serious social issues created during 15 years of conflict in the Southeast. On the same subject, Sezgin Tanrıku, President of the Diyarbakır Bar Association, and Cihan Aydın, Director of HAP, emphasized that the law rests on the state’s strict liability, but that administrative liability based on negligence is ignored.⁵² They added that the major aim of the law was to prevent cases of people evicted from their villages from reaching the ECtHR.⁵³ Similarly, a governorship official emphasized that, although one of the stated goals of the law was “*rapprochement* between citizen and state,” the underlying rationale behind the

49 Official Gazette (2004a).

50 Official Gazette (2004b).

51 Members of Parliament (“MPs”) who voted against the draft law in the Turkish Parliament’s Planning and Budgetary Commission in 2004 had cited the absence of compensation for pain and suffering for the grounds of their dissent.

52 The “Preamble” to the Compensation Law reminds that the Turkish Republic is a social state based on the rule of law, and states that although administrative liability usually is based on negligence, in certain exceptional cases, “certain damages which the administration is responsible for preventing but is unable to must be compensated regardless of causality or condition of fault” and that this is called “the doctrine of social risk based on strict liability.” Official Gazette (2004a).

53 In fact, in the “Preamble” to the law, the compensation of damages arising from acts of terror and from the fight against terrorism via friendly settlements without having recourse to legal remedies, and the prevention of compensation awarded by the ECtHR becoming a means for “unfair enrichment” is mentioned among the objectives of the law. Official Gazette (2004a).

enactment of the law was to create an effective domestic legal process in line with the National Program for accession to the EU, and, in a way, that would prevent cases from being brought to the ECtHR.⁵⁴

In short, almost all public and local officials and NGO representatives interviewed in Diyarbakır expressed the opinion that the law was insufficient in completely compensating damages suffered during the State of Emergency rule in the region. Moreover, NGO representatives also said that the law was insufficient in contributing to peace in the region.

Another legal problem voiced concerning the law is that, in cases of death, the compensation to be granted is based on a pre-determined multiplier.⁵⁵ The approximate amount of this compensation was YTL 14,000 in 2005 and was raised to YTL 16,000 in 2006. Karaman said that according to Turkish legislation, in incidents resulting in death, specialized courts establish the amount of compensation by taking into account socio-economic factors, gender, and age of the deceased, as well as any remaining dependents. Karaman, therefore, emphasized that the compensation for death and injury in the Compensation Law should be established in a similar fashion.

However, the Compensation Law establishes an implicit connection between the RVRP and the implementation of the law. Although the law foresees cash or in-kind compensation for material damages, it also states that “priority is given as much as possible to in-kind compensation. In-kind compensation can be delivered within the framework of individual or more general projects.”⁵⁶ NGOs and representatives of the bar association have stated that this article constitutes a problematic situation in the compensation of damages. Some lawyers said that prioritizing in-kind compensation and not mentioning the victim’s preference would result in “forcing” people to return to their villages. In order to prevent such an eventuality, HAP recommends that, at the request of the victims, phrases such as “the cash compensation of the damages I incurred” should be included in petitions. In spite of this criticism, there is no data to date concerning any problems that this decision might have caused.

5.3. THE POSSIBILITY OF TAKING EVICTION CASES TO THE ECtHR

In February 2005 lawyers had expressed the opinion that the Compensation Law would not hinder cases unresolved under this law from being taken to domestic

54 In the “Preamble” to the Law, it is stated that “the compensation of damages [based on the doctrine of social risk] will reinforce trust in the State; it will increase the rapprochement between citizen and state and will make an important contribution to the fight against terrorism and to social peace” (emphasis added). Two paragraphs later, there is a statement that, in any event, this law needs to be enacted in 2004 in accordance with the National Program and that, thanks to this law, only those who cannot reach a solution through friendly settlements will petition the ECtHR. Official Gazette (2004a).

55 Article 9, paragraph e) of the Compensation Law and Article 21, paragraph c) of the Regulation. Official Gazette (2004a and 2004b).

56 Compensation Law, Article 19. Official Gazette (2004a).

courts and then to the ECtHR. It is generally accepted that the eviction of people from their villages and the burning of villages - both very frequent practices in the first half of the 1990s - were not brought to trial in domestic courts during the State of Emergency period because they could not be documented and the petitions to legal and administrative authorities were left unanswered or rejected. They had therefore been barred by the statute of limitations.⁵⁷ By stating that petitions for the compensation of material damages not resolved via friendly settlement can be brought to courts, the Compensation Law theoretically removes the statute of limitations for relevant damages incurred since 1987. About 1,500 people (around 500 were from the Ovacık and Hozatlı districts of Tunceli, the rest from Diyarbakır and from other provinces) who petitioned the authorities in 1999 and 2000 to return to their villages and whose return was prevented on the grounds of security, petitioned the ECtHR claiming that they incurred damages arising from being unable to access their property in violation of the right to property under Protocol No. 1 to the European Convention on Human Rights (ECHR). One of the most important consequences of this wave of petitions was the ECtHR's decision ordering Turkey to pay compensation in the case known as *Doğan and Others*.⁵⁸ Lawyers interviewed in Diyarbakır thought that, in light of these developments and the fact that the Compensation Law was problematic, many petitions would indeed end up at the ECtHR.

Following the enactment of the Compensation Law, the ECtHR asked the government and the Diyarbakır Bar Association whether this law would be an effective domestic legal mechanism before it reached a decision on whether the petitions it had received were "admissible." Mehmet Ali Kirdök, a lawyer who represented most of the plaintiffs from Tunceli, and the Diyarbakır Bar Association reported that there were significant issues regarding the substance and the implementation of the law.⁵⁹ Yet the government presented 440 petitions where damage assessment commissions in Diyarbakır and Tunceli had decided on the compensation of damages, as evidence of the effective implementation of the law. On the grounds that the Compensation Law was an effective domestic legal mechanism and that the petitioner had not yet

57 Yet there were still some exceptions that reached the ECtHR. For example, in 1996 a group from a village of the Ovacık district petitioned the ECtHR when their complaint about the eviction of their village was rejected by the Public Prosecutor's office. In addition, the petition of about 60 families resulted in the payment of compensation within the framework of a "friendly settlement" in 2000 between Turkey and the plaintiffs. This information was obtained from lawyer Mehmet Ali Kirdök of the Istanbul Bar Association who represented the said people. It was thanks to the *Akdıvar v. Turkey* decision, which set a precedent that the ECtHR accepted the petitions by this group on the assumption that domestic legal remedies had been exhausted. For this decision and other similar examples, see Chapter IV, Kurban: "Human Rights Watch, Kurdish Human Rights Project and the European Court of Human Rights on Internal Displacement in Turkey" in this book.

58 ECtHR (2004f). For this decision, see Chapter IV, Kurban: "Human Rights Watch, Kurdish Human Rights Project, and the European Court of Human Rights on Internal Displacement in Turkey" in this book.

59 Among the evidence presented by Kirdök to the ECtHR was, the report published by TESEV in 2005 entitled: "The Internal Displacement Problem in Turkey: Assessment and Suggestions for Solution." Aker *et al.* (2005). The report was also cited by the court in its judgment. ECtHR (2006).

exhausted this mechanism, the ECtHR rejected the “admissibility” of the petition under consideration in the *İçyer v. Turkey* decision.⁶⁰ Taken within the framework of a “pilot case,” this decision will give the ECtHR the possibility to reject about 1,500 petitions on the same grounds.

The government was satisfied with this development. In fact, governorship officials spoke with pride about the work undertaken in the second half of 2005 by the commissions in Diyarbakır that were assessing petitions concerning material damages. However, the situation reached after *İçyer* decision is a source of concern for lawyers. Karaman and Kirdök argued that the ECtHR’s non-admissibility decision in the *İçyer* case, which left no room for appeals, was “biased” and “lacked legal foundation.”

One of the reasons why the decision is considered biased is that most of the finalized petitions from Tunceli presented as evidence by the government were filed by people from the village of Boydaş, which had previously been the subject in *Doğan and Others*. In this context, lawyers emphasized that the government had assembled a portfolio of petitions that had resulted in decisions to pay compensation, whereas it did not present the ECtHR with any petitions from provinces such as Hakkâri where the implementation was very problematic. Still, some lawyers are self-critical in that they think that the bar associations acted slowly and that rejected compensation petitions could have been sent to the ECtHR as evidence. However, they were not.

Criticism from the legal point of view to the ECtHR’s most recent decision is as follows: for example, the *İçyer* decision claims that, based on Article 12 of the Compensation Law, it is still possible to request compensation for pain and suffering.⁶¹ The said article of the law states that, in disagreements that friendly settlements left unresolved, petitioners have the right to recourse to legal remedies.⁶² According to Kirdök and Karaman, administrative courts can only examine whether the commission’s implementation concerning a petition is in accordance with the content of the law. That is to say, a petitioner requesting compensation for pain and suffering cannot obtain any judgment in an administrative court. Therefore, after this stage, the law can only be subject to domestic legal review regarding the conformity of implementation to its content; the law in itself is not open to review by domestic law or by the ECtHR.

Similarly, compensation amounts for death and their calculations cannot be brought to trial either in Turkish courts or in the ECtHR at this stage because, as administrative courts will assess appeals concerning cases of death within the framework of the

60 ECtHR (2006). For detailed information on this decision, see Chapter IV, Kurban: “Human Rights Watch, Kurdish Human Rights Project and the European Court of Human Rights on Internal Displacement in Turkey” in this book.

61 ECtHR (2006).

62 Official Gazette (2004a).

law's scope, these kinds of petitions will be automatically rejected. In fact, that the implementation of the law should be left to the supervision of administrative courts only and that the ECtHR should have approved of this through its decision on *İçyer*, was also criticized in a statement made by a group of lawyers. The group of lawyers who met in Diyarbakır claimed that the authority responsible for supervision of the law should be civil courts of first instance, rather than administrative courts.⁶³

5.4. ISSUES CONCERNING THE IMPLEMENTATION OF THE LAW

A. ISSUES ARISING FROM THE DIFFICULTY OF DOCUMENTING DAMAGES

Lawyers, from the outset, have been criticizing the fact that both the law and the regulation place the burden of proof of documenting damages on the petitioner. IDPs generally do not possess any documentation indicating that their village was evicted or that their property was burned/demolished. An amendment brought to the regulation in August 2005 reduced the burden of proof on the petitioner concerning determination of material damages.⁶⁴ However, it is stated that inconsistencies remain in the implementation of the law. While no petitions were rejected for lack of information or documents as of 31 December 2005 in Diyarbakır - the "showcase" for the region - hundreds of petitions were rejected in Elazığ and Hakkâri for this same reason (See Table 2).

More importantly, there can be differences of understanding between damage assessment commissions and petitioners on the reasons for leaving the villages. In fact, lawyers said that when families, under pressure from the PKK or from village guards, left of their own accord, their petitions, regarding damages arising from not being able to access their property, could be rejected because they would be unable to prove damages. Some household representatives interviewed in Diyarbakır and Istanbul stated that they felt obliged to leave their villages not because of an *en masse* eviction of the villagers, but because they feared for their safety. Lawyers felt that administrative officials who implemented the Compensation Law would consider such cases as "leaving the village voluntarily," and would exclude the petitions from the scope of the law.⁶⁵ In fact, a governorship official, in an interview, stated that he believed that requests for material compensation by those who had migrated from villages that were not evicted should not be compensated. There is no data regarding the rejection or acceptance of such petitions in Diyarbakır. Still, one can think that some of the petitions rejected for not "falling within the scope of the law" may be of this type.⁶⁶

63 Diyarbakır Bar Association (2006).

64 Official Gazette (2005).

65 Article 2, paragraph d) of the regulation states that "people leaving their places of residence voluntarily" cannot benefit from the law. Official Gazette (2004b).

66 As of 31 December 2005, 70 of the 742 rejection decisions taken by damage assessment commissions in Diyarbakır were based on these grounds, see Table 2 in this book.

The difficulty of documenting damages causes other problems in Diyarbakır as well. For example, petitioners can receive compensation for the burning or demolishing of their houses, but, as there are no receipts for their belongings or proof of burning, requests for compensation for these items are generally rejected by the commissions.⁶⁷ Similarly, as the death of livestock during evictions has not been documented, compensation for such losses has not yet been paid in Diyarbakır. Furthermore, if a family living in the city for many years does not have a lease, they cannot request compensation for rent, which is a type of damage incurred from not having access to its property. Most internally displaced families in Diyarbakır are apparently in this situation. Moreover, some claim that a map dating from the 1950s, in which areas subsequently opened to cultivation are shown as woodland, is used in damage-assessment trips to villages, making the actual size of agricultural lands look much smaller. Lawyers interviewed in May 2006 said that no land surveying was carried out during on-site investigations and that the size and quality of lands was determined haphazardly. Moreover, there seem to also be problems in the determination of the time period during which petitioners could not access their property. While the date of the eviction is considered to be the starting point, the year 1999 is assumed to be the date when all rural property could be accessed again. In fact, in some places, IDPs could not reach their farms due to security reasons even after 1999.⁶⁸

Furthermore, the law is implemented differently in different provinces, because of uncertainties in the regulation implementing the law and difficulties in the assessment of damages. Ministry of Interior seminars to deputy governors working in damage assessment commissions should be useful for bringing consistency to implementation. However, some lawyers said in May 2006 that inconsistencies concerning decisions taken within the scope of the Compensation Law continued to exist both between Diyarbakır and other provinces and between districts of Diyarbakır itself.⁶⁹

B. NEGATIVE CONSEQUENCES ARISING FROM THE İÇYER DECISION

An important feature of the *Doğan and Others* decision is that it ruled on paying compensation for damages arising from the inability to make use of, not only agricultural land based on title deeds or on possessory rights, but also common spaces such as pastures and forests. This ruling was very significant because,

67 Although there are no official reports regarding the burning of houses, houses can be documented through official documents such as deeds or utility bills, or at least from the ruins of the house. However, this is generally not the case for household goods.

68 Karaman (2006).

69 For example, a lawyer said that compensation was paid for agricultural produce to petitioners in the Hazro district of Diyarbakır, but that later on, just like other damage assessment commissions, the commission dealing with Hazro started not to pay compensation for produce.

especially in the mountainous areas of the region, animal husbandry is the main source of livelihood, most families do not have much land, and there is a great number of villages that have no land at all; thus, people in these situations could now be compensated. Some lawyers interviewed in 2005 expressed the idea that the *Doğan and Others* decision might result in an amendment to the Compensation Law. However, while that decision might have set a precedent in domestic law, the *İçyer* decision eliminated this possibility. This fact, as well as the fact that the Compensation Law does not allow for compensation of pain and suffering, can cause new grievances, especially for poor and landless families.

The fact that damage assessment commissions established by the Diyarbakır Governorship have worked intensively, both before and after the *İçyer* decision, and that more petitions have been accepted compared to other provinces is significant. Yet, for petitions in which compensation decisions are made, very serious criticism exists regarding the calculation method of damages and the fact that compensation amounts remain low. Following the *İçyer* decision, a sudden decrease has been reported in compensation amounts offered by the commissions in Diyarbakır. Karaman said that, while a quarter of an acre of irrigated agricultural land was previously estimated at YTL 85, following the *İçyer* decision this amount dropped to YTL 50, and that similarly, while a walnut tree was previously estimated at YTL 35, this amount had now dropped to YTL 20. A group of lawyers issuing a public statement in Diyarbakır has expressed similar concerns.⁷⁰

A more general criticism concerns the low amounts of compensation. For example, the value of YTL 35 estimated for a walnut tree is very low because it does not cover either the value of the tree's potential yield which the person has been deprived of during the years of internal displacement, or the value of the tree as wood. According to information obtained by Karaman, the value as wood of a walnut tree in 2005 was about YTL 1,900!⁷¹ The case of the walnut tree might seem like a simplistic example, but this example indicates the very substantial difference between the economic values estimated by the damage assessment commissions, and the values determined for properties and goods by official institutions in other situations. It also indicates that keeping low the value of a tree as economically valuable as the walnut tree prevents the full compensation of damages incurred by the IDPs.⁷²

70 Diyarbakır Bar Association (2006).

71 The example of the walnut tree was featured in the press as well. In his article on this subject, Altan emphasized that if the Compensation Law was implemented effectively and new violations were not caused by keeping compensation amounts low, important steps could be taken toward resolving the Kurdish issue. (2006).

72 In fact the example of the walnut tree is also significant for a very different reason. In many parts of Anatolia, old walnut trees have a cultural significance in that they are "witnesses" to several generations of a family. Therefore, in addition to the lack of compensation for destroyed walnut trees, the burning of the trees also caused pain and suffering. Thus, even this simple example underlines the drawbacks arising from the omission of compensation for non-pecuniary damages in the law.

Like the walnut tree, declarations of friendly settlement are also said to include very low value proposals for agricultural lands and other produce. As a result, the low compensations proposed by damage assessment commissions bring about the danger of injuring the sense of justice for people who have petitioned the law for compensation of their damages.

C. THE IMPARTIALITY OF COMMISSIONS

Lawyers also said that damage assessment commissions work unprofessionally and that fact finding missions to villages are not conducted seriously. Interviewees expressed concern that the presence of only one person who is not a public official (a lawyer appointed by the bar association) in the damage assessment commissions would result in biased decisions. Moreover, lawyers criticize the fact that members of the police are employed in the secretariat of damage assessment commissions in Diyarbakır. Tanrikulu and Karaman argued that the employment of members of the police, and especially policemen who had been active in the Anti-Terror Unit (*Terörle Mücadele Şubesi* - “TEM”), in the secretariat was not only unprofessional but could also be harmful. Tanrikulu emphasized that the presence of TEM police in the secretariat would undermine the trust that people who had incurred damages arising from “the fight against terrorism” should feel towards the commissions. Tanrikulu said that he had verbally expressed his concerns regarding this matter to Governor Efkân Ala and to Deputy Governor Erol Özer, who is responsible for the commission where the TEM members are employed.⁷³ The Diyarbakır Governorship has stated that there are members of the police force among the employees of the secretariat.⁷⁴ Responding to the concerns of lawyers on this matter, Deputy Governor Erol Özer emphasized that these policemen played no role in the assessment of the petitions, that they held no judicial discretion in the reports of damage assessment commissions carrying out damage-assessment visits, and that the responsibility of establishing compensation lay with him. In a meeting held on 10 May 2006 with TESEV Working Group Member Dilek Kurban, Özer explained that the employment of policemen in the commission’s secretariat accelerated the assessment of petitions, because, as opposed to other civil servants, policemen were ready to work after hours and they worked “with great discipline.” Deputy Governor Özer emphasized that if policemen did not work in the secretariat, their commission, which worked more effectively than commissions in other provinces, would not have been able to fulfill the government’s expectations of

73 The employment of policemen formerly members of TEM in the commissions was also criticized in a common statement by a group of NGOs. Diyarbakır Bar Association *et al.* (2006).

74 The letter dated 18 January 2006, written by Diyarbakır Deputy Governor Erol Özer in reply to Diyar Göç-Der’s request for information, which Diyar Göç-Der has shared with Dilek Kurban, member of the TESEV Working Group, states that 21 people are employed within the secretariat, 9 of whom are from the Special Provincial Administration, 7 from the Police Department, and the other 5 from the Provincial General Directorates of Agriculture, Healthcare’ and National Education and from the Department of Religious Affairs.

finalizing a high number of petitions, especially before the ECtHR's *İçyer* decision. Furthermore, Özer said that policemen working in the secretariat wore plain clothes and that they were not in contact with petitioners, and that, therefore, there was no harm in policemen being employed in this way. However, Tanrikulu and Karaman said that both petitioners and their lawyers were continuously in contact with secretariat employees (and therefore with policemen). Furthermore, they emphasized that, although policemen did not establish the compensation amounts in the declarations of friendly settlements, they did determine the amounts concerning those properties mentioned in the documents sent by the damage-assessment visit commissions in the districts to the damage assessment commissions. Stating that the employment of policemen in the secretariat of the commissions in Diyarbakır was harmful in principle even though it might not result directly in biased decisions, Tanrikulu emphasized that this situation constituted a negative example for provinces where the Compensation Law had already not correctly been implemented.

On the other hand, some lawyers believe that, following the *İçyer* decision, the attitude of damage assessment commissions in Diyarbakır has changed for the worse. A few lawyers said that along with the decrease in the compensation amounts following *İçyer* - which was considered a success in the ECtHR by the government - secretariat employees began to behave as if "everything was within their power."

As a result, if the Compensation Law is to be an effective domestic legal mechanism and if the elements that may cause biased decisions are to be removed, policemen should not be employed within the secretariat of damage assessment commissions. In order to reach this objective and to make the commissions work more efficiently, the government should urgently solve the financial and personnel problems of governorships. Therefore, although the implementation in Diyarbakır is positive in terms of the efforts of the governorship to make the commissions more effective, it still constitutes a negative example because of the employment of TEM members in the commissions' secretariats.

D. THE EFFECTIVENESS OF THE ADMINISTRATIVE REVIEW OF THE LAW

As aforementioned, the practices of damage assessment commissions are subject to review by administrative courts. Therefore, petitioners who do not consider the amount of compensation sufficient, whose petitions are rejected, or who do not receive compensation can seek review in administrative courts. It is also significant to note what kinds of petitions are rejected. For example, petitions by people who have been convicted within the scope of the Anti-terror Law are rejected, even if their damages within the scope of the Compensation Law have nothing to do with the action that resulted in their conviction. The Compensation Law does not preclude the payment of compensation to people whose convictions under the Anti-Terror Law are not related to the damage-causing activity for which compensation is

requested.⁷⁵ Officials from the Diyarbakır Bar Association state that they expect petitioners in this situation to receive compensation if they go to administrative courts. In one case, the legal inheritors of a murdered person were granted the right to receive compensation within the scope of the Compensation Law. However, the commission had not paid the share that was granted within the framework of the Law of Inheritance to a son who had been convicted within the scope of the Anti-terror Law. The lawyer who shared this information with the TESEV Working Group thought that this unfair practice of “double punishment” would eventually be corrected by administrative courts.

Do petitioners who consider the compensation amounts insufficient actually file lawsuits in administrative courts? As of 28 April 2006, of the 3,797 cases in which four commissions in Diyarbakır decided to pay compensation, only 33 have not signed the declaration of friendly settlement (see Table 4). It is unknown whether these figures indicate that the majority of petitioners are satisfied with the compensation or whether they are merely reluctant to initiate legal proceedings in the administrative courts that would last 5-6 years. It is possible that some petitioners who have been living in cities for years in a state of poverty and who do not wish to return to the villages, would prefer to sign the proposed declarations of friendly settlement rather than have to struggle for years in the courts. In fact, even the fees for filing a lawsuit are said to be too high for a destitute petitioner. However, rather than going to court, some lawyers may prefer to take their share of payment from the compensation to be paid by the commissions. Some lawyers in Diyarbakır are reported to prefer the fee they would receive in the short-term for their power of attorney, to a long-term legal battle. Still, some petitioners who are more politicized, or some lawyers who wish to establish legal precedents, might prefer legal battles in domestic courts as well as the ECtHR. What is most important here is that lawyers should provide their clients, who for the most part are uneducated and poor, with correct information regarding their options.

E. THE CURRENT FUNCTION OF THE COMPENSATION LAW

The Compensation Law also covers compensation “of damages arising from terrorism and from the fight against terrorism” that have occurred since the date it has been enacted. Within this context, there has been the issue of compensating damages that occurred during the incidents in the provincial center of Diyarbakır at the end of March 2006 and the beginning of April, and of paying compensation to people injured or to relatives of those who died during these incidents. The payments of compensation for damages to workplaces or vehicles incurred during the demonstrations are already

75 In common Article 2, paragraph f, to the law and the regulation, “damages incurred by people because of activities for which they have been convicted [for crimes] within the scope of Articles 1, 3 and 4 of the Law no. 3713, and for aiding and abetting in acts of terror” are excluded from the scope of the law. Official Gazette (2004a and 2004b).

underway. A lawyer said that he was under the impression that more emphasis was given by the damage assessment commissions to the compensation of this kind of damage than to the files concerning damages arising from the eviction of villagers.

As for the payment of compensations for injuries and deaths, a legal duality might possibly arise. The compensation of material and non-pecuniary damages arising from activities of civil servants by the state is an already established practice in administrative law. However, the main objective of the Compensation Law was the compensation of damages that occurred under the State of Emergency, but which could not be brought to trial because of laws protecting public officials from being sued for their faulty administrative practices during the State of Emergency. Nowadays, when injury or death arises from terrorism or from the fight against terrorism, there is no jurisprudence that delineates whether the people in question should petition the Competition Law or the administrative courts directly. One lawyer said that this uncertainty was cause for concern. For example, a person injured as a result of fire opened by the armed forces, or the family of someone who died for the same reason, can file petitions with administrative courts for both material and non-pecuniary compensation. In such cases, when the calculation is based on methods used in administrative law, an amount higher than the YTL 16,000 foreseen by the Compensation Law may be paid to the petitioner.⁷⁶ The lawyer further emphasized that an unfair situation can arise if governorships encourage people injured during the incidents or the families of the deceased to file their petitions under the Compensation Law rather than with administrative courts.⁷⁷

On the other hand, in cases of injury and death, prosecution is initiated in order to file a public lawsuit. According to information supplied by lawyers in Diyarbakır, petitions for compensation made by victims to the Compensation Law, rather than to administrative courts, do not in principle prevent the prosecution and trial of the perpetrators. However, despite demands by civil society and lawyers, no investigation for determining the perpetrators, following the death and injury of people during the police intervention in the demonstrations, has been conducted.

6. CONCLUSION

The complex issues arising from internal displacement have legal, political, social, and urban dimensions necessitating legal, political, and socio-economic measures. Not taking any measures in some of these fields can result in complications in others. However, even if some of these measures (like social investment and rural development) are taken today, it could be years before they yield results.

76 In administrative law, amounts for material compensation are established individually in every case, taking into account the injured or dead person's age and his or her family's economic conditions.

77 For example, the governorship paid YTL 15,000 to compensate for the death of 3-year-old Fethi Tekin, who was killed during the demonstrations in Batman on 31 March 2006. Although it was not clearly stated in the newspaper article, one may conjecture that this payment was made within the scope of the Compensation Law. *Radikal* (2006b).

Within the framework of EU membership, the government has adopted legal measures in order to rectify damages arising from internal displacement. However, as aforementioned, the Compensation Law carries with it various questions as well. As it excludes the strict liability of the state concerning the eviction of people from villages, murders by unidentified perpetrators, and disappearances in custody, the law cannot fulfill the demand for peace in the region.

However, one must not regard the law as a simple text. The Compensation Law can initiate the process of coming to terms with illegal practices and human rights violations that occurred in the region under the State of Emergency. Villagers' testimonies in the petitions made to the commissions about their eviction from their homes and the burning of villages constitute documentation about such rights violations. These kinds of wrongful acts might now fall under the statute of limitations. Yet, measures must be taken so that perpetrators of these acts are found and put on trial.

Is the objective of this law, which excludes compensation for pain and suffering, to achieve “a rapprochement between citizens and state” and to “contribute to peace,” or to selectively pump money into the region for this or that constituency? Unfair practices in the payment of compensation for material damages, the possibility that some victims might exaggerate their damages to receive more compensation, and the fact that some lawyers may view their petitioning clients as cash cows, are all issues that raise serious concern.

However, legal arrangements cannot be sufficient on their own in rectifying a phenomenon that has been occurring for 15 years, that has turned into a serious social issue, and that negatively affects both the migrants and the current population of cities. First of all, even if legal arrangements are “perfect,” all segments of society do not have equal access to legal and administrative institutions. Moreover, taking advantage of “justice” may cause new injustices for various groups, as will be explained below.

Disregarding the flaws in the content and the implementation of the law for a moment, it is still possible to consider what kinds of material damages are unlikely to be compensated. Those who were obliged to leave their villages due to security threats, but who were not physically evicted (that is those who cannot prove to the commissions that they were internally displaced), may not be able to request compensation for damages arising from being unable to access their property. Landless villagers whose livelihoods were based on animal husbandry or who were employed as agricultural workers will not be able to request compensation for material damages, even if they were evicted from their villages. Those who had to sell their animals for less than market prices when they moved to the cities, those who do not have a lease because they live in informal shantytowns or in tents and who therefore cannot document their housing expenses, will, likewise, not be able to request compensation.

In addition, there will even be family members who will be unable to make use of the compensations paid to their families. Some households were divided after displacement when married men settled in other houses with their new families and when daughters got married. Since it is the owners of the damaged property who petition the commissions, leaders of extended families and older sons are more likely to be awarded compensation. Therefore, the young - especially young women - are the most disadvantaged group here. Considering the structure of land ownership in the Southeast which is to the advantage of big land-owners and to the disadvantage of women, there may be many segments of society that will not be able to benefit from the law.

However well-intentioned they may be by defining the grievances, legal and administrative arrangements draw lines between those who are eligible and those who are not. While trying to re-establish citizenship rights, such practices can potentially cause new grievances. Therefore, besides taking political and legal measures, it is necessary to begin implementing a comprehensive social program in the region and to develop employment opportunities. Literacy and skill-development courses for adults' - especially for women's - education, and healthcare are areas requiring particular emphasis. The development of employment and income-earning opportunities for women living in cities is also of particular importance. Another option could be the development in the next few years of projects that would assist those who benefited from the Compensation Law but who do not wish to return to their villages, to establish small-scale enterprises. Similarly, for those who wish to return to their villages, the construction of housing and rural projects, which would present options such as the soil improvement of agricultural fields or the development of animal husbandry, could be another option. In addition, it is necessary to develop and expand rehabilitation programs for IDPs, and especially women and children, who experienced serious traumas during the evictions and as a result of urban poverty.

The above observations show that finding a solution to the problems expressed in this article is actually contingent on political will. Osman Baydemir, the Metropolitan Mayor of Diyarbakır, and NGO representatives believe that up to the present, the state and the government have not proposed a concrete plan for the solution of economic, social, and security issues in the Southeast. Local officials and NGO representatives think that laws and projects concerning the region are disconnected, are weak in terms of implementation, and are not transparent. The demands most frequently expressed were the ceasing of armed clashes, the abolishment of the village guards system, the disarmament of PKK members, and an amnesty to be granted to the same group. In this context, the establishment of peace is the main wish expressed by both NGOs and IDPs. In order to overcome the consequences of internal displacement and the armed conflict, it is necessary to start a dialogue among various segments of Turkish society on the traumas and the pain suffered. More generally, a reconciliation process needs to be initiated.

Evaluation of Fieldwork Conducted in the Province of Batman: The Socio-Economic Consequences of Internal Displacement and Obstacles to Return

AYŞE BETÜL ÇELİK¹

This section evaluates the socio-economic, psychological, and physical health problems resulting from internal displacement and the obstacles to return, based on interviews held between 23 June and 1 July 2005 by the TESEV Working and Monitoring Group on Internal Displacement in Turkey (“TESEV Working Group”) with public institutions, non-governmental organizations (“NGOs”), municipal officials, and internally displaced persons (“IDPs”) in the provincial district of Batman and in the district centers of Beşiri, Hasankeyf, Sason, and Gercüş, and in light of on-site observations. Members of the TESEV Working Group² have interviewed representatives of almost all public institutions, municipalities, and NGOs in the said places.

The following methods were employed to reach IDPs in the provincial center and in district centers of Batman on the basis of information gathered from public institutions and NGOs. The TESEV Working Group identified the neighborhoods in the city center where IDPs are more heavily concentrated. Then, interviews with IDPs were conducted in coffeehouses and houses and on the streets of these neighborhoods, making an effort to place equal emphasis on women, men, and children. As for villages in the surrounding districts, the group determined these through public institutions’ and NGOs’ lists of empty villages, full villages, and villages where return has taken place. The two villages in the district of Sason were chosen because return to one had been very problematic from the point of view of restructuring and of security, whereas return to the other had been relatively free of problems. During visits to these villages, all available villagers were interviewed, at times individually, at other times within groups. Although the methods employed are not suitable for statistical generalization, these findings are used in this report only when they are consistent with findings from other sources.

1 The author would like to thank Öznur Acicbe for her contribution to the writing of this article, especially in the description of the reasons behind migration and of the psychological and other health problems of IDPs.

2 The Batman fieldwork was carried out by Dilek Kurban and Ayşe Betül Çelik of the TESEV Working Group, and by the assistants Öznur Acicbe and Harun Ercan.

The findings used in the present report are obtained from interviews with six public officials, nine NGO representatives, six municipal officials, the provincial chairman of a political party,³ and from the results of individual interviews and group meetings with 35⁴ IDPs.

1. CAUSES OF MIGRATION

As a result of interviews held with civil servants employed in the provincial and district administration of Batman, with NGOs, and with people who were forced to migrate to neighborhoods in the city or who had returned to their villages following internal displacement, the TESEV Working Group has compiled the following list of the causes for the migration in Batman: 1) the eviction of villagers and the setting on fire and destruction of villages by security forces and/or village guards; 2) maltreatment of villagers (physical violence, verbal violence, house raids, etc.) by the security forces and/or village guards; 3) pressure by the security forces and/or village guards for villagers “to either become village guards or leave;” 4) lack of safety brought on by the environment of conflict; 5) economic difficulties brought on by the said environment; and 6) pressure by the Kurdistan Workers’ Party (*Partiya Karkerên Kurdistan* - “PKK”).

Although the first four causes of migration were articulated similarly by villagers (IDPs living in neighborhoods of the Batman provincial center and in villages of the districts of Sason, Gercüş and Beşiri), NGOs (i.e., The Association for Human Rights and Solidarity with the Oppressed (*İnsan Hakları ve Mazlumlar için Dayanışma Derneği* - “MAZLUMDER”), the Healthcare Employees’ Trade Union (*Sağlık Emekçileri Sendikası* - “SES”), Human Rights Association (*İnsan Hakları Derneği* - “İHD”) and the Migrants’ Association for Social Solidarity and Culture (*Göç Edenler Sosyal Yardımlaşma ve Kültür Derneği* - “Göç-Der”)), and the Municipality of Batman; officials from MAZLUMDER and from the Municipality of Batman have said that economical causes also constitute a viable reason for migration in conjunction with all of the other causes. On the other hand, officials from the Sub-Provincial Administration of Sason have stated that no villagers in Sason were evicted by state officials and that people who migrated did so voluntarily, due to pressure by the PKK, or for economic reasons. Furthermore, in spite of IDPs who stated that they were evicted from their villages by security forces, according to officials from the bar association, official records of public institutions contain no reference to “eviction of villagers” and villagers seem to have left their villages voluntarily according to these records.

3 Although political party officials were not interviewed within the scope of the fieldwork, the provincial representatives of the Justice and Development Party (*Adalet ve Kalkınma Partisi* - “AKP”) were visited upon their request and invitation.

4 Twenty-three of these IDPs were from the provincial center of Batman, 12 were from villages in surrounding district centers. 14 of the interviews were face-to-face, while 21 were held within a total of six group interviews.

As a result of these findings, four issues require closer scrutiny:

- i. Although more than 15 years have passed since the occurrence of internal displacement, the actors in this matter have yet to reach an agreement on the causes of the issue.
- ii. Although “the lack of safety brought about by the environment of conflict” is among the main causes of internal displacement, it either went unmentioned by public institutions, or was mentioned as a minor reason for leaving place of origin. Even though, according to the “Guiding Principles on Internal Displacement” (“Guiding Principles”), people who have migrated for these reasons are also considered IDPs, public institutions seem to be disregarding this category by denouncing their existence.
- iii. Some public officials expressed “economic troubles” as a cause of displacement but as being separate from the environment of conflict - which they presented as a problem common to the whole region - and claimed that some people who migrated for economic troubles, that were brought on by the environment of conflict, had actually left for “economic reasons only.”
- iv. State institutions do not take into consideration as causes for internal displacement the pressure exercised by security forces (the army and/or village guards) to “either become village guards or leave,” the eviction of people from their villages, or their maltreatment (physical violence, verbal violence, house raids, etc.) by the security forces.

2. PROBLEMS ENCOUNTERED DURING MIGRATION, FOLLOWING MIGRATION, AND DURING RETURN

Before evaluating the consequences of socio-economic, health, and psychological problems caused during and following migration and during return in Batman, an important fact needs to be underlined: it is very difficult to distinguish the dimensions of these problems in district centers, and particularly in provincial centers, from the economic underdevelopment, unemployment, poverty, and lack of infrastructure deriving from inadequate urbanization - all of which are typical characteristics of the eastern and southeastern regions of Turkey - and to examine them separately. These regions are already economically depressed with high levels of unemployment, housing, and poverty problems. While the IDP population in these places increased the level of economical depression, it also made it harder to differentiate the IDP problems from those of the rest of the population. Therefore, within this report, at times problems that IDPs face will be reported in the way in which they themselves expressed them, at other times the mechanisms produced for the solution of these problems or the lack of these mechanisms will then be examined, taking into account those aspects overlapping with the aforementioned problems encountered in provincial or district centers. The objective here is to examine internal displacement,

as much as possible, as a separate problem. However, the amount of time that has elapsed since the emergence of internal displacement has resulted in this problem becoming intertwined with other problems experienced, especially in the provincial centers in this region. This emphasizes the fact that the issue of forced migration is not limited to return to villages, and that most cities in Turkey need to produce mechanisms that will deal, in particular, with the socio-economic and psychological problems resulting from this issue.

2.1. ECONOMIC PROBLEMS

Economic difficulties are among the post-migration problems most emphasized by IDPs. These problems can be examined under three dimensions: economic problems caused by the migration process, economic problems arising in the post-migration process, and economic problems experienced after return to villages.

A. ECONOMIC PROBLEMS ARISING FROM THE MIGRATION PROCESS

The migration process generally began in two ways. In the first case, village residents were given some advance notice to leave their villages. In this case, the villagers were able to take at least part of their belongings and to sell their livestock. However, IDPs have said that they generally had no choice but to sell their assets at half their market value if not less. Because they had to carry their belongings, it was not generally possible for them to take all of their belongings, and it was very difficult to find a vehicle or an animal to carry them. In the other case, villagers were evicted from their villages suddenly and without being given prior notice; their houses were then either set on fire or destroyed. In this case, people were not able to take any of their belongings and most were not able to sell their livestock because most of the animals had perished. In both cases, IDPs incurred serious economical loss.

B. ECONOMIC PROBLEMS ARISING FOLLOWING MIGRATION

Two issues need close scrutiny in any discussion about economic problems arising from migration. The first of these concerns the nature of IDPs. IDPs are generally individuals who formerly subsisted on agriculture and animal husbandry in their villages, and it is not generally possible to practice either of these activities as a means of livelihood in cities. Therefore, forced migration from villages to cities has left IDPs without a profession. Employment options for unskilled workers are very limited in the Batman region in particular. IDPs are mainly able to work in the field of construction. However, because of the physical and psychological effects of the clashes that have occurred in villages, some IDPs feel they have lost their physical capacity to engage in such work. Moreover, following the incidents in villages, some of them now have criminal records. As a consequence, it becomes even more difficult for them to find employment.

Another issue that needs to be taken into consideration in the analysis of economic problems experienced by IDPs is the characteristics of the last destination that IDPs reach. That is to say, it is not only the specific conditions encountered by the IDPs that make their financial situation deteriorate, but also whether the receiving city has enough resources to be able to welcome them. Apart from the oil sector, the province of Batman is not industrially well developed; therefore possibilities for employment are severely limited.

Due to the conditions mentioned above, many economic problems have arisen in the provincial center of Batman following internal displacement. Compared to the rest of Turkey, Batman is a province with a high rate of unemployment. Men spend most of their time sitting in coffeehouses waiting for job opportunities to manifest themselves. Women are generally able to find work more easily. Young people, and sometimes the entire family, may find work as seasonal workers.⁵ There are also a high number of young people who work seasonally in garment sweatshops in Istanbul. According to the information obtained from municipal officials and from NGOs, following migration, children, especially girls, began working in the streets (washing car windshields, selling chewing gum or tissues, watering cemeteries, hoeing fields, etc.), and their numbers have been increasing (according to the Municipality of Batman, they now number around 1,400). These economic problems have also brought about significant psycho-social and health problems.⁶

C. ECONOMIC PROBLEMS FOLLOWING RETURN

People who have returned to their villages are suffering from significant economic problems because they are left without their homes, their orchards, their fields, and their livestock. Some have covered their dilapidated homes with nylon sheets or have built themselves tents and are living in unhealthy, makeshift conditions. Some have partially repaired their homes or have rebuilt them with money borrowed from their neighbors; however, they are now in serious straits because of their debts. Those who own fields are unable to cultivate them due to water shortages. Most people earn a living either as seasonal workers or by grazing the animals of better-off farmers. If all members of a family remain in the village, then the family is generally unable to earn a living.⁷ As the discussion below will show, aid provided to returning villagers within the Return to Villages and Rehabilitation Project (“RVRP”) is generally insufficient for the reconstruction of homes.

5 Seasonal work can also be cause for serious problems; IDPs told the TESEV Working Group that while product prices should by law be determined by the Chamber of Agriculture and the Chamber of Village Headmen, these chambers instead allow landlords to determine prices. Therefore, for example, although the generally agreed upon fee for cotton picking is YTL 80, workers end up being paid only YTL 40. (As of June 2007, YTL 1 (Yeni Türk Lirası - New Turkish Lira) equals to USD 0.755).

6 These subjects are covered in detail under the headings of 2.2. “Social Problems,” 2.3. “Health Problems” and 2.4. “Psychological Problems.”

7 This problem will be dealt with in detail under 4: “Obstacles to Return” within this article.

During interviews, the TESEV Working Group observed that economic hardship has reached significant dimensions and that IDPs, especially those living in slums, are on the brink of starvation. Public institutions do not pay attention to the specific problems of the IDPs. In the eyes of public officials, IDPs are only part of the urban poor. Therefore, when asked about aid provided to IDPs, public officials speak about policies which are limited to resolving the economical aspect of internal displacement and about financial aid offered to all citizens below a certain income level rather than specifically to IDPs. The social aid most emphasized by public institutions, in particular by sub-provincial administrations and by governorships, is the funds reserved for the needy provided within the scope of the Social Aid and Solidarity Foundation (*Sosyal Yardımlaşma ve Dayanışma Vakfı* - "SYDV") and the free health care program called the Green Card practice.⁸ Although the Governorship of Batman provides food via soup kitchens to counteract poverty in the province as a whole, and the Municipality of Batman provides coal for the winter via the Social Solidarity Fund of the SYDV, none of these are aimed at IDPs in particular.

2.2. SOCIAL PROBLEMS

As mentioned above, the various complications stemming from forced migration have been felt in the municipal center of Batman for approximately 15 years. The social aspects of this problem are now intertwined with the fact that the city is suddenly placed in the position of having to host a high number of IDPs. With the attendant infrastructure problems, public institutions have not been able to find sufficient financial support to solve these problems.

Although not a direct consequence of internal displacement, the rising crime rate in the city center is an important social issue for the aforementioned reasons. Public institutions working in this field have stated that there has been an increase in crimes such as burglary, mugging, and gang-membership and that 90 percent of those who commit these crimes are those under 16 years old. Moreover, as there is no children's reformatory in Batman, under-age criminals are not being held by the authorities. It has also been said by the same sources that following migration, children have begun working on the streets and that their numbers are on the rise. According to municipal records, 70-80 percent of the 1,600 children working on the streets are IDPs.⁹ Social care workers believe that some of these children are pushed to commit crimes following pressure from their parents who tell them not to return home unless they have money to bring to the household. It is also obvious that small children who stay out late at night are subject to all kinds of exploitation.

8 Green Card is a generic poverty-alleviation government program, which provides free health care and meets 80 percent of medication costs of citizens below a certain income level.

9 Research conducted not only in Batman but also in other provinces shows that most of the children working on the streets or involved in crime come from internally displaced families. See for example Altuntaş (2003). See also Yüksekler: "Internal Displacement and Social Exclusion: Problems Encountered by Internally Displaced Persons in the Provinces of Istanbul and Diyarbakır" in this chapter.

According to data from the SYDV, there are 280-300 children in Batman who cannot attend school as a result of economic hardship brought on by migration. The foundation is carrying out a project aimed at addressing this problem, but this is not limited to the children of IDPs. The project, supported by the World Bank, consists in providing monetary support to families whose children are not able to attend school due to financial difficulties. Families receive a stipend of YTL 18 for boys attending primary school, YTL 22 for girls attending primary school, YTL 28 for boys attending high school, and YTL 39 for girls attending high school.¹⁰ In the provincial center of Batman, which has a population of 250,000, there are 47,000 children who benefit from this project. If a family stops sending its children to school, the support is terminated. A form must be completed by families who apply to the project and those who are eligible to receive support are determined according to a computerized system of points. However, the project is a temporary one, and once it ends, IDPs who had been receiving support will once again face high levels of financial difficulty. None of the IDPs interviewed were aware that the project would not be ongoing.

Economic factors have resulted, not only in children working on the streets or being unable to attend school, but also in an increase of street peddlers and beggars. Another problem concerning children is the emergence of substance abuse, especially glue-sniffing. The TESEV Working Group was told that there are approximately 13-14 children in Batman who are addicted to glue-sniffing.

Migration has also been the cause for an increase in the number of underage marriages, child mothers, and suicide among women. The issue of suicide among women in Batman is one that exceeds the scope of this study and urgently needs to be addressed in another forum. Moreover, as a result of housing shortages, some families have no choice but to sleep ten to a room. Although this reality is one that is not much acknowledged publicly, an increase in incest is also believed to be a consequence of this situation. Public officials and NGOs working in this field are also of the opinion that there has been an increase in prostitution, though again, this is not openly discussed within society in Batman.

Both NGOs and public workers argue that the city is undergoing unplanned growth, that economical balances are disrupted due to unemployment, lack of social security, and lack of education. For example, domestic violence is stated to be seriously on the rise.

¹⁰ Known as Conditional Cash Transfers, the educational support of this project, which is carried out throughout Turkey through a loan by the World Bank, is provided as financial aid to families who lack social security and who cannot send their children to school due to poverty. However, as aforementioned, this project is temporary. According to information obtained from the Prime Ministry's Office, General Directorate of Social Aid and Solidarity, the project was planned to be terminated in June 2006, but was extended until December 2006 and later until 31 March 2007. The project was subsequently taken over by the General Directorate both in terms of human (since 31 March 2007) and financial (since May 2006) resources. Currently, the project is exclusively and fully funded by the Turkish government and is not subject to an expiration date. Information received through a phone conversation with the General Directorate on 04 June 2007: (<http://www.sydtf.gov.tr/snt.html>).

During interviews with the children of IDPs living in municipal neighborhoods with a high density of IDPs, the TESEV Working Group established that almost all children, male and female, are attending or have attended primary school. However, the rate of post-primary school attendance is rather low. Based on what the group could gather from its interviews, the quality of education in these neighborhoods is quite poor and classrooms are overcrowded. The children have stated that there are gangs in the vicinities of the schools and that some children bring weapons to school.

These problems are of course not all direct consequences of internal displacement. Nevertheless, it is important to underline that as a result of the sudden migration, people suffered problems in their new places of residence both as a result of the different social structure in their places of origin and due to inadequacies in the city's infrastructure for coping with this migration.

Officials from public institutions and from municipalities have stated that they are organizing a number of activities aimed at correcting social difficulties arising from both internal displacement and from Batman's urbanization problems. For example, in order to find solutions to women's problems in the city center of Batman and to provide assistance, the Municipality of Batman is organizing a project in collaboration with the Selis Women's Counseling Center¹¹ (*Selis Batman Kadın Danışmanlık Merkezi* – "SELİS") within its own structure and with the Municipality Health Center. They plan to construct a community center in every neighborhood. The objective of the community center will be to organize activities aimed at women, such as literacy and handcraft courses. As it is, literacy courses for women are already being held, organized by the same organization, SELİS.

According to another project, whose implementation had not begun when the fieldwork was carried out, the Provincial Directorate of Social Services and the Governorship will collaboratively set up education centers for street children in every neighborhood, where school age children will be enrolled in schools and housed in student dormitories.

For a time, Batman was featured in the press because of the high number of young women who committed suicide following the sudden migration in the 1990s. Social services in Batman have therefore been concentrating on families and on women over the past few years. Though not organized directly for IDPs, the services mentioned below are slowly improving the lives of IDPs who live in the city and have access to these services.

Among the initiatives undertaken by the Provincial Directorate of Social Services, along with the family counseling center that families encountering difficulties

¹¹ Selis Women's Counseling Center is a newly established center in Batman. The first Selis Center was founded in Diyarbakır, a nearby city. This center is known to be close to the pro-Kurdish political party, Democratic Society Party (*Demokratik Toplum Partisi* - "DTP").

are directed to, there are also three community centers¹² carrying out work aimed at women in particular, where vocational courses as well as health information, computer proficiency, handcrafts, and literacy courses are held. Women are taught skills and also have the opportunity to strengthen their social networks. Individual counseling services are also available from time to time. These centers are based mainly on the outskirts of the city. University preparation courses led by university students have also been organized in these centers. Some of the young people who pass the university entrance exam are able to obtain scholarships from NGOs, municipalities, and businessmen. Volunteers spend time outside of the classroom with 7-16 year old children in these centers, thus supplementing their education. Sports activities, chess tournaments, and folk dancing aimed at young people are also organized in these centers. Another project encountered during the fieldwork but which has not as of yet been put into practice, is the “Project to Promote Children’s Rights” aimed at street children. Yet another project in the works but not as yet implemented concerns supporting pre-school education. It consists of providing 1,000 children with pre-school education through the employment of graduates from children’s development departments in girls’ vocational high schools.

According to information obtained from the Provincial Directorate of Social Services, the education department of the Educational Volunteers Foundation of Turkey (*Türkiye Eğitim Gönüllüleri Vakfı* - “TEGV”) provides support for 7-year old children’s schooling. Within the scope of “Turkey’s Contemporary Girls” project by the Association in Support of Contemporary Living (*Çağdaş Yaşamı Destekleme Derneği* - “ÇYDD”) 300 children are given yearly scholarships that can cover the expenses of a university education.

Literacy and vocational courses as well as awareness-raising work are carried out in various districts by public institutions. For example, the Sub-Provincial Administration of Sason launched a literacy course aimed at women that was implemented seven months ago.¹³ The objective is for 1,000 women to become literate. A monthly stipend of YTL 40 is paid to participants in order to encourage participation in the courses. Participating women are aged 15 – 40. According to information given by the sub-provincial administration, these courses have been initiated in all villages where there are schools, including villages where IDP return has occurred.

12 Interviews held in various neighborhoods made clear that there is very little awareness of available services. There are therefore question marks as to whether these services are genuinely able to reach their target group. The TESEV Working Group observed that most people have a negative image of and little trust towards state-run community centers in particular.

13 When people living in villages in the district of Sason were asked about the services offered by the sub-provincial administration, they said that they were not aware of any of these services. There seems to be, therefore, either a problem concerning dissemination of information about these services or serious question marks regarding the reliability of information supplied by the sub-provincial administration.

2.3. HEALTH PROBLEMS

Post-migration health problems must be analyzed in light of the difficulties suffered during and after migration and/or together with the financial difficulties arising after migration. As mentioned in previous chapters, another important point is that post-migration problems may overlap with urbanization and poverty. It is therefore important to point out that analyses in this field are not limited to IDPs and that they need to be examined while bearing in mind the causes that negatively affect the lives of IDPs.

Healthcare officials in Batman have stated that the health problems most commonly encountered in the province of Batman are, in essence, the same as in other regions, that is: heart conditions, high blood pressure, cancer, stomach pains, headaches, painful joints, calcification, backaches, rheumatic disorders, anemia, and diabetes. According to information obtained from the Municipal Health Center, after the necessary tests are administered, no physiological findings are encountered in most illnesses, and this leads to the conclusion that these illnesses might be psychosomatic.

When examining the health dimensions of internal displacement, the condition of women must be considered separately. This is because, due to language-related problems or cultural differences, internally displaced women often do not know when to seek professional medical advice and generally prefer traditional methods of healing.

Some of the health problems suffered by IDPs living in the city should be seen as an extension of the problems suffered by Batman as an underdeveloped city. The issue of healthcare personnel's unwillingness to work in Eastern Turkey - which exacerbates the health problems in Eastern and Southeastern Turkey in particular - has seriously affected Batman as well. For example, throughout Batman there are no specialists in neurology, cardiovascular surgery, or cardiology.

In the provincial center of Batman, there is one state hospital (which has a bed capacity of 150, 42 specialists, 18 general practitioners, 88 nurses, and 2 ambulances, one of which is out of order. It still has vacancies for 56 specialists, 12 general practitioners, and 62 nurses), one hospital specializing in obstetrics, gynecology, and pediatrics (with one ambulance), two private hospitals, one medical center, polyclinics providing emergency care, 11 state-run primary health clinics, three communal¹⁴ primary health clinics (Binatlı, Balpınar, Hisar), one dispensary that focuses on tuberculosis treatment, one dispensary for mothers and children, one malaria treatment center, and a municipal health center. The municipal health center offers free-of-charge health services to patients; it has polyclinics in the fields of

■ 14 The smallest administrative unit in Turkey which has a municipality.

obstetrics and gynecology, pediatrics, ophthalmology, and dentistry, and it employs specialists and 3 general practitioners adding up to a total number of 16 personnel.

The healthcare services offered in the health center consist of medical examinations (10 minute examinations, in keeping with the World Health Organization and the Doctors Without Borders protocol, and a total of 40 patient examinations a day), inspections, laboratory analyses, x-ray, family planning counseling services, health education campaigns in neighborhoods, and the treatment of patients who have been diagnosed during the healthcare campaigns. Ophthalmologic screening has been carried out in schools and prisons, free-of-charge eyeglasses have been provided, and patients have been operated free-of-charge.

As for the districts, there is one district hospital and two state-run primary health clinics in Sason, one state-run primary health clinic in the community of Yücedağ, one district hospital (with one specialist and one general surgeon) and two state-run primary health clinics in the district of Kozluk, one state-run primary health clinic in the community of Tuzlagözü, one state-run primary health clinic in the district of Hasankeyf, one state-run primary health clinic in the district of Gercüş, and one state-run primary health clinic in the district of Beşiri. Of the 46 health centers in the villages of these districts, 10 are active and 36 are closed.

In addition to healthcare services provided by the state, in Batman there are also healthcare services carried out by the municipality. According to the project which the Municipal Health Center and the Selis Women's Counseling Center plan to carry out collaboratively, leading teams of women will be chosen in each neighborhood. These women will then be trained in physical and psychological healthcare and be encouraged to disseminate this training in the neighborhoods. In another of their projects, tents were set up in neighborhoods for a few nights and seminars on healthcare were held there.

The major health problem encountered by IDPs in Batman is the overcrowding problem, as shown by the figures given above. This is common not only in many places where internal displacement has occurred, but in the whole of Turkey. However, taking it into consideration within the framework of internal displacement, this problem is even harder for IDPs, among whom the rate of poverty is very high. IDPs cannot benefit from private health services due to poverty, and they can benefit from public services only insofar as they can access them. The situation in villages is much more serious; especially in villages which are far from the provincial center and/or where return is permitted but which lack an adequate infrastructure, people have no option but to make do with provisional health services.

From the civil society point of view, there is a certain amount of assistance provided by İHD. Officials from İHD have stated that, from time to time, they assist people in the purchase of medication and that they direct people with problems in the right direction.

Another project addressing healthcare problems is a healthcare support project carried out among children aged 0–6, with the support of the World Bank. This project consists of a continuous monitoring of children’s health by state-run primary health clinics. Family planning counseling and education is also provided to families.

Healthcare personnel have stated that 30 percent of the rural population benefits from healthcare services. According to the governorship, in the province of Batman 120,000 people have a Green Card. Batman is a particularly good example of the implementation of the Green Card system. For example, according to the sub-provincial administration, 90 percent of the population of the district of Sason has a Green Card. In the fieldwork carried out by the TESEV Working Group, it was established that all IDPs either had a Green Card¹⁵ or had applied for one. Although IDPs stated that they were happy with the Green Card system, they also talked about certain problems arising from the implementation of the system (such as the financial weight brought about by the fact that the card carrier is required to cover 20 percent of medication fees).

However, this kind of aid varies in accordance with each local administrator’s attitude towards this issue. For example, the priority and emphasis given to the Green Card system by the newly appointed sub-provincial administrator of Sason has resulted in positive consequences for the villagers of Sason. Although comparative figures from other districts are not available to TESEV at this time, it is clear that a rate of 90 percent is very high.

2.4. PSYCHOLOGICAL PROBLEMS

Among the psychological problems most frequently observed in Batman, are depression (especially pessimism, intolerance, desperation, mistrust, contemplation of death, suicide, loss of appetite, sleep disorders, fatigue, forgetfulness, and concentration problems), anxiety (due to traumatic stress disorder symptoms in particular; obsessive thoughts about the traumatic event, nightmares, avoidance of thinking or talking about the traumatic event, not wanting to revisit the scene of the traumatic event, extreme psychological and physical stress following thoughts about the traumatic event, extreme psychological and physical stress resulting from things that remind one of the traumatic event, avoiding meeting people or interacting with things that remind one of the traumatic event, etc.), psychosomatic symptoms (stomach aches, headaches, back pains, joint pains, palpitations, feeling faint), chronic substance addiction (not frequently encountered, but on the increase since migration), reactions of mourning (inability to speak about loss, inability to look at photographs of a lost loved one, feelings of intense distress when looking at

15 It would be useful at this point to say that most of these Green Cards had been acquired in the recent past. IDPs have not been able to benefit from these services for more than 10 years; they have suffered damages from not having access to healthcare in a period of serious poverty.

photographs, constant crying, a wish to die, expecting the lost loved one to return, anger, etc.), lack of self-confidence, relationship problems within families, violent behaviours, various fears, and extreme despair.

Although it is difficult to establish a direct link between psychological problems and internal displacement in Batman as a whole, the picture resulting from interviews held in the city center and in villages where return took place indicates that it is mostly IDPs who suffer from these psychological problems. It would surely not be an erroneous stretch to think that in addition to the environment of conflict and the losses suffered, the socio-cultural conflicts and the economic problems arising from living in the city would result in rife conditions for developing psychological problems. Among the results drawn from the interviews is the fact that IDPs have more difficulty adapting when they see the standard of living in cities and realize that they will be made to live in even more restricted conditions than those of their villages, and this has a negative effect on their mental health. Furthermore, although there is no statistical data on this, healthcare personnel have informed the group that there is an increase in the use of psychiatric medications.

The TESEV Working Group has noticed that in spite of the existing problems, very few services are offered in the field of mental health. In interviews with health officers, there was mainly talk of future projects. Mental health services that will be provided in the community centers to be built by the municipality in various neighborhoods are among these future projects. Although SELİS was founded recently, it employs a psychologist and offers free-of-charge psychological support. Yet, although there is a Department of Psychiatry at the Batman State Hospital, officials from the department have stated that they do not have any special services aimed at IDPs.

3. THE DILEMMA OF RETURN TO VILLAGES AND STATE SUPPORT

According to data obtained from the Governorship of Batman, before the phenomenon of “Return to Villages” which was initiated in 2000, 18,658 people had migrated from a total of 2,513 households in 37 villages and 137 hamlets. Up to the time when the fieldwork was carried out, a total of 6,269 people from 971 households had returned to 28 villages and 75 hamlets.

Two issues stand out concerning the consistency of these figures:

- i. There are serious discrepancies between these official figures and those given by NGOs collecting data in this region. When taking into consideration villages as units, it is clear that in comparison to lists prepared by the NGOs, there are serious deficiencies in the tables provided by the governorship which show the situation of villages within the scope of the RVRP. Most of these tables cover only villages where the population had been completely evicted. Villages where the population was partially evicted were not taken into consideration.

- ii. There are inconsistencies between population figures provided by the governorships and by NGOs. Official figures - in the form of two sets of data - are recorded by both governorships and the Gendarmerie. These consist of a list used within the framework of the Law no. 5233 titled "Law on Compensation for Losses Resulting from Terrorism and the Fight against Terrorism" ("Compensation Law") and indicating only whether villages within the scope of the law are deserted or not; and a list indicating how many people have migrated from each village within the scope of the RVRP. On the other hand, the consistency of the NGOs' data is also questionable. For example, the Yezidi village of Yolveren (Çinerya), at a distance of 10 minutes from the district center of Beşiri, is neither on the official lists nor in the list of villages prepared collaboratively by İHD and Göç-Der. The fact that a village which the TESEV Working Group has visited and where it has made on-site investigations, and which is this close to the provincial center, had not been recorded by NGOs as an evicted village may be seen an indication that NGOs do not carry out sufficiently comprehensive work in establishing their figures. When the group visited the village of Gökçeşir in the district of Gercüş, which was among the villages listed by İHD, the residents said that the village had been deserted as result of a blood feud. In response to our concerns on this matter, officials from NGOs stated that rather than making on-site investigations to gather figures, they formed their lists on the basis of the petitions made under the Compensation Law by IDPs. This method presents serious flaws for NGOs working in this field.

The RVRP, which is aimed at IDPs in Eastern and Southeastern Turkey, has been carried out in Batman by the governorship since June of 2000. According to data provided by the governorship, besides the purchase of the necessary construction material for building houses for a total of 141 households, village schools and roads were built, transmission lines were built and repaired, drilling work for drinking water in villages was carried out, and support was provided for income-generating fields such as animal husbandry and beekeeping. Furthermore, Units for the Provision of Rural Services in districts have made financial contributions by delivering construction material and constructing village roads in the villages in the districts of Kozluk, Gercüş, and Hasankeyf.

The most significant issue following the conflict in Eastern and Southeastern Turkey and in the provision of assistance for return is that IDPs do not feel that they are citizens in the real sense. The RVRP is also an important factor in making IDPs feel, in their own words, like "second class citizens." During interviews held in the villages of Batman where return has occurred and in parts of the city that received migrants, the TESEV Working Group found that there was little awareness of the RVRP among most people and that those who knew of it believed it was an assistance program for village guards.

Another serious impasse concerning the RVRP is the ambiguity of the definition of the assistance and the flaws in its implementation. The ambiguity of the RVRP derives from the fact that it is defined and implemented as if it were more comprehensive than simply providing financial aid to people returning to their villages. For example, just as the provision of material such as bricks, cement etc. to be used by IDPs to reconstruct their houses is covered by the scope of the RVRP, the aid provided to police stations ensuring the safety of the villages is also declared as an expense within this project. What is meant here by flaws is that the expenses claimed by government officials to have been made under the RVRP were not verified by the fieldwork carried out by the TESEV Working Group. For instance, according to information provided by the sub-provincial administration of Sason, the keys to 24 houses in the village of Aydınlik were delivered to their owners within the scope of the RVRP. During the group's visits to the village of Aydınlik, villagers stated that the houses were delivered to them incomplete and that they had to buy, at their own expense, construction material such as glass, window frames, and doors. This constitutes a serious financial burden for a section of the population that is already suffering from poverty. Hence, many IDPs in villages where return had taken place were observed to live in dilapidated houses covered with nylon sheets.

During interviews, the TESEV Working Group encountered both IDPs who received financial assistance from the state in various ways and those that did not receive any form of assistance. Most of those who received assistance received it in the form of cement and bricks. As will be discussed below, this assistance was very limited. However, the TESEV Working Group also encountered many families, especially in those neighborhoods of Batman which received a high number of migrants, who said that they had petitioned public institutions for assistance and that they had either not received any response to their petition or that their petition had been rejected. During interviews in these neighborhoods, IDPs were also encountered who claimed that most of the assistance provided for return to villages had been given to landowners or to landlords.

4. OBSTACLES TO RETURN

The city center of Batman received a high number of migrants especially in the 1990s. Internal displacement is the cause for the formation of settlements in certain parts of the city where the poverty level is very high and where there is a heavy concentration of IDPs. One of the most significant findings that resulted from interviews held both in these places of settlement and in two villages where return has taken place, is that most of the families who have returned have left some family members behind. As previously mentioned, poverty is one of the major socio-economic problems arising from internal displacement. Almost all returnee families interviewed in the villages of Batman had left behind around half of their family members in the city in order for them to contribute to the livelihood of the family. As will be discussed below, the

poor infrastructure of villages and the negative impact of the conflict on livelihood, further deteriorate the already minimum living standards in these areas. Therefore, the major socio-economic problem encountered during return is poverty and the related fragmentation of families.

The majority of villagers who have returned or wish to return consists of elderly people and men. Especially during interviews held in villages, the TESEV Working Group found that young people were unhappy about having returned, and that they wished to return to the city as soon as the opportunity arose. Of the young people who returned, the ones in their late teens were not happy at all with village life. A 15-16 year old boy in one of the villages said that although he encountered difficulties while living in the city and has not received any education, he was planning “to escape to the city as soon as an opportunity arises.” In order to solve the issue of divided families, opportunities for education and employment aimed at young people need to be increased.

According to NGOs and public institutions in Batman, it is clear that the number of returnees is not very high. What matters more is that there are serious discrepancies between the figures provided by public institutions and NGOs for deserted villages and for those who have returned.

In one-on-one and group interviews held with IDPs in Batman and its villages, the interviewees stated that the obstacles to return consisted of the inability of the state to ensure an environment of peace, the absence of an amnesty for PKK members, the continuation of the village guard system, the lack of infrastructure in villages, the lack of state support, and the fact that the conflict in the region has negatively affected the sectors of animal husbandry and agriculture. The main reason why IDPs ask for amnesty is that most people have relatives or acquaintances who have joined the PKK, and they believe amnesty to be intertwined with peace and freedom.

The serious infrastructure problem includes lack of electricity, piped water, sewer systems, and healthcare in villages where return is taking place. In one of the two villages visited in the Sason district of Batman, lack of piped water constitutes an important issue. Villagers had to travel a long distance to carry water to their homes. Although similar problems can be seen in other regions of Turkey, and even in some parts of big cities, these remain important issues which must be emphasized in order to determine the problem and to transform the “return to villages” into a permanent and long-standing process.

The work carried out by healthcare institutions is not sufficient for providing effective healthcare services in villages where return is taking place. According to information obtained from NGOs, from public institutions dealing with healthcare, and from doctors, serious problems exist in this field even in district centers. For example, there are two state-run primary health clinics each in the centers and communities

of Kozluk and Sason, which are the two districts of Batman from which the highest number of migrants have originated. Considering the distance of most mountain villages from the provincial center, this is a very low number. Moreover, healthcare services are not provided in almost any of the villages of Batman where return has taken place. The only time when healthcare services reach these places is when country-wide healthcare campaigns such as vaccination campaigns are held.

Problems in the education field, such as lack of schools and teachers, also exist in villages where return has taken place. Yet, rather than linking this issue directly to that of internal displacement, it might be more useful to examine it in the context of the problems in the field of education existing throughout Turkey and especially in Eastern and Southeastern Anatolia. In terms of internal displacement, education personnel are not able to access these villages because of the environment of conflict. Furthermore, teachers tend not to volunteer to work in the villages of the region.

The feudal structure of the region also continues to constitute an obstacle to return. For example, some IDPs told the TESEV Working Group that landlords in a village in the district of Beşiri are exercising pressure on villagers to become village guards, and that even if they were to return, the landlords would not accept them in the villages. However, as a contrasting example, people from the village of Aydınlık have stated that they have no problems concerning security, but that they are suffering from poverty. However, concerns for the present indicate that proper safety has not yet been ensured. IDPs who returned to the mountain village of Heybeli expressed unease about the recent increase in clashes in the area.

Although their number and locations are not disclosed, landmines and unexploded ordnance constitute a serious security problem. The TESEV Working Group found mortar shells from the 1990s during its visit to the village of Heybeli in Sason. People knowledgeable on this subject claimed this was not the first case of mortar shells found in that region. Mustafa Yıldız, from the Batman Bar Association told the group the story that there were two children from a village in Sason who died while playing with a hand grenade. Moreover, an article published in the Batman *Çağdaş* newspaper dated 7 April 2004 draws attention to the great danger arising from mortar, rocket, and gun shells left behind in the fields during military operations in the villages of Heybeli and Balbaşı in the Sason district of Batman. The article features photographs of people from these villages holding mortar shells.¹⁶

4.1. THE TOBACCO QUOTA AS AN OBSTACLE TO RETURN

As aforementioned, internal displacement has seriously impeded agricultural development and agricultural means of livelihood in the region. Tobacco growing constitutes an important means of livelihood for Batman and especially for the

■ 16 See Arslan (2004).

districts of Sason and Kozluk. For example, according to information obtained during interviews held with officials from public and military institutions and from the municipality in the Sason district of Batman, the two main means of livelihood in Sason are tobacco growing (about 85 percent of all means of livelihood) and employment as village guards. Therefore, both the practices concerning tobacco growing, which will be mentioned below, and damages brought about by internal displacement that concern tobacco cultivation constitute obstacles to return to a “normal” life for IDPs.

Law no. 4733 dated 3 January 2002, known as the “Tobacco Law,”¹⁷ abolished state support in the production, purchase, and sale of tobacco leaves and stipulated a quota of 200 kilograms on the purchase of tobacco by the state.¹⁸ According to this law, all producers of tobacco leaves are required to apply to the General Directorate of TEKEL (Turkey’s alcohol and tobacco monopoly) for a cultivation document (certificate). Both practices constitute problems for IDPs who earn their living from tobacco growing and who wish to return to their homes.¹⁹ It is clear that this 200 kg. quota plays a role in aggravating the poverty aspect of internal displacement. According to calculations made by İrfan Arslan, Mayor of Sason, the annual income to be obtained from 200 kg. of the yearly yield of tobacco, which is obtained by toiling for a minimum of 7 months, is about YTL 900. Considering that in January 2007, the Turkish Statistical Institute (*Türkiye İstatistik Kurumu*) determined the minimum amount which should be spent on staple foods by a family of four as YTL 618, an income of around YTL 900 is much below the annual expenditure of an average family.²⁰ The rate of agriculturally utilizable land in Sason is of about 4.5 percent; this figure limits, to a great extent, the kinds of produce that can replace tobacco. According to Arslan, petitions made by the municipality to both the Ministry of Treasury and the Prime Minister’s Office to increase the quota on tobacco have not produced any results. Although the group was informed of this problem in Sason only, its work throughout Batman and especially in Sason and Kozluk verifies that this problem is part of a significant obstacle to return throughout the region.

In addition to the quota problem, the permit/cultivation document/certificate difficulty also constitutes a significant issue for IDPs wishing to return. As far as the

17 Before the new law, The General Directorate of TEKEL was obliged to purchase all the produce that each grower wanted to sell, at a pre-established market price. Following amendments made to the law, tobacco is now purchased only by agreement. The General Directorate of TEKEL announces the amount to be purchased within a certain time period, signs agreements with growers who fulfill the conditions required and provides each grower with a tobacco permit. Moreover, in accordance with the Executive Committee Decision reached by taking into account tobacco stocks in the storehouses, the established minimum amount per grower is 200 kilograms, while the maximum amount is 1,000 kilograms. But the amounts exceeding 200 kilograms are subject to expert evaluation for quality determination.

18 For detailed information on this subject, see Hürriyet (2002).

19 To examine the public and political aspects of this subject within the context of Batman, see a speech given in the Parliament by Batman MP Ahmet İnal. İnal (2003).

20 Batman Posta Gazetesi: (http://www.batmanpostasigazetesi.com/author_article_print.php?id=65).

TESEV Working Group could find out, IDPs are affected in a special way by these practices. Some IDPs who had to abandon the fields that they had cultivated have lost their right to sell tobacco, either because they were obliged to sell their permits out of poverty or because their permits have expired because they were unable to cultivate their fields. At this point, even if IDPs who live in district centers or in cities and who once earned a living from tobacco growing return to their villages, they will be facing poverty. Also, the two fields that are the main means of livelihood in Sason (employment as village guard and tobacco production) are interestingly intertwined. Both according to TESEV's observations and according to information obtained from interviews, although IDPs who were unable to produce and sell tobacco because they had to abandon their fields had their permits revoked, certain village guards have a large number of permits even though they do not actually grow tobacco. This is in defiance of the newly enacted law, according to which each producer is allowed to hold only one permit.

Recommendations for the solution of this issue, which negatively affects return not only in Batman but also in Diyarbakır, Muş, Bitlis, and Adıyaman, are: increasing the tobacco quota, the provision of tobacco permits for IDPs who earn a living from tobacco growing, and the annulment of tobacco permits obtained via illegal means.

5. THE VILLAGE GUARD SYSTEM AND RELATED PROBLEMS

According to information provided by the Sub-Provincial District of Sason and by the Association of Village Guards, at the time of the fieldwork there were 1,359 village guards in the district of Sason; 487 of whom were hired on a voluntary basis. Although the recruitment of provisional village guards has been halted in 2000, the recruitment of voluntary village guards is continuing, even if only on paper.²¹ According to an official from the Ministry of Interior, voluntary village guards are no longer being recruited. According to this official, the recruitment of voluntary village guards is limited to those villagers volunteering in order to protect their villages and to the registration of their names for possible recruitment if needed, and the volunteers are not being armed.²² However, according to information gathered during the fieldwork, 35 people in two villages in the district of Sason where return has taken place have applied to become voluntary village guards. The number of applications throughout Sason at the time of the fieldwork had reached 658. This information reveals an interesting reality. Especially now that the PKK is once again resorting to armed clashes, "security issues" might be used as a reason by the

21 It is worth noting, however, that the government reversed this decision after the publication of the Turkish edition of this book in June 2006. In an amendment to the Village Law on 27 May 2007, the parliament authorized the government to recruit up to an additional 60,000 provisional village guards upon proof of necessity. Official Gazette (2007b). For more on this very recent development, see "Introduction to the English Edition" in this book.

22 Information obtained during a telephone conversation with an official from the Ministry of Interior, February 2006.

state to increase the number of village guards. Indeed, in a law enacted on 27 May 2007, the parliament authorized the government to recruit up to 60,000 additional provisional village guards.²³ Various villagers may apply to become voluntary village guards for this reason. However, under a regulation enacted in 2000, the recruitment of village guards has been halted. There is still ambiguity concerning how these applications are evaluated and whether there is indeed an increase in the number of village guards.

The dismissal of a village guard (whether on the payroll or in a voluntary capacity), either for abuse of power or for insubordination, can only take place with the approval of the sub-provincial administration. However, in the region as a whole, village guards have been involved in a great number of crimes. For example, immediately before its visit to Batman, the TESEV Working Group received information from various sources that village guards from Mardin raided a house in the district center of Batman, kidnapped a young woman, and took her to the mountains. However it is unknown how many of these village guards have been dismissed as required since there is no public information available on the issue.

According to various sources, another important issue regarding village guards is that at times women or even children can become village guards, in order to obtain arms and also a salary, if they are provisional village guards. There are about 50 registered female village guards in the Sason district of Batman. What is even more worrisome is that although men receive training before becoming village guards, women receive no such training. The problems that have been identified concerning village guards - which is one of the systems that the government most emphasizes for ensuring safety during return - actually indicate that this system is another main obstacle to return.

6. RECONCILIATION AND THE ACHIEVEMENT OF DURABLE PEACE

In addition to being an obstacle to return, the village guard system is also one of the most important obstacles to achievement of reconciliation and durable peace. Armed clashes in Eastern and Southeastern Anatolia and the hostility between villagers and village guards are placing undue pressure on an already tense environment. It is imperative that opportunities be created for the re-integration of village guards into society, for the provision of their social security, and for their employment following abolishment of the system. Of the proposals for the employment of village guards heard during interviews held in Batman, the idea of employing village guards as night watchmen was an interesting one. Listening to advice by NGOs working in the field may produce interesting and positive solutions for the creation of alternative employment opportunities for village guards. However, the employment of village

■ 23 See footnote 21.

guards must exclude certain important fields (for example education) and village guards' criminal records must be taken into account.

According to various NGOs and IDPs, the fact that the state does not assume responsibility for internal displacement constitutes a significant obstacle to closure on this issue. The Compensation Law is regarded by organizations such as İHD and by bar associations not as an amendment for mistakes made, but as the approach by a social state whose citizens are faced with difficulties. That is, according to these organizations, both in previous policies and in the Compensation Law, the state is not accepting responsibility for the grave errors it made during this 20 year-long process, it is not producing comprehensive solutions for the problems that have arisen, and it is failing to ensure that necessary measures be taken in order to prevent repetition of these problems. Instead, the state is dealing only with the visible dimensions of the internal displacement issue, such as poverty and infrastructure problems, which are considered to be "caused by terrorism." Moreover, many IDPs and NGOs see the Compensation Law in particular as a measure for overcoming possible problems during the EU membership process and to avoid financial difficulties that might result from ECtHR decisions. In particular, people whose relatives have been murdered by unidentified perpetrators wish that the state would accept its responsibility in this matter. Many IDPs who think that the process they have undergone has caused more psychological than material damages, believe that the state and the society need to confront the past.

Yet, the Compensation Law is important from the point of view of reconciliation. In Batman, NGOs such as İHD are documenting the displacement stories of IDPs and their post-migration problems. These NGOs are also putting together their own data regarding villages from which residents were evicted and to which residents wish to return. NGOs and bar associations regard the preservation and documentation of these stories as a significant archiving project in this field.

The achievement of peace and its sustainability is an important step to be taken in order to solve the internal displacement issue. Furthermore, an environment of peace is also required for damage assessment commissions working within the scope of the Compensation Law to be able to make their assessments properly and to reach their decisions in good time.

A serious consequence of the conflict in Eastern and Southeastern Anatolia is the persisting feeling of mistrust in these regions. From the perspective of public officials, this feeling of mistrust results in the belief that citizens may at any time start supporting the PKK; whereas, people who have found themselves in the midst of the conflict between the PKK and the security forces for 15 years and who have suffered the most, feel that they are treated as "second class citizens." The fact that aid under the RVRP and the compensations paid under the Compensation Law are

seen to be directed mainly at village guards supports the idea that “the state does not protect us and treats us like ‘second class citizens’.” The definite distinction between villagers and village guards reinforces the feeling of mistrust towards the state and the concept of “second class citizen” which is deeply rooted among IDPs. Moreover, according to some NGOs, the requirement, in accordance with the regulation of the Compensation Law, to obtain an official report from the Gendarmerie proving that the village has been evacuated “due to terrorism” has resulted in a strained relationship between the citizens and the state. The unwillingness of certain departments to provide documents that are necessary to apply to the commissions for compensation constitutes a serious problem standing in the way of reconciliation.

Moreover, the fact that most mountain villages throughout Batman are considered “supporters of the PKK” by security forces strains these relations even further. During a visit to the village of Heybeli in the Sason district of Batman, while the TESEV Working Group was holding one-on-one interviews, the security forces that had accompanied the group at the request of the sub-provincial administration, ostensibly to ensure the group’s security but nevertheless against its will, tried to find out from villagers and from children whether the village was providing any support to the PKK. The fact that the security forces attempt to extract information from villagers by acting as “journalists” is one of the most obvious examples of this mistrust.

7. CONCLUSION

As one of the provinces in Southeastern Anatolia from which the highest number of migrants have originated, and one of the city centers that have received the highest number of migrants from districts and other provinces in the vicinity, Batman is a good example indicating the many dimensions of the issue of internal displacement. The results of the fieldwork clearly show that, although for most IDPs many years have passed since the problems occurred, the consequences of the problems are ongoing and still a part of their daily reality. In this process, which was sudden and during which many IDPs moved to the city, the city center of Batman has been unable to produce the infrastructure and the social aid necessary to meet the needs of this population boom. IDPs living in the municipal center have attempted to survive through their own efforts but have had to cope with serious problems such as unemployment and poverty. Moreover, there are no public assistance services aimed at IDPs in particular. Therefore, even after approximately 20 years, IDPs in the city center continue to suffer from serious problems in their new places of residence.

However, the most positive recent development that can be seen in the region in general and in Batman in particular is the abolishment of the State of Emergency and the cessation of clashes after 1999. Unfortunately, the environment of conflict that began anew in 2005 has once again created uncertainty and fear for IDPs who

have returned to their villages. Looking at Batman as a whole, the “wish to return” found especially in older people and in men is gradually decreasing because of the lack of sufficient infrastructure in the villages and because of the fear caused by the lack of safety in the violent environment of clashes. Return is, therefore, becoming ever more difficult. Moreover, the youth in the villages visited have specifically stressed that village life holds no attraction for them. This shows that the “wish to return” actually arises from economical problems and sometimes from nostalgia and that the solution to internal displacement is not limited to “return to villages.” It also emphasizes that in years to come, more efforts must be made to reach IDPs, particularly those living in city centers.

Another important point, which has been ignored both by most researchers who carried out research on this subject and by public officials, is the expectation in the region of durable peace and reconciliation. The saddest part of internal displacement is possibly the mutual feeling of mistrust that has formed between public institutions and citizens. Similar conflicts in other parts of the world show that conflicts can re-emerge. In order to prevent this flux and the re-emergence of this conflict, it is necessary to carry out in-depth research concerning the origins of the problem and to overcome the feelings of mistrust and of “being oppressed” which might cause these problems to recur. As mentioned above, policies concerning internal displacement do not deal sufficiently with this dimension of the subject and the aid provided to IDPs is nothing more than limited financial assistance, which in the end, contributes very little either to the families or to the resolution of the manifold problems.

Internal Displacement and Reparative Justice: Implementation of the Compensation Law in the Province of Batman

DİLEK KURBAN

In the first draft of this article, prepared in light of the fieldwork¹ carried out by members of the TESEV Working and Monitoring Group on Internal Displacement in Turkey (“TESEV Working Group”) in Batman in June 2005, the group felt that the province of Batman constituted a “good example” for the implementation of Law no. 5233 titled “Law on Compensation for Losses Resulting from Terrorism and the Fight against Terrorism” (“Compensation Law”).² This opinion was based, in part, on the proper communication that had been established between the public officials responsible for the implementation of the law and the bar association; on the dedicated, zealous, and well-intentioned work carried out by the damage assessment commissions formed immediately after the law’s entry into force; and on the flexibility shown - within the constraints of the text of the law - by deputy governors in implementing the law. However, the data and impressions obtained

1 This article is based on fieldwork carried out by TESEV Working Group members Betül Çelik and Dilek Kurban and assistants Öznur Acicbe and Harun Ercan between 23 June and 1 July 2005, in the provincial center of Batman, the districts of Beşiri, Hasankeyf, Sason and Gercüş, the village of Yolveren in the central district, the villages of Heybeli and Aydınlı in the Sason district and the Gökçeşınar village in the Gercüş district. Within this fieldwork, the group interviewed the governor and deputy governors of Batman, the provincial director of social services, the sub-provincial administrator and the garrison commander of Sason, the acting mayor and deputy mayors of Batman, the mayors of Beşiri, Sason and Hasankeyf, officials from the Justice and Development Party (*Adalet ve Kalkınma Partisi* - “AKP”), the president of the Batman Bar Association, members of damage assessment commissions, lawyers representing applicants to the Compensation Law, the chairman and members of the Batman branch of the Human Rights Association (*İnsan Hakları Derneği* - “İHD”), the chairman and members of the Migrants’ Association for Social Solidarity and Culture (*Göç Edenler Sosyal Yardımlaşma ve Kültür Derneği* - “Göç-Der”), the chairman and members of the Association for Human Rights and Solidarity with the Oppressed (*İnsan Hakları ve Mazlumlar için Dayanışma Derneği* - “MAZLUMDER”), members of the Health Care Employees’ Trade Union (*Sağlık Emekçileri Sendikası* - “SES”) and employees of the Batman Women’s Counselling Center (*SELİS Batman Kadın Danışmanlık Merkezi* - “SELİS”). In-depth interviews were also held with 35 internally displaced persons (“IDPs”), 23 of whom lived in the provincial center of Batman and 12 in district centers and villages; 14 of these interviews were face-to-face, while 21 were held as part of six group interviews. The information concerning the implementation of Law no. 5233 titled “Law on Compensation for Losses Resulting from Terrorism and the Fight against Terrorism” (“Compensation Law”) was updated in accordance with additional information obtained from the president of the Batman Bar Association and the relevant deputy governor via phone calls and e-mail correspondence in February 2006.

2 This view was expressed in the report published by TESEV in 2005, entitled “The Internal Displacement Problem in Turkey: Assessment and Suggestions for Solution.” Aker et al. (2005).

through a second field study,³ carried out approximately one year later, in May 2006, within the framework of another project, showed that the group may have been too hasty in reaching its earlier conclusion. The group, thus, found it necessary to allow some time to pass before reaching any final conclusions regarding the implementation of the law, both in Batman and in the country as a whole.⁴ The major reason for this cautious approach was the *İçyer v. Turkey* (“*İçyer*”) decision of the European Court of Human Rights (“ECtHR”).⁵ In *İçyer*, the ECtHR decided that the damage assessment commissions responsible for the implementation of the Compensation Law constituted an “effective domestic legal remedy” and rejected more than a thousand pending applications. This ruling noticeably slowed the progress on the implementation of the Compensation Law in Batman as well as in other provinces^{6,7} Also, the negative political environment caused by the armed clashes - which have resumed prevalence in the region since summer 2005 - has had negative effects on the relations between the state, civil society, and the people. Naturally, this has also had a negative effect on the implementation of the law. Finally, it seems that the recent appointment of new deputy governors in Batman has also had negative implications for the implementation of the law. Lawyers who are in regular contact with damage assessment commissions reported that the newly appointed deputy governors lack the enthusiasm and good will of their predecessors, and act with a typical “civil servant mentality.”

Since some of the problems encountered in the implementation of the Compensation Law are beyond the authority and power of commission members, the government needs to take the necessary steps to improve the law. It is necessary for Ankara to show political will in this matter, especially following the ECtHR’s *İçyer* decision which has already resulted in “lassitude” among commission members. Furthermore,

- 3 Within the framework of the fieldwork carried out by TESEV for “The Voices of IDPs” project of the Brookings-Bern Project on Internal Displacement, TESEV Working Group member Dilek Kurban and assistant Mert Kayhan carried out research in the provincial centers of Diyarbakır and Batman between 8 and 13 May 2006. Within the scope of the fieldwork conducted in Batman, the group interviewed the governor of Batman, the relevant deputy governors, officials from the Provincial Special Administration Secretariat, the mayor and some municipality officials, the president of the Batman Bar Association, a member of damage assessment commissions, lawyers, the chairman of the Batman branch of İHD, the chairman of the Batman branch of Göç-Der and members of MAZLUMDER. In-depth group interviews with eight IDPs were also conducted.
- 4 Sezgin Tanrıkulu, president of the Diyarbakır Bar Association, pointed out that the legal timeframe allowed for the assessment of petitions is two years, which can be extended by six months upon necessity, and that more accurate conclusions concerning the implementation of the Compensation Law can only emerge by the end of 2007. Diyarbakır, 8 May 2006.
- 5 ECtHR (2006).
- 6 For the effect of the *İçyer* decision on the implementation of the Compensation Law in Diyarbakır, see Yüksekler: “Internal Displacement in Diyarbakır; Return, Urban Issues, and Implementation of the Compensation Law” in this chapter. For the negative effect of the *İçyer* decision on implementation in Diyarbakır and surrounding provinces, see Diyarbakır Bar Association (2006). For similar criticisms, see Diyarbakır Bar Association *et al.* (2006).
- 7 For the *İçyer* decision, see Chapter IV, Kurban: “Human Rights Watch, Kurdish Human Rights Project, and the European Court of Human Rights on Internal Displacement in Turkey,” in this book.

there is an urgent need to recognize that acceptance of the security forces' role in the egregious human rights violations committed during the State of Emergency will not only solve many of the problems in the implementation of the Compensation Law, but will also be a significant step in the achievement of "*rapprochement* between citizen and state," which is one of the aims of the law. The remainder of the article is organized as follows: the first part examines the accessibility of the law for internally displaced persons ("IDPs"), the second part evaluates the scope of the Compensation Law, and the third part discusses the implementation of the law. The conclusion emphasizes that the solution of the problems observed in the implementation of the law in Batman is contingent upon the demonstration of clear political will on the part of the government.

1. ACCESS TO JUSTICE

One of the most central research questions focused on during interviews conducted with IDPs, non-governmental organizations ("NGOs"), public officials, and lawyers was how accessible the Compensation Law was for IDPs. What is meant here by "access to justice" is not a formalist approach concerning whether or not IDPs have heard about the law, but rather, to what extent IDPs know and understand what damages are compensated by the law, who can benefit from the law, how to file a petition under the law, and the scope of the rights conferred to them under the law. In this context, the opportunities enabling IDPs' access to the law and the obstacles preventing them from doing so, are considered within the concept of "access to justice." With this in mind, the role played by public officials, NGOs, and lawyers in this process is also put into question. The tendency of a few IDPs and lawyers to take advantage of the law is also considered as an element preventing access to justice.

1.1. THE DISSEMINATION OF INFORMATION ABOUT THE COMPENSATION LAW

The lawyers and public officials interviewed were all in agreement that "everybody knew about the law." In fact, most of the IDPs interviewed agreed that they had heard of the law. However, there are still a number of people, though marginal from a quantitative aspect, who have not heard of the law - although it was enacted nearly a year before the fieldwork was carried out in June 2005. For example, two middle-aged women in the Seyitler neighborhood and about twenty women in the Petrol neighborhood of Batman had not heard of the law. Taking into account that those who have not heard of the law are mainly women who do not speak Turkish and/or are illiterate and that the region is characterized by a male-dominated family structure, one can assume that each family, though not each and every IDP, has in one way or another heard of the law.

However, there are two issues that need to be underlined in this context: first, most of the IDPs interviewed for this research project lived in the provincial center of Batman

or in villages in the vicinity and were, therefore, relatively easy to reach. However, officials from Migrants' Association for Social Solidarity and Culture (*Göç Edenler Sosyal Yardımlaşma ve Kültür Derneği* - "Göç-Der") have stated that in villages and hamlets that cannot be reached by NGOs, which lack mass communication media and where there is no village headman, there are IDPs who remain unaware of the law. Ahmet Demir, Chairman of the Batman branch of Göç-Der, admitted that, even civil society - which makes use of informal knowledge networks in disseminating information - is not successful in reaching all IDPs, and that their efforts to reach those living far from provincial and district centers are sometimes impeded by security forces. Although this claim cannot be verified, even the possibility that information on the law may not have reached a few IDPs is noteworthy.⁸ This leads to the second issue which needs to be emphasized. The TESEV Working Group determined that a large majority of IDPs interviewed were aware of the law through information meetings held in neighborhoods and in villages by Göç-Der, Human Rights Association (*İnsan Hakları Derneği* - "İHD"), and the Democratic People's Party (*Demokratik Halk Partisi* - "DEHAP"). Moreover, it is clear that the media, as well as the bar association, were also effective in disseminating information about the law. Yet, neither the government nor public officials in Batman carried out any work to raise awareness about the law. Therefore, the government has failed in fulfilling its duty of informing citizens about their rights under the newly enacted law. Zekeriya Aydın, president of the Batman Bar Association, pointed out that, although in past years the government's Repentance Law directed at PKK militants was advertised by dropping brochures from helicopters, methods of this kind were not employed in the dissemination of information about the Compensation Law. This, Aydın argues, puts the good will of the government in question. Aydın believes that civil society is also guilty of failing to fulfill its responsibilities in this matter. However Emin Ekmen, a lawyer, does not agree. Although he concurs that the state has not sufficiently disseminated information about the law, he believes that NGOs and DEHAP more than fulfilled their responsibilities in this regard.

What is meant here by "having heard" of the law? There is no doubt that when the law in question aims at compensating human rights violations, the fact that IDPs have heard of the law does not mean that they are sufficiently informed about it. What is important here is that potential applicants should have sufficient knowledge about the content of the law, about the rights it confers on them, and about the process of petitioning to it. Although most IDPs interviewed were aware of the law and had even petitioned to it, almost all of them lacked meaningful knowledge about these issues. The TESEV Working Group observed that many IDPs could not differentiate

8 This analysis is based on the TESEV Working Group's impressions from fieldwork carried out in June 2005. It could be assumed that by 2006 there were no longer many IDPs who were unaware of the law. Still, nearly one year after the enactment of the law, the existence of such claims was noteworthy in terms of the law's accessibility.

between the Compensation Law and the Return to Village and Rehabilitation Project (“RVRP”); that some were not informed about the outcome of past lawsuits filed on their behalf by their lawyers, whose names they did not even know in some cases; and that they were unaware of the difference between lawsuits they had filed in administrative courts in the past and the applications they had made under the Compensation Law.

Some lawyers believe that as long as they are diligent in keeping track of the applications to the Compensation Law, their clients - most of whom are uneducated and even in some cases illiterate - need not be informed in detail about the law. There is no doubt that the fact that IDPs lack full understanding about a complicated legal process is part of the nature of the lawyer-client relationship. However, for the Compensation Law, this situation entails the risk of causing a potential conflict of interest. From the point of view of the lawyers, who represent IDPs on a contingent fee basis where they charge 10-15 percent of the final settlement award, filing a relatively easy petition under the Compensation Law and receiving compensation within one or two years might be preferred to venturing into a long and difficult legal process in courts with an unforeseeable conclusion. In fact, this is also the case for the majority of IDPs who, having suffered economic difficulties for many years, prefer to receive compensation within a short period of time under the Compensation Law rather than wait through a long and uncertain legal process. However, according to observations made during the fieldwork, there exists a group of people, especially among families where one or more members have been murdered by unidentified perpetrators or have died in custody, who seem determined to take their cases to court “in the name of justice.” It is clear that the interests of these IDPs might not coincide with the interests of their lawyers who would prefer that these cases are resolved through friendly settlements in damage assessment commissions under the Compensation Law. Therefore, for IDPs to be able to make free and conscious decisions on the legal strategies that they wish to pursue, it is vital that they are fully informed about the Compensation Law.⁹

9 Stories reported by some IDPs interviewed in Diyarbakır and Batman in May 2006 enforce the fear that within the process of implementation of the law, relations between lawyers and IDPs will become especially strained in the near future, when petitions regarding immovable properties will be concluded and compensations for such cases will be paid out. For example, an IDP interviewed in the Suriçi neighborhood of Diyarbakır held the lawyer who had power of attorney for 260 households in his village responsible for the appearance of a total of YTL 30.000 counterfeit money within the settlement awards he had distributed to villagers who won compensation. (As of June 2007, YTL 1 (Yeni Türk Lirası - New Turkish Lira) equals to USD 0.755.) He further claimed that the lawyer was the reason for the low compensation amounts paid to villagers on the grounds that the lawyer had allegedly cut a deal with the village headman and as a result engaged in fraudulent reporting to the damage assessment commissions by claiming on behalf of the village headman some of the land that actually belonged to villagers. The allegation of counterfeit money was also verified by some lawyers, who stated that the Public Prosecutor in Diyarbakır had initiated an investigation to determine whether the responsibility of the counterfeit money rested with the bank that delivered the payment made from the Ministry of Interior or with the lawyer.

1.2. THE LIMITATIONS OF CIVIL SOCIETY

The public antagonism that took place in Batman between Göç-Der and İHD on the one hand, and the bar association on the other, constitutes an interesting example of the limitations of the NGOs' role in facilitating IDPs' access to justice in particular, and civil society ethics in general. The incident - which was covered by the local and national press - occurred when the governorship, displeased by accounts that, following the enactment of the law, certain lawyers had visited villages in the words of Deputy Governor Kemal Cirit "for client shopping," reported this situation to the bar association which took immediate action. According to Aydın, the press conference organized by Göç-Der immediately after the enforcement of the law, criticizing lawyers who charged contingent fees on the basis of 15 to 25 percent of settlement awards, and stating that lawyers who were members of Göç-Der would "work at cheaper prices," was what triggered the controversy. Saying that NGOs are not "employment organizations for lawyers" and that they should work on a voluntary basis, Aydın harshly criticized the commercial relationship that Göç-Der and İHD engaged in with IDPs because it conflicts with lawyers' professional obligations under the Law on Lawyers, violates the right of individuals to freely choose their lawyers, and is in conflict with civil society ethics. Aydın said that they conveyed this criticism to senior officials of Göç-Der and İHD, who admitted that Aydın was right and promised to refer IDPs to the bar association from then on. However, Aydın said that no referrals have been made to the bar association through these organizations to date.

However, officials from İHD stated that after news of the law spread, certain lawyers had visited villages naming the association as a reference, but that İHD had tried to prevent this. Referring to the press conference by Göç-Der as "a premature, impulsive, and unfortunate statement," they explained their referral of IDPs to certain lawyers as a service "given on a voluntary basis, to prevent citizens from suffering even more damages." The officials from İHD stated that in collaboration with Göç-Der they had founded four commissions made up of three lawyers each, and that they referred IDPs to these 12 lawyers. They said that they offered four alternatives to IDPs who applied to their organizations: hiring a private lawyer, filing petitions through the bar association, filing petitions individually, and hiring İHD/Göç-Der lawyers. However, they noted that IDPs only trust İHD for the protection of their rights. According to information provided by Göç-Der, the 12 lawyers shared among themselves petitions originating from the provinces of Batman and Siirt, from the Dargeçit and Midyat districts of the province of Mardin, and from the Bismil, Silvan, and Kulp districts of the province of Diyarbakır. A lawyer, whom the TESEV Working Group was told serves on these commissions, said that he had received nearly 10 files from İHD but that he was unaware of any such commissions. Another lawyer, also said to be one of the 12 lawyers, said he was told that he was member of a commission only after the

fact. There is uncertainty, not only about the existence of these commissions, but also about the number of lawyers considered to be part of them. Saadet Becerikli, Chairman of the Batman branch of İHD, interviewed by phone following the fieldwork, stated that the total number of lawyers in the commissions was actually 10 and not 12.¹⁰

Zekeriya Aydın, who said that he had heard of the “12 lawyer system” for the first time from the TESEV Working Group, stated that just as he was opposed to “lawyers of the state,” he was also opposed to “lawyers of NGOs” and that such a practice would cast a cloud on the confidentiality of the lawyer–client relationship. Demir, Chairman of Göç-Der, said that they were currently working on addressing criticisms, that he recognized the truth in the claims of unfair competition, but that he disagreed with accusations that they violated any ethical rules. Pointing out that most of the population is uneducated, Demir emphasized that in order to protect their rights, IDPs preferred to work only with lawyers that they trusted. Similarly, another lawyer emphasized that the region’s conditions must be taken into account and that they “were unable to enjoy the luxury of working like professional lawyers.” Mehmet Şat, Chairman of the Batman branch of the Association for Human Rights and Solidarity with the Oppressed (*İnsan Hakları ve Mazlumlar için Dayanışma Derneği* - “MAZLUMDER”), which has not acted together with İHD and Göç-Der on this issue, stated that he agreed with Aydın, that from an ethical point of view, they did not approve of NGOs referring petitions to lawyers with whom the former shared similar political views. Şat said that they had considered providing destitute IDPs with free-of-charge legal services but that they abandoned this idea in order not to do injustice to other lawyers. Şat stated that they waited for the bar association to take the initiative to collect all petitions in a pool and to distribute them equally among all lawyers in Batman - in order to prevent unfair competition - but that when the bar association failed to do so, MAZLUMDER also started to recommend the hiring of independent lawyers to IDPs.

Another drawback to the 12 lawyer system is that it might cause a drop in the quality of legal services and a conflict of interest between lawyers and their clients. According to the NGOs, some of these 12 lawyers are dealing with close to 600 files each. Emphasizing that a lawyer cannot possibly handle this number of files in a fair manner, a member of MAZLUMDER said that these lawyers are unable to pay sufficient attention to the files and, therefore, file standard petitions without taking into account the factual differences between each case. This situation can be disadvantageous for IDPs in two ways. Lawyers with a high number of files might not be inclined to petition the ECtHR because of the time and hard work this choice entails. However, regardless of whatever decision the commissions might take, some IDPs, though few in number, prefer to petition the ECtHR. Moreover, whatever

■ 10 Phone interview on 1 February 2006.

their preferences might be, IDPs should have the right to freely make decisions regarding whatever legal strategy they may wish to follow. Secondly, the standard petitions prepared, without taking into account the subjective characteristics of IDPs, can result in the conferment of low amounts of compensation on the part of the commissions.

The example of Batman provides an indication of the difficulty of providing simple answers to complicated questions within the process where, in the period after the State of Emergency, relations between the state and the citizens, between lawyers and clients, and between NGOs, the citizens, and the state are being reshaped. On the one hand, the sense of mutual mistrust, fear, and suspicion on which the relationship between the state and the citizens is based causes IDPs to substitute NGOs for the state. The displacement of IDPs by their own state and the violation of their fundamental rights and freedoms by the agents of their state has significantly damaged their sense of citizenship. On the other hand, the armed struggle led by the PKK in the stated name of the Kurds, the support the organization has received from civilian Kurds, and the ambiguity of the demands of the Kurdish political actors, have led the state to suspect the true intentions and loyalty of its Kurdish citizens. From this point of view, it is easily understandable and even quite natural that IDPs should apply to NGOs and that they should prefer lawyers recommended by NGOs. The asymmetry of knowledge and the potential conflict of interest inherent in the nature of the lawyer-client relationship intensifies under the conditions of the region where the vast majority of the people are uneducated. Still, this is insufficient to justify NGOs' referral of IDPs to lawyers who they identify merely on the basis of the relationship of trust between IDPs and these organizations. In the end, the process that began with the enactment of the Compensation Law can be considered to be a historical opportunity not only for compensating damages, but also for repairing the relationship between the state and the citizens. Both the state and civil society bear an important responsibility for making good use of this opportunity. Bar associations in the region have a special responsibility to ascertain that their members adhere to professional and ethical rules of conduct.¹¹

1.3. LEGAL AID

As far as its accessibility is concerned, one of the most positive aspects of the Compensation Law is that it offers petitioners exemption from legal fees.¹² However the fact that legal aid for destitute IDPs is not foreseen in the law, constitutes a potential obstacle preventing the most needy segment of society from benefiting

¹¹ The problem of lawyers not adhering to professional rules of ethics has also been identified by the Diyarbakır Bar Association. Officials from the bar association state that lawyers make use of the personal relationships they establish with damage assessment commissions to ensure that their petitions are given priority. Diyarbakır Bar Association (2006).

¹² Official Gazette (2004a): Article 15.

from the law. Considering that the regulation, in its pre-amended version, required petitioners to present commissions with various official documents - that were both difficult to obtain and expensive - in order to prove their damages, this deficiency was even more significant before 15 September 2005.¹³ Aydın stated that the bar association's proposal to the Ministry of Justice that the state provide petitioners with legal aid was rejected.¹⁴

Obtaining all of the documents required by the commissions constitutes a financial burden that is impossible to meet for IDPs - the majority of whom do not have a regular income. According to figures provided by Sedat Özevin, a lawyer handling these petitions, an inheritance certificate costs YTL 20, a criminal record document YTL 3, and, depending on the number of inheritors, a document of power of attorney can cost up to YTL 100. Moreover, in order to obtain documents such as a decision of lack of jurisdiction from (formerly) State Security Courts that do not even exist in every province, IDPs (or generally their lawyers) need to incur travel expenses. Özevin said that lawyers generally pay for such expenses out of their own pockets.

Taking into account that petitions made under the Compensation Law have, to a great degree, been concluded, it could be argued that the government no longer needs to make an amendment in the law to provide IDPs with legal aid. However, the provision of legal aid can be of vital importance in facilitating the access to justice of IDPs who will choose to go to court rather than accepting the friendly settlement offered by the commissions and of IDPs whose petitions are rejected. Actually, the relevant provision of the law which says that "petitions to be made under the scope of

13 Official Gazette (2004b): Article 17. These documents included an official report explaining how the damage-causing incident had occurred, a medical board report in the case of injuries and disabilities, an autopsy report and an inheritance certificate in the case of death. The amendment to the regulation on 15 September 2005 made it possible for petitioners to present the information and documents they had and to a great degree reduced their burden of proof. Official Gazette (2005). For more information on this subject, see Chapter III in this book. However, when the fieldwork was carried out in June 2005, the pre-amended regulation was in force. Besides, in spite of the amendment to the regulation, commissions in the provinces of Mardin, Şırnak, and Hakkâri continue to require petitioners, who allege that they had been evicted from their villages by security forces, to present official reports supporting such claims, which indicates that the implementation of the law in some provinces has not softened in spite of the amendment. Phone conversation with a member of the Diyarbakır Bar Association, October 2005. For the implementation of the law in Hakkâri, see Kurban: "Internal Displacement and Reparative Justice: Implementation of the Compensation Law in the Province of Hakkâri" in this chapter.

14 According to information gathered during the fieldwork carried out in May 2006, the Batman Bar Association has initiated a practice by which it provides legal aid to IDPs who present a "proof of poverty" document obtained from the village headman. However, since the bar is required by law to limit legal aid to exemption from expenses arising from legal representation, in order to obtain the official documents required by the commissions, IDPs are still required to incur expenses that they cannot afford. Ahmet Sevim, a member of the Batman Bar Association, said that the number of applications to the bar association for legal aid were very few and that there were three reasons for this: 1) the activities of certain NGOs concerning the Compensation Law "create the impression that there is a monopoly in this field" and very few IDPs petition the law through the bar association; 2) petitions filed to commissions are exempt from fees; and 3) lawyers' contingent fees are calculated on the basis of a percentage of the compensation amount and, therefore, the necessary expenses are covered by lawyers and IDPs do not need to make any payments. Interview, 11 May 2006.

this law...are exempted from all taxes, duties, and fees” provides exemption from court fees for petitions to be made to administrative courts.¹⁵ However, according to the lawyers, when petitions are made under the scope of the Compensation Law, administrative courts reject requests for legal aid and require petitioners to pay court fees and expenses. Lawyers point out that court fees are calculated on the basis of the compensation amount requested by petitioners, and state that in lawsuits concerning extensive damage to immovable property, IDPs are required to pay fees up to YTL 200-300 that very few of them can afford. Considering that this situation effectively annuls the possibility of going to court for IDPs, a special legal arrangement should be considered necessary under the Compensation Law to provide exemption from fees in administrative courts, in order both to facilitate IDPs’ access to the law, and to put pressure on commissions that tend to keep compensation amounts low or to arbitrarily reject petitions.¹⁶

1.4. FEAR AND MISTRUST AS FACTORS PREVENTING ACCESS TO JUSTICE

The Compensation Law covers not only damages to movable and immovable property, but also for death and bodily harm.¹⁷ However, at times the scope of the law may be interpreted erroneously or deficiently. A former headman of two neighborhoods in Batman that received a high number of forced migrants said that the expression “resulting from terrorism” in the law made people think only of evictions from villages, and that it was not generally known that deaths and murders by unidentified perpetrators are also covered within the scope of the law. Conversely, IDPs may think that in the absence of loss of life, mere property losses do not qualify for receiving compensation under the law. An IDP who returned to his village a short time ago stated that, although his village had been burned by security forces, he did not feel the need to file a petition under the Compensation Law because no deaths had occurred.

An IDP interviewed in Batman said that he would not petition the law because he was not a “terrorist.” The fear of possible consequences arising from petitioning the law causes IDPs to consider petitioning as complaining against the state rather than making a lawful claim. Bengi Yıldız, a lawyer, stated that IDPs are unaware that they have a right to file a petition under the law and that they regard the whole process as a fight against the state. This feeling can turn into a suspicion that is mutually-fed by both IDPs and the state. In an incident reported to the TESEV Working Group by İHD, officials from the Gendarmerie called villagers who had filed petitions under the law to their headquarters and accused them of “complaining to the commission

15 Official Gazette (2004a): Article 15.

16 Such a regulation was among the legal amendments proposed in the October 2005 report by the TESEV Working Group. Aker *et al.* (2005).

17 Official Gazette (2004a): Article 7.

about the Gendarmerie.” İHD officials believe that this arises from the fact that commissions ask the Gendarmerie for information in order to verify the claims made by IDPs. An IDP interviewed in the district of Gercüş whose father was murdered by unidentified perpetrators but who “would not petition the law out of fear,” believed that he would be interrogated at the gendarmerie headquarters because he spoke to the TESEV Working Group. This shows that fear and mistrust on the part of IDPs can serve to prevent their access to the Compensation Law.

The above examples not only demonstrate that the law has not been sufficiently and correctly introduced to IDPs, but they also point to a relationship between the state and the citizenry that is based on mistrust and fear. In this context, the most striking example encountered during the fieldwork in Batman was that a member of the Gendarmerie who accompanied the group on a visit to the Heybeli village in the district of Sason “to ensure the safety of group members” introduced himself to a villager as a journalist, asked for the names of the villagers that spoke to the TESEV Working Group, and videotaped the village and the villagers.¹⁸

2. GENERAL EVALUATION CONCERNING THE COMPENSATION LAW

Lawyers in Batman consider the Compensation Law a political measure taken by the Turkish government to appease the European Union (“EU”) on the road to eventual membership and in order to prevent the filing of petitions at the ECtHR. However, they do believe that it is a positive measure in its own right. According to Murat Çiçek, “the state accepting its responsibility is much more important than the ECtHR paying an additional YTL 10,000 in compensation.” He pointed out that both the reference to peace in the Preamble to the Law and the indemnification of damages caused by security forces mean, by implication, that the state has accepted its responsibility in the incidents that have occurred. Still, lawyers believe that the law contains significant problems. These criticisms can be grouped under four categories: 1) the narrowness of its scope in that it fails to provide compensation for non-pecuniary damages; 2) that it is based on the “social risk” principle which fails to anticipate fault on the part of the state; 3) that it provides very low amounts of compensation for death and bodily damages; and 4) that it carries the risk of unfairly excluding from its scope IDPs who had earlier been sentenced under the Anti-terror Law even if the alleged activities resulting in their prosecution were not related to the damages they have incurred during displacement - in other words, where they bear no responsibility for the harm they have suffered.

One of the points criticized by lawyers is that the scope of the law takes as its starting point 1987 instead of 1984, when the armed clashes - and therefore the material

¹⁸ Although the TESEV Working Group specifically requested the officials that village guards not be included in the security team accompanying the research team, there was also a group of village guards accompanying the group.

damages - actually began.¹⁹ Aydın pointed out that 1987 was also the year that the State of Emergency was declared. He also stated that the fact that the scope begins there, implicitly means that the state accepts that damages incurred since that time were caused by the State of Emergency regime. However, emphasizing that a law aiming at spreading damages to the whole of society through the principle of social risk should also cover damages incurred in the period 1984-1987, Aydın said that a state, guided by the rule of law, cannot limit its responsibility to administrative practices only and avoid compensating “damages caused by the organization [the PKK].” Another consequence brought about by the exclusion from the scope of the law damages incurred during this three-year period is discrimination among IDPs who have suffered similar human rights violations. An official from İHD stated that there were some IDPs who were forced to migrate in the years 1985-1986 but who were excluded from the scope of the law simply because of the date when the incidents occurred.

Another reason for the wide criticism of the law is that it is based not on the negligence, but strict liability of the state through the “doctrine of social risk based on the objective responsibility of the state”²⁰ However, “the reinforcement of trust towards the state, the *rapprochement* between citizen and state and contribution to peace”²¹ aimed at with the law can only be realized through the identification and punishment of the perpetrators of human rights violations. Many lawyers have expressed that, especially those families whose relatives have been murdered by unidentified perpetrators, do not consider compensation a sufficient recompense for “making peace with the state” and that they are in favor of going to court so that the perpetrators may be identified. In fact, some IDPs have said that “they will not forgive the state” unless an apology is proffered and the perpetrators are punished. The fact that some IDPs may choose to venture into a long and arduous process by taking their cases to court is an indication that the Compensation Law is far from fulfilling its aforementioned aims.

The fact that compensation amounts determined by the law for death, injury, and disability are very low is criticized by all lawyers, local officials, NGOs, and even some public officials.²² What is most at issue is that the nearly YTL 14,000²³ paid for death “cannot be the equivalent of life” in the words of Deputy Governor Mustafa Kaya.

19 Official Gazette (2004a): Provisional Article 1. For further information, see Chapter III.

20 *Ibid.*: Preamble.

21 The relevant sentence in the law is as follows: “Regardless of whether damages incurred by people are caused by terrorist organizations or by measures taken by the State during the fight with terrorism, the compensation of these damages in accordance with said principles will result in the reinforcement of trust towards the state, the *rapprochement* between citizen and state and a contribution to peace.” Official Gazette (2004a): Preamble to the Law.

22 For the compensation amounts determined for death, injury, and disability, see Chapter III in this book.

23 This is an approximate figure from the year 2005. For compensation amounts that change according to the civil servant salary coefficient, see Chapter III in this book.

Another problem related to the payment of compensation for damages of this kind is that the law foresees the same compensation in all situations, regardless of the special circumstances surrounding an incident or the circumstances of a particular IDP. According to the general principles of compensation law in Turkey and elsewhere, the compensation amount to be paid in cases of death, injury, and disability is determined in accordance with variables such as the person's age, profession, level of income, level of education, the number of inheritors, and the ages of any dependent children left behind. Illustrating this situation with an example, Özevin said that it was unacceptable that no differentiation should be made between victims under the Compensation Law, and that the same compensation amounts should be paid for the death of a 17-year-old and the death of a 60-year old. On the other hand, Özevin points out that paying victims' families compensation for loss of financial support will create a financial burden on the state that it cannot bear. According to him, the solution to this problem lies in keeping compensations to be paid for death and bodily damage at a fixed rate, but in increasing this rate to a level that will be acceptable for victims. According to others, in accordance with the general principles of compensation law, compensations to be paid for death, injury, and disability should be determined individually, according to the subjective conditions of each case.

The exclusion from the scope of the Compensation Law of those sentenced for terror-related crimes where they have incurred "damages arising from these activities" is criticized by many lawyers because of the problems this can cause during implementation.²⁴ According to Emin Ekmen, a lawyer, it is paradoxical that while former PKK members should be promised work and food under the Social Reintegration Law, "people displaced from their homeland who are involved in terrorism should be left out." According to him, it is comprehensible that damages incurred by IDPs resulting from their own actions should not be compensated. However, Ekmen added, during the State of Emergency the security forces referred to many incidents as if they were armed clashes and, therefore, it is very difficult to determine whether the damages incurred by IDPs had been caused by their own actions. Pointing out that the rights of innocent people may be violated in this way, Ekmen said that this law should be criticized so that "not one person should be denied their rightful due." According to Ekmen, commissions are faced with two options at this point: either to accept mistakes made in the past and to solve the problem through testimonial proof, or to adopt a "legitimizing approach towards the past" and to reject petitions recorded as clashes in the records of the Gendarmerie without conducting any due diligence. Ekmen said that adopting the first option "would be a revolution from the point of view of the state" but that the current approach was closer to the legitimizing approach.²⁵

24 Official Gazette (2004a): Article 2(f).

25 The implementation in Diyarbakır and Mardin verifies the concerns of Ekmen. A lawyer interviewed in Diyarbakır reported that in the petition of one of his clients who had had to leave his village in 1994

Finally, in this context, IDPs' attitude towards the Compensation Law should also be covered. According to officials from İHD, the majority of IDPs, who do not believe that "any good can come out of the state," petition the law via lawyers, while village guards and their families file petitions individually through the governorship. It should be born in mind that IDPs feel this way, not only because of having been displaced by security forces, but also specifically because they are mostly Kurds. The State of Emergency regime during which a separate legal regime had been created to govern the Kurdish-populated eastern and southeastern regions and the rights violations committed by security forces during that period has left a legacy of mistrust to the state on the part of the IDPs. NGO officials have said that although IDPs tell them their stories in detail, they are reluctant to put their whole stories down in the petitions they file with the commissions out of fear of being punished by the government. Moreover, the TESEV Working Group observed that there is a widespread opinion among IDPs that the petitions filed by village guards - civilian Kurds who have sided with the security forces in their fight against the PKK - are being prioritized by the commissions. The TESEV Working Group was unable to verify these claims because official documents obtained from governorships do not provide a breakdown of files according to type of petitioner. However, even the existence of such a perception constitutes a serious obstacle to the establishment of a strong relationship based on trust between the citizens and the state.

3. IMPLEMENTATION OF THE LAW

In June 2005, when the fieldwork was carried out, there were two compensation commissions in Batman. A third commission was formed following completion of the fieldwork. In the reply,²⁶ given by the Batman Governorship to the written request by TESEV under the Right to Information Law,²⁷ the founding dates of the commissions were given as follows: commission no. 1 on 1 September 2004, commission no. 2 on 10 February 2005, and commission no. 3 on 27 July 2005. However, when the number of deputy governors was reduced from three to two, commission no. 3 became null shortly after having been founded.²⁸ Because the much needed deputy governor

because of operations by the security forces, an employee from the commission secretariat had informed him verbally that the file was not missing any documents, but as a result of the General Information-Gathering carried out regarding his client, it was discovered that the Diyarbakır Public Prosecutor's Office had undertaken an investigation regarding his client in 2005. The lawyer sent a written request to the commission, stating that carrying out General Information-Gathering on a person who did not have a criminal record was in violation of the Compensation Law and requesting the information gathered about his client through this process. The reply sent from the commission, a copy of which was given to the TESEV Working Group by the lawyer, simply states that "work on the file is ongoing." Another lawyer in Diyarbakır said that the commission in Mardin had rejected a file concerning a deceased person on the basis of official records prepared by the Gendarmerie based on the statements of provisional village guards that the deceased was a "terrorist," and without relying on testimonial proof. Documents regarding both files are available among the records of the TESEV Working Group.

26 The request for information dated 28 July 2005, forwarded from TESEV to the Batman Governorship General Directorate of Press and Public Relations.

27 See Batman Governorship (2005b).

has not yet been appointed, Governor Haluk İmga has found a practical solution and has appointed the sub-provincial administrators of the districts of Beşiri and Hasankeyf in the capacity of deputy governors as the chairpersons of commissions no. 3 and 4 formed in the first months of 2006.²⁹

The fact that commission no. 1 was founded before the regulation entered into force in October 2004 is an indication of the importance given to the implementation of the Compensation Law in Batman. The formation of commission no. 2, following complaints by the Batman Bar Association that the implementation was proceeding very slowly, indicates also that the governorship pays attention to recommendations by the bar association. Also, the fact that Governor İmga has conferred powers of deputy governor to sub-provincial administrators in order to facilitate the formation of commissions no. 3 and 4 is indicative of how public officials with good will can find practical solutions to overcome limited resources.

The first fieldwork in Batman revealed that although commissions were dedicated and hard-working, as of 23 June 2005, only 314 out of a total of 4,830 petitions had been concluded.³⁰ It could be argued that this was caused by problems arising in the implementation of the law, such as insufficiency of human and other resources and the fact that commission members are unable to work full-time. However, as of 12 May 2006, by which time there were four commissions and human resources in the secretariat were almost tripled, the number of concluded petitions was still only 660.³¹ Admitting that “the rhythm had somewhat slowed down” in the implementation, Governor İmga stated that this could be explained by their prioritizing of the institutional restructuring in order to strengthen the secretariat. İmga said that, thanks to the increase in the number of commissions, along with faster and now more effective work on the part of the restructured secretariat, they would “gather speed” and the implementation in Batman would improve by autumn of 2006.³² The fact that so few decisions have been made 20 months after the formation of the first commission - at a time when the implementation should have been accelerated - raises doubts about whether it will be possible to bring to a conclusion all petitions within the two-year period required under the law.

Deputy Governor Kemal Cirit, interviewed during the fieldwork carried out in June 2005, stated that in a collective petition regarding damages to immovable property,

28 Phone interview with Zekeriya Aydın, Chairman of the Bar Association, 15 February 2006.

29 Interview with Governor İmga during fieldwork carried out in May 2006.

30 See *Batman Governorship* (2005a).

31 Information obtained from the *Batman Governorship* during fieldwork dated May 2006. According to up-to-date information obtained from the *Batman Governorship* while this book was being prepared, as of 14 June 2006, the total number of petitions filed was 9,699 and the number of petitions brought to a conclusion was 708. *Batman Governorship* (2006). For the chart compiled with this information, see Table 5.

32 For the restructuring of the Secretariat, see part 3.3 “The Working Conditions of Compensation Commissions” in this article.

compensation amounts of YTL 110,000 were paid to each of the 20 petitioners. As was previously noted, none of the files concerning damages to immovable property have been brought to a conclusion within the last year. According to Ahmet Sevim, a lawyer, agreement is generally reached on declarations of friendly settlement in the case of files regarding death, and compensation amounts are determined by law, but there might be problems in cases of immovable property. According to information provided by the commission secretariat, as of 12 May 2006, a total of YTL 5,474,598 was paid as compensation in Batman, and close to YTL 2 million of this was paid as compensation for the collective petition by more than 30 households in the Çatalısu village in the district of Hasankeyf.³³

3.1. IMPLEMENTATION CONCERNING THE SCOPE OF THE LAW

The expression “resulting from terrorism and the fight against terrorism” in Article 1, which describes the objective of the law, establishes a link of causality between damages incurred and actions of the armed organization or of security forces.³⁴ This situation presents the danger of excluding from the scope of the law those who were obliged to leave their villages because they felt unsafe and/or because they were deprived of the economic conditions in which they could earn a living. In fact, petitions by people in this situation are rejected in Hakkâri.³⁵

Upon request by the bar association, the Governorship of Batman has prepared a document entitled “List of Villages Abandoned Due to Terrorism.”³⁶ This list includes villages that were *abandoned* - not evicted - as a result of psychological pressure, in the form of “either become village guards or leave the village” and physical pressure, such as the setting on fire and destruction of villages, torture, and maltreatment exercised by the security forces; because of pressure exercised by the PKK, such as “do not leave the village, join the PKK!”; and because of lack of safety and economic difficulties caused by the environment of conflict. Although the title of the list might give the impression that it excludes villages whose population was evicted by security forces, and although governorship officials interviewed persistently emphasized that villagers had not been “evicted” but had “abandoned” - suggesting that security forces bear no responsibility in displacement - their places of residence, villages whose population had been evicted by the security forces were also included in the list. For example, an IDP interviewed in the İpragaz neighborhood of Batman, where a high number of forced migrants live, told the TESEV Working Group that villagers were evicted from the village of Dereli in the district of Gercüş by soldiers in 1994 and that said village is in the list of the governorship.

33 Information obtained from the Batman Governorship during fieldwork dated May 2006. For the situation of compensation payments in Batman as of 14 June 2006, see Table 5. Batman Governorship (2006).

34 Official Gazette (2004a).

35 For detailed information on this subject, see Kurban: “Internal Displacement and Reparative Justice: Implementation of the Compensation Law in the Province of Hakkâri” in this chapter.

36 This list is available among the records of the TESEV Working Group.

Therefore, the governorship list has the potential of making the law, the scope of which allows for a narrow interpretation, more accessible in its implementation to a larger group of IDPs. However, this approach by the governorship, which can dispel to a certain degree discrimination inherent in the text of the law, carries the risk of causing new problems because of further discrimination made among IDPs. The list includes only villages and hamlets that were completely abandoned or whose entire population was evicted. It, however, excludes those that were only partially abandoned or evicted. An IDP interviewed in the Petrol neighborhood of Batman stated that almost all of the 50 households abandoned the village due to pressure by the security forces to “become village guards” and that only village guards were left behind. However, the village of Büyükdere was not included in the governorship’s list.

According to lawyers, this list is used as a foundation for the implementation of the law and the fact that it does not include those villages that were partially abandoned or evicted presents the risk of excluding many IDPs from the scope of the law. Serhat Gönenç said that when filing petitions concerning villages not included in the governorship list, lawyers ask sub-provincial administrations for information regarding the reason for the eviction of villagers, and that the sub-provincial administrations at times provide them with reports stating that villagers were evicted as a result of terrorism, and that at times there is no reply.³⁷ However, Deputy Governor Tamer Orhan said that the list had nothing to do with the law and that it had been compiled in order to determine the infrastructure needs of villages where return will take place.³⁸ What decision the commissions will make when petitions concerning villages that are not included in the governorship’s list are filed, and when the relevant sub-provincial administration does not provide the necessary information regarding the reasons behind the displacement of villagers, constitute serious questions that need to be followed-up closely in the near future.³⁹

3.2. THE INDEPENDENCE AND IMPARTIALITY OF AND ACCESS TO COMMISSIONS

One of the points criticized by both lawyers and NGOs in Batman is the fact that six of the seven commission members are public officials and five of the six work under the leadership of the deputy governor who is also their manager. This criticism is based on the grounds that it casts a shadow on the impartiality of the commission. Mustafa Yıldız, a lawyer who serves on one of the commissions, said during his interview of June 2005 that this situation did not create any difficulties

37 Phone interview, 13 February 2006.

38 Phone interview, 16 February 2006.

39 Because as of May 2006, only one collective decision has been made regarding a case of evicted villagers. The other petitions have not yet been brought to a conclusion, as will be seen below. The implementation in this field will only become clearer in the near future.

and that, up to that time, he had never been obligated to issue a dissenting opinion in the decisions taken by the commission of which he was a member. Yıldız said that in two cases where he had considered dissenting, he had managed to convince the other members to issue a decision in accordance with the law. The TESEV Working Group observed at the time that as a consequence of the good will of governors and deputy governors, commissions were working harmoniously, fairly, and as fast as the law allowed. NGOs, local politicians, and lawyers were in agreement with this opinion and praised the work of Governor İmga and Deputy Governors Kaya and Cirit. According to Aydın, commissions were “working well” within the constraints of the law. It was observed that although Yıldız, who served on the commission chaired by Deputy Governor Cirit, had a very heavy workload and served free-of-charge on the commission, he enjoyed his work and was pleased with the results obtained. As the only non-civil servant in the commission, Yıldız stated that he worked in harmony with the deputy governor and with the other members. He stated that the deputy governor especially took great heed of his opinions as a lawyer.

During TESEV Working Group’s visit of May 2006, the situation had changed a great deal. The implementation of the law in Batman - which had been cited as “an exemplary province” the year before - had slowed down and regressed. According to Yıldız, following the ECtHR’s *İçyer* decision, which constituted a “turning point” in the implementation of the Compensation Law, there was a “significant regression” in the implementation in Batman. Lawyers pointed out that the government, which had worked hard and meticulously before the *İçyer* decision to guarantee that the commissions are accepted by the ECtHR as an “effective domestic legal remedy,” desisted from doing so after the decision, showing that *İçyer* played a role in this regression.⁴⁰ Another factor was the change in deputy governors in Batman. The lawyers said that at the time of Kaya and Cirit, who were experienced in the implementation of the law, the governorship was receptive towards civil society and had trust in lawyers who were members of the commissions; files were brought to a conclusion very quickly, but with the appointment of the new deputy governors, the implementation had slowed down, and the lawyers who served on the commissions were excluded from the decision-making processes. The developments that resulted in Aydın, the president of the Batman Bar Association, having to hold an internal meeting to evaluate the situation have been reported as follows: meetings were scheduled according to the programs of deputy governors and lawyer members of the commissions were given very short notice of the date of such meetings; in contrast to the past when deputy governors made an effort to reach an accord with

40 This opinion is shared by many lawyers interviewed in Istanbul, Diyarbakır, and Batman. They point out that circulars sent before the *İçyer* decision by the Ministry of Interior asking the commissions to accelerate implementation and award high compensation amounts stopped, and commissions “fell into lassitude.” That the Ministry of Foreign Affairs had sent letters to the commissions both directly and through the Ministry of Interior before the *İçyer* decision requesting that priority be given to files concerning petitions pending at the ECtHR and that work be sped up was also verified by a deputy governor.

lawyers before reaching a decision, now they behaved in a way that seemed to mean “if you wish to dissent, go ahead;” requests by lawyer members of the commissions to obtain up-to-date statistical information on implementation of the law were at times rejected by the secretariat;⁴¹ and commissions, which had previously worked in a transparent and participatory manner, were now subject to the discretion of the deputy governors who merely “informed the other members of the decisions he had made”⁴² on behalf of the commissions.

Lawyers also complained about the change in the attitude of the commissions. One such lawyer, Ahmet Sevim, stated that his request to obtain a copy of the expert’s report concerning the file of his client was rejected on the grounds that, in the words of an employee of the secretariat, “it would have given him the upper hand during settlement negotiations.”⁴³ Rauf Bozkurt, the coordinator of the secretariat for the commissions, called attention to the fact that this is a friendly settlement process and stated that “it was necessary to be tight-lipped in order not to let the opposing side acquire strength,” that they were not authorized to give out the experts’ reports as this could be considered a type of information which should be kept confidential even under the Right to Information Law, and that they had asked the opinion of the Ministry of Interior. Aydın said that lawyers were authorized to access all types of information which did not constitute state secrets or did not threaten public security and that this attitude was unacceptable. Furthermore, Aydın stated that in the next few days he would present Governor İmga with the report of the internal assessment meeting held at the bar association.

The TESEV Working Group did not have the chance to seek the opinions of the deputy governors who chaired commissions no. 1 and 2 and who were the object of criticism regarding the allegations of the lawyers, since both officials were out of town during the time of the fieldwork in May 2006. However, Governor İmga welcomed the TESEV Working Group warmly and instructed Osman Varol and Tarkan Keskin, the sub-provincial governors of Hasankeyf and Gercüş chairing commissions no. 3 and 4 respectively in the capacity of deputy governors, to answer the questions of the group. Varol and Keskin stated that meetings were scheduled in advance, that the lawyers were given notice of the meetings in good time, and that they made an effort not to hold meetings unless all members were present. Varol and Keskin also said that because

41 Aydın stated that the determining factor in him deciding to hold the meeting was that Yıldız’s request for information from the secretariat regarding the work of the commission of which he was a member in order to prepare for the meeting with the TESEV Working Group, was rejected upon the order of the deputy governor because this information “could be obtained under the Right to Information Law.” Stating that it was “unacceptable” that the work of a commission should be concealed from one of its members, Aydın said that this attitude conflicted with the spirit of the law and that it indicated that the lawyer was not in reality considered to be a commission member on equal footing with the rest of the members.

42 Aydın, 12 May 2006.

43 Sevim subsequently renewed his request in writing. As of 11 May 2006, he was awaiting word from the secretariat.

their commissions had been formed only a few months before and they had given priority to establishing databases,⁴⁴ they had only just begun assessing petitions.

At this point, the difficulties that commission members encountered because the commissions are not independent from the administrative government need to be underlined. As previously stated, six of the seven members of the damage assessment commissions are civil servants.⁴⁵ In accordance with the relevant provision of Law no. 657 on Civil Servants, “if the administration incurs damages due to intent, fault, negligence, or imprudence on the part of civil servants, the relevant civil servant is required to pay for the damage at the current market value.”⁴⁶ Therefore, civil servants who are members of the damage assessment commissions could face the risk of recourse for damages they might cause not only by intent or fault, but also by negligence or imprudence. In the words of Batman Governor İmga, this situation acts as “the sword of Damocles” on commission members. The deputy governors stated that the right to recourse constituted a heavy burden on commissions, and that although the implementation of the Compensation Law was not an administrative duty but a legal one, commission members were deprived of the immunity conferred on judges for their decisions in courts. This is a factor that partly explains the problems encountered in the implementation of the law, both in Batman and in other provinces, especially concerning public officials with a positive attitude toward this process.

3.3. THE WORKING CONDITIONS OF COMPENSATION COMMISSIONS

During the fieldwork carried out in May 2006, the TESEV Working Group observed that certain problems concerning the working conditions of commissions in Batman observed in 2005 had been overcome to a great degree thanks to the responsiveness of Governor İmga. While in June 2005 there were four employees in the secretariat, in May 2006 the secretariat consisted of 11 people under the direction of a coordinator.⁴⁷ However, the problems resulting from the law - which cannot be solved through the initiative of local administrators - are still present. The fact that commission members carry out this duty, in addition to their own jobs and without meaningful financial compensation,⁴⁸ not only slows down the assessment of the petitions, but

44 The databases include information obtained from various relevant public institutions to document the sale price of agricultural products, the dates of phone bills paid by IDPs, the dates of agricultural support premiums IDPs have received from the state, and the enrolment records of children attending schools in villages.

45 For the structure of the commissions, see Chapter III in this book.

46 Official Gazette (1965): Article 12: 2.

47 On the instruction of Governor İmga, Varol introduced the TESEV Working Group to the coordinator and the other employees and gave the group a tour of the secretariat building. Within the secretariat there are two employees and a legal practitioner for each commission.

48 According to an amendment made in the Compensation Law which came into force in January 2006, commission members have begun receiving a stipend per meeting, but the amount paid is no more than a symbolic “attendance fee.” Official Gazette (2006a). On this subject, see Chapter III in this book.

also renders the work of the commission - which is a judgment function - dependent on the members' senses of personal dedication and responsibility. Lawyers who are members of commissions have an additional problem in that, unlike civil servants, they do not have a monthly income. Yıldız said that this duty took up all of his time and left him no time to take on cases in order to make a living.

3.4. PROBLEMS ENCOUNTERED DURING THE ASSESSMENT OF PETITIONS

The major issue in the implementation of the law derives from the evidentiary burden brought on IDPs in proving the damages they had incurred. The executive regulation implementing the Compensation Law requires that IDPs prove their damages with documents such as official reports, health reports, and ownership titles.⁴⁹ The fact that documents that have never existed or that cannot be obtained by petitioners are required means that challenging the unlawful administrative practices that occurred during an extraordinary legal regime - the State of Emergency - are subjected to the routine legal process. Moreover, the regulation placing the burden of proof on IDPs - the majority of whom lack education, information, resources, and self-confidence - rather than on public officials who already are or should be in possession of said documents, is not only in conflict with the principle of equality, but also with the *Doğan and Others* decision of the ECtHR which states that under State of Emergency conditions the burden of proof lies with the state.⁵⁰ The extensive discretionary power given to commissions in this matter renders the process dependent on the good will of commissions and results in inconsistencies in implementation among provinces.⁵¹

3.5. PETITIONS CONCERNING DEATH, INJURIES, AND DISABILITIES

During the June 2005 fieldwork, implementation was focused predominantly on files concerning death and bodily damage. Lawyers stated that the major difficulty that they encountered arose from the burden of proof placed on petitioners. Sedat Özevin said that the requirement of providing an inheritance certificate created great problems particularly in cases of disappearance. In effect, because those who had

49 Official Gazette (2004b). The amendment made to the regulation on 15 September 2005 has made it possible for petitioners to present commissions with any document and information they have rather than having to obtain specific documents, alleviating the heavy burden of proof that rested on IDPs. Official Gazette (2005). However, because the old regulation was still in force in June 2005 when the Batman fieldwork was carried out, the assessment here contains findings from that period as well. Moreover, in spite of the amendment made in the regulation, it is clear that there are still difficulties in the implementation arising from the burden of proof.

50 ECtHR (2004f). For the *Doğan and Others* decision, see Chapter IV, Kurban: "Human Rights Watch, Kurdish Human Rights Project, and the European Court of Human Rights on Internal Displacement in Turkey" in this book.

51 For example, while the commissions in Batman and Diyarbakır are relatively flexible in evidentiary matters and permit petitioners to prove their damages through testimonial evidence, in Hakkâri the petitions of IDPs who cannot present official documents can be rejected.

disappeared were still considered alive in census records, it was necessary to obtain a legal declaration of presumed death - a document that courts "were not very keen" on providing. Pointing out that only legal heirs are permitted to file lawsuits for a declaration of presumed death, Özevin emphasized that multiple problems arise regarding unofficial marriages. This situation results in unfairness in implementation between legal heirs and unofficial relatives of the disappeared, and of those who are considered officially dead. Moreover, while the disappearance of people in custody during the State of Emergency has been established several times by the ECtHR, commissions still require evidentiary proof of death for people who had disappeared in that period.

Files concerning murders by unidentified perpetrators constitute another problematic area. Commissions' literal interpretation of the expression "resulting from terrorism and the fight against terrorism," and the heavy burden of proof brought by the regulation have resulted in the commissions' requiring that files concerning murders by unidentified perpetrators be forwarded to the State Security Court.⁵² According to Sedat Özevin, implementation is as follows: in cases where the files concerning murders by unidentified perpetrators had earlier been forwarded by the Public Prosecutor's Office to the State Security Court, which has thereupon reached a decision of lack of jurisdiction, the commissions decide that these murders resulted from terrorism and that they fall within the scope of the law. Yet, in petitions regarding cases where the Public Prosecutor's Office had not carried out an investigation in the past, the commissions ask petitioners to provide a decision of lack of jurisdiction. Stating that this is virtually impossible, Özevin believes that murders by unidentified perpetrators should automatically be considered as resulting from terrorism, even if their files had not been forwarded to the State Security Court. Rauf Bozkurt, coordinator of the commission secretariat stated that only one or two petitions concerning murders by unidentified perpetrators had been rejected. He said that these files contained neither a decision not to prosecute, nor a State Security Court record nor even testimonial proof, and that the commissions were unable to find any reason for concluding that these incidents fell within the scope of the Compensation Law. Drawing attention to the fact that there is danger of recourse if commission members unlawfully award IDPs compensation, Osman Varol, who chairs a commission, pointed out the drawbacks that would result from their point of view if they considered such petitions within the scope of the law.

The persistent attitude of the commissions concerning the forwarding of files to the State Security Court as a condition for consideration under the scope of the law is not limited to murders by unidentified perpetrators. In 2005, Mustafa Yıldız, who

52 As stated above, the June 2005 fieldwork was held before amendments were made to the regulation. Because commissions in Batman gave priority to death and injury, most of these petitions were dealt with before the amendment to the regulation on 15 September 2005.

serves on a commission as a lawyer, gave an example illustrating the fact that commissions feel “more positive” about files which have been forwarded to the State Security Court. In the petition filed by the parents of two children who died while playing with a hand grenade in a village in the district of Sason, the other members of the commission were of the opinion that, as the incident had not been forwarded to the State Security Court, it had not resulted from terrorism and did not fall under the scope of the law. Stating that this erroneous opinion derived from the fact that commission members were not knowledgeable about legal procedures, Yıldız said that, in such cases, files were never forwarded to the State Security Court as a matter of law and the parents of the children were generally brought to trial in ordinary courts for manslaughter by negligence. In this particular case, Yıldız had managed to convince the other members to include this petition under the scope of the law. However, during an interview in May 2006, Yıldız stated that there were petitions concerning death and injuries that had been rejected because of missing documents concerning lack of jurisdiction or of a State Security Court decision. Yıldız said that, although the post-amendment regulation considered the petitioner’s testimony as the principal evidence,⁵³ by asking for definite proof, commissions unlawfully placed the burden of proof on the IDPs.

3.6. PETITIONS CONCERNING DAMAGE TO VILLAGE PROPERTY⁵⁴

Petitions regarding damage to movable and immovable property in villages constitute the files where commissions encounter the most difficulties and where the longest delays occur in the assessment process because they require on-site investigations. During the first fieldwork in Batman, commissions had only recently begun assessing these petitions and had just completed the on-site investigation for petitions made by the residents of a village in the district of Hasankeyf. There are several reasons for this delay: lack of time and resources for commission members, prioritization of petitions concerning death and injury because compensation amounts for such petitions have been set by law, indecision arising from the fact that the method of on-site investigation is not pre-determined in the regulation, the political nature of cases involving eviction of villagers by security forces, and lack of safety due to the resumption of clashes in the region. However, during its visit in May 2006, apart from the village in the Hasankeyf district of Batman mentioned above, the TESEV Working Group found no other file regarding the eviction of villagers that had been brought to a conclusion.

The fact that on-site investigations in Batman were initially held by damage assessment commissions with the participation of all members, slowed down the

53 Official Gazette (2005).

54 The implementation concerning damages to movable and immovable property in villages, which constitute a sub-heading under the general heading of “damages to movable and immovable property” will be examined here.

period of assessment for each file. In fact, as of the end of June 2005, the on-site investigation for 40 files in only one village in the district of Hasankeyf had taken place, but the petitions had not yet been brought to a conclusion. The reason that 10 petitions concerning immovable property were concluded was because the on-site investigations of those petitions had been carried out by administrative courts in previous years. Considering that as of 23 June 2005, 4,178 of the 4,830 petitions required on-site investigation, this result is a cause for concern.⁵⁵ At the beginning of 2006, the implementation in Batman underwent a change and the on-site investigations were transferred to experts' commissions formed in districts. The technical reports prepared by these commissions - which have no power of decision - are forwarded to damage assessment commissions in the provincial center. As of May 2006, on-site investigations in districts have gathered speed but no other file has yet been brought to a conclusion. Governorship officials have said that decisions regarding village files will be undertaken after the on-site investigations have been completed.⁵⁶

The implementation regarding damage to property caused by security forces who had allegedly destroyed and burned down moveable and immovable property in villages is closely connected to how much importance the commissions will attribute to information supplied by the Gendarmerie on the cause of displacement in these villages. Incident reports that petitioners are asked to provide the commissions with constitute a burden of proof impossible to meet by IDPs who claim that they were evicted from their villages by the security forces. Aydın has said that some lawyers have asked sub-provincial administrations for incident reports regarding the eviction of villagers by security forces, but that sub-provincial administrations rely on the Gendarmerie for the provision of such information. However, Aydın says that the records held by the Gendarmerie state that villages were abandoned because of the pressure to join the PKK or because villagers left of their own accord, and he objects to asking the Gendarmerie for information on the grounds that the Gendarmerie was "party to the clashes under the State of Emergency" and it "cannot overcome the reflex [to protect the state]." According to Aydın, the issue of burden of proof can and should be overcome by testimonial proof.

A document obtained by Serhat Gönenç, a lawyer, verifies Aydın's concerns. Before the governorship list was published, Gönenç asked the sub-provincial administration for information regarding why the residents of the Kıymılı hamlet of the Yazıhan village in the district of Beşiri were evicted, in relation to the files of close to 40 clients from that hamlet. According to the document entitled "Chart Showing Villages and

55 See Batman Governorship (2005a).

56 As of 14 June 2006, the number of files that required on-site investigation was 8,709 out of a total 9,699: Batman Governorship (undated). For the table compiled from the document obtained from the governorship, see Table 5 in this book.

Hamlets That Have Been Deserted, Villages and Hamlets Where Return has Taken Place and Villages and Hamlets that Remain Deserted within the Beşiri District Gendarmerie Command's Area of Responsibility,"⁵⁷ the "reason for deserting" 21 places of settlement - among which the hamlet of Kıyımlı figured - was "terrorist activity in the region and pressure by terrorist organizations, economic, and social factors." This situation is an indication of the Gendarmerie's persistent attitude that there are no villages or hamlets whose residents have been evicted by the security forces. Also, the fact that a standard reply, which contains only three different reasons, should be given as the main reason for abandoning each and every place of settlement casts doubt on the entirety of the list. Furthermore, the chart of the Gendarmerie also contains a significant contradiction which could be determining for decisions regarding petitions to be made from these places of settlement: while the first two reasons point to forced migration and thus include the place of settlement within the scope of the law, the "social and economic reasons," which in actuality mean voluntary migration, can result in petitions being rejected if this chart is accepted as evidence by the commissions. Furthermore, the fact that the "reason for deserting" the villages and hamlets in this list should be given as "due to terrorism" in the governorship list and that there should be no mention of "economic and social reasons," indicates inconsistency between the official documents of two public institutions.

During the 2006 fieldwork, the TESEV Working Group learned about developments that served to verify the lawyers' concerns. President of the Bar Association Aydın stated that the commissions had instructed the sub-commissions "not to carry out on-site investigations if the Gendarmerie supplied information stating that villagers had migrated of their own accord," and that some petitions had been rejected for this reason without even having recourse to testimonial proof. Yıldız said that although they had cautioned the sub-commissions about the fact that only the damage assessment commissions in the province have the power of decision and that they should carry out on-site investigations and gather evidence regardless of the information coming from the Gendarmerie, this warning was not taken into consideration by the sub-commissions. Yıldız explained that a person serving in the experts' commission told him that in cases where there was a discrepancy between the testimony of the petitioners and the information provided by the Gendarmerie, the deputy governor had instructed them to base their decision on the latter. Yıldız said that commissions in the province had not yet dealt with files of this type. Governorship officials to whom the TESEV Working Group reported these problems stated that they did not base their decision on documents from the Gendarmerie, but they "took them into consideration as explanatory documents."⁵⁸

57 See the Beşiri District Gendarmerie Command (undated).

58 Sub-Provincial Administrator Osman Varol, who acts as chairman of commission, in the capacity of deputy governor.

Another concern expressed by lawyers relates to the way in which the databases that have been prepared by the secretariat will be employed by the commissions.⁵⁹ Officials from the governorship have stated that the objective of the database was to determine whether petitioners, who request compensation on the grounds that they could not access their property, did not, in actuality, access their property in said period of time. Pointing out that experts' reports might be erroneous due to witnesses' providing erroneous information,⁶⁰ they said that in such cases they determine through the database whether people were in actuality able to access their property or not.⁶¹ According to Aydın, who understands that such a measure should be taken by governorship officials in order to prevent the exploitation of the law, what matters is *how* the database is used. Aydın believes that if databases remain under the exclusive reach of the sub-commissions or the secretariat and if the damage assessment commissions - which are the only authority with power of decision - are not provided with access to the databases, implementation cannot be transparent.

Another problem encountered by lawyers is the probability that petitions made from the district of Sason might be rejected because villages in that region are built on forest land. Aydın states that much of the land that was later transformed into residential areas was shown as forest land in the forest land map dated 1956 and that, if the provision of the Law on Forest Land stating that "places recorded as forest land cannot become private property" is implemented regarding this map, all petitions coming from Sason - 95 percent of which is built on forest land - will be rejected. Aydın said that no decision had been made yet on these files, but that there was an inclination towards rejecting them. Varol and Tarkan Keskin, who were interviewed on this matter in Governor İmga's office, stated that making use of forest land was a crime and that illegal property on such land could not be considered within the context of ownership rights. Pointing out that files originating from Sason are beyond the authority and power of the commissions, Varol and Keskin said that they had asked for the Ministry of Interior's view and that they would make their final decision in accordance with the reply from the ministry.

3.7. FOLLOWING İÇYER, IS IT STILL POSSIBLE TO TAKE EVICTION CASES TO ADMINISTRATIVE COURTS?

The probability that petitions in Batman that come under the scope of the law might be rejected on the grounds that damages cannot be proven because of the burden of

59 For information on the databases, see footnote 44.

60 Varol pointed out that the landownership structure in Batman, which consists of few landowners possessing the majority of the land, may encourage people to include false evidence in depositions.

61 For example, in order to test the claim of a person who requested compensation on the grounds that he had not had access to his land for 10 years, the database concerning the sales of agricultural products was inspected to see whether he had sold any products during said period.

documentation required by the commissions, brings to the forefront whether it is still possible to take eviction cases to court following the *İçyer* decision made by the ECtHR. In fact, in theory, people whose petitions are rejected or who consider the settlement awards too low reserve the right to go to court and subsequently, to the ECtHR. However, in practice, the number of people anticipated to choose, or rather be able to choose, this course of action is very low.⁶² The major reason for this, as mentioned before,⁶³ is that petitions to administrative courts are not exempt of legal fees, that courts generally reject legal aid requests by lawyers, and that IDPs are in no financial condition to venture into such long legal processes. Stating that IDPs are “people who struggle to make a living,” Aydın says that very few people will petition the ECtHR and that the majority will not even go to the administrative court.

4. CONCLUSION

The province of Batman quickly turned from a relatively good example into a negative one in the implementation of the Compensation Law. This demonstrates how the process rests on a delicate political balance. In addition to the lassitude the ECtHR’s *İçyer* decision has caused on the part of the local administrators and the central government, the commissions’ lack of independence from the central administration has also played an important part in the regression in Batman. The negative change brought about by the appointment of new deputy governors especially is an indication that success here depends on the will and effort of public officials. However, the implementation of a law that is binding for both the government and public officials cannot be subject to arbitrariness. In a state governed by the rule of law, where the executive are bound by rules, inconsistencies between provinces and even within the same province, in the implementation of a law can neither achieve the “strengthening of trust towards the state” aimed at by the Compensation Law nor be in accordance with the principle of the rule of law.

There are significant current and potential problems concerning implementation in Batman. First of all, the role played by the security forces in the violation of rights that occurred under the State of Emergency and especially in the eviction of villagers has still not been accepted. Both the persistent statements by public officials that villagers “were not evicted,” as well as official documents such as the chart of the Gendarmerie and the list of the governorship discussed above are an indication of the fact that the official policy is far from acknowledging the responsibility of the state in displacement. This attitude not only prevents the “*rapprochement* between citizen and state” aimed at in the Preamble to the Law, but it also results in many

62 This view is supported by data regarding implementation. As of 14 June 2006, parties failed to settle in only four files out of the 442 petitions that were concluded with the awarding of compensation. Besides, it is still unclear whether these four petitioners will choose to go to court. Furthermore, as of the above date, among the 100 petitions that were rejected for being outside the scope of the law, there may be petitioners who opt to present their cases in court. See Table 5 in this book.

63 See Part 1.3 “Legal Aid” in this article.

IDPs being unfairly left outside the scope of the law. Therefore, in order for the implementation of the law to be accelerated and improved, both the central government and public officials in Batman need to accept the political responsibility of the security forces' role in the violation of rights. Another step that needs to be taken is that commissions should be cautious about information received from the Gendarmerie. In cases where there are inconsistencies between this information and statements by IDPs, the problems must be overcome through on-site investigations and testimonial proof. A macro change of this type in the general political attitude would not only solve many micro problems encountered in the implementation of the law, it would also make it possible for IDPs to see the Compensation Law as an "effective domestic legal remedy" in the real sense of the word and to trust in the system. This would constitute significant progress in the achievement of "peace" as aimed at with the law.

NGOs and lawyers also must play an important role toward the achievement of peace. One of the most negative legacies of the State of Emergency regime has been the mutual feeling of mistrust and suspicion it has left in the relationship between the state and citizens. Especially at a time when armed clashes have resumed and when the political environment is strained, civil society, which acts as a bridge between the state and the people, carries great responsibility in achieving an environment of peace. Lawyers need to take into account that members of damage assessment commissions work in the shadow of the risk of recourse and they need to avoid abusing the process and to make an effort to ensure that their clients claim compensation for real damages they have suffered. Regional bar associations also need to play an important role from this point of view, as it is not only the compensation of financial damages that is in question, but also a significant step taken towards repairing the damage brought to the relationship between the state and citizens under the State of Emergency and toward achieving peace and reconciliation.

Finally, in spite of the problems in its content and implementation, the Compensation Law is without a doubt a very important and unprecedented step towards remedying the human rights violations that occurred under the State of Emergency. However, as such, it is also a much delayed and insufficient step. IDPs' demands for "justice" cannot be reduced merely to the compensation of their pecuniary damages. On the contrary, what they mean by "justice" is the identification and punishment of the perpetrators of human rights violations (such as murders by unidentified perpetrators, the eviction of villagers, disappearances under custody, and torture) which cannot be fathomed in a state under the rule of law. However, as Prime Minister Recep Tayyip Erdoğan mentioned during his visit to Diyarbakır in summer of 2005, such a step would mean that the state would be accepting the mistakes it has made in the past and that it would work hard towards achieving peace. Otherwise, the Compensation Law will be nothing more than a "technical" measure enacted in order to gain EU membership, which would make it an empty promise indeed.

Internal Displacement and Social Exclusion: Problems Encountered by Internally Displaced Persons in the Provinces of Istanbul and Diyarbakır

DENİZ YÜKSEKER

Internal displacement in Eastern and Southeastern Turkey in the 1990s triggered a number of problems including urban poverty, lack of access to education and health services, lack of social security, unemployment, and discrimination within urban spaces. Moreover, internally displaced persons (“IDPs”) who wished to return to their original places of settlement encountered many significant socio-economic obstacles. It is possible to examine all of these problems within the framework of the “social exclusion” concept used in social policy work. The main argument of this article is that internal displacement in Turkey has created multi-dimensional processes of social exclusion. The article seeks to examine these processes in light of the findings of the fieldwork that the TESEV Working and Monitoring Group on Internal Displacement in Turkey (“TESEV Working Group”) carried out in Diyarbakır and Istanbul.¹

The concept of social exclusion, used both in the social policy literature of the European Union (“EU”) as well as in studies on poverty in developing countries, expresses the consequences of a series of intertwined processes. The term social exclusion indicates that in an environment where most citizens benefit from certain economic, political, social, and cultural activities, other citizens cannot benefit from these activities, and are, therefore, excluded. Most researchers working in this field agree that social exclusion consists of multi-faceted processes and that it arises from more than one source/factor.² Taking as a starting point the argument that social exclusion is a multi-faceted process with multiple causes, this article examines the many dimensions of social exclusion caused by internal displacement.

The following part will explain that internal displacement results in processes such as 1) the loss of and inability to access traditional means of livelihood; 2) inability to benefit from social citizenship rights; 3) housing problems; 4) poverty and inability

1 TESEV Working Group member Deniz Yüksekaker carried out fieldwork in Diyarbakır in February 2005 and in Istanbul in July and August 2005. This article is based on interviews held with one or more members of about 50 internally displaced families in Istanbul and Diyarbakır. Şefika Kumral worked as a research assistant in Istanbul; Harun Ercan, Şefika Kumral, Berna Öztekin, Gülistan Özdemir, and Öznur Acicbe worked as research assistants in Diyarbakır. Internally displaced families in Diyarbakır and Istanbul were reached with the help of non-governmental organizations (“NGOs”). Pseudonyms have been used for internally displaced persons who have been quoted in this article.

2 See Atkinson (2000), Byrne (1999), Du Toit (2004), Hayton (1999), and Percy-Smith (2000).

to compete in the labor market; 5) exploitation of child labor; 6) inability to benefit from the right to education and from educational opportunities; and 7) being subject to discrimination in urban spaces, and, therefore, also results in social exclusion. Health problems and the inability to access healthcare services, which are also caused by internal displacement, will be examined in other parts of this book.³

The common consequences of all of these factors are urban poverty and social exclusion. However, internal displacement is certainly not the only reason behind urban poverty and social exclusion which have been the subject of much discussion in Turkey over the last ten years. Social exclusion in Turkey is fed by many overlapping economic and social factors including the impact of the economic crises of 1994 and of 2001, and the consequences of neo-liberal economic policies, such as the transformation of the informal urban housing market that caters to low income people, changes in the urban labor market, the removal of agricultural support policies, and privatization of public enterprises.⁴ Under Turkey's current socio-economic conditions, IDPs were pulled into processes of social exclusion once they arrived in large cities such as Diyarbakır, Adana, Mersin, Ankara, İzmir, and Istanbul. The following will attempt to explain these views using examples of internally displaced families' experiences.

1. INABILITY TO ACCESS TRADITIONAL MEANS OF LIVELIHOOD AS A CONSEQUENCE OF DISPLACEMENT

The displacement that occurred in the first half of the 1990s caused the loss of "traditional" lifestyles based on agriculture and animal husbandry for hundreds of thousands of people living in rural areas. It is known that subsistence agriculture (restricted to meeting household needs) is carried out especially in the highland areas of the region, with sheep herding in pasture grounds, whereas market-oriented agriculture is carried out in the plains. As a result of migration to urban areas, people lost access to both of these agricultural activities and became dependent on the market economy for even their most basic needs.

This fact was expressed by almost all IDPs that were interviewed by the TESEV Working Group. For example Yunus (24), who, along with his family, had to abandon his house in a village in the Hozat district of Tunceli in 1994, said the following on such loss of livelihood: "...at that time, when the villages were inhabited, both tradesmen in the city and in the towns made money, everybody made money. You made money in the village; you sold your produce from the village in the city, and people in the city made money."

3 For more information on this subject, see Çelik: "Evaluation of Fieldwork Conducted in the Province of Batman: The Socio-Economic Consequences of Internal Displacement and Obstacles to Return" and Aker: "Evaluation of Fieldwork Conducted in the Province of Hakkâri: Causes and Psychological and Social Consequences of Internal Displacement and the Process of Return" in this chapter.

4 See for example Keyder (2005) or Buğra and Sınmazdemir (undated).

Naile (43), who migrated from the Hani district of Diyarbakır to Istanbul in 1992, said that back home they used to make a living cultivating their fields:

If one person works in the village, he can look after ten children. But here [in Istanbul] if one person works, could he ever look after ten children? The children are starving... If it hadn't been for the clashes, we would have still worked in the fields; we would buy animals or open a grocer's shop. I mean, we would have been content. But here it isn't possible to live comfortably. For example, breakfast here costs us five to ten million lira (YTL 5-10).⁵ You go to the market, you spend fifty to one hundred million (YTL 50-100). It wasn't like this in the village. For example, here sometimes I can only buy stale bread for 5 million (YTL 5).

Derya, whose family abandoned their village in 1992, following a raid by the Kurdistan Workers' Party (*Partiya Karkerên Kurdistan* - "PKK") and settled in Van, had similar thoughts on the issue: "Life in the village is much more comfortable. There you grow your own produce and you live off it."

Besides believing that earning a living is difficult in the city and easier in the village, internally displaced families have also been deprived of certain economic opportunities that "voluntary" migrants have benefited from. An important livelihood strategy of individuals and families in the course of urbanization is to procure part of their staple food needs through provisions brought regularly from the village provided by the relatives who remain in the village and continue to engage in agricultural production.⁶ Eviction from their villages has largely prevented families from getting provisions from the village.

On the other hand, abandoning the traditional lifestyle of the village and suddenly moving to the city has had the most profound cultural effect on adults who were over 50 at the time of the migration. Many people in this age group interviewed in Diyarbakır and Istanbul were very nostalgic about life in the village. Those who would wish to return to the village if the opportunity arose are nostalgic about how they cultivated their orchards and vineyards and raised livestock; they complain about living a prison-like life in the city. According to what they and their children say, most people in this age group have been unemployed since their move to the city. As a result, internal displacement has transformed many people who once were agricultural producers into destitute consumers in the cities. Thus, internal displacement has brought about not only a *horizontal* displacement, but also a *vertical* and *downwards* displacement. Therefore, from the moment internal displacement began, a process of social exclusion simultaneously began for the families in question.

5 As of June 2007, YTL 1 (*Yeni Türk Lirası* - New Turkish Lira) equals to USD 0.755.

6 See for example Erder (1998).

At this point, the following question could be raised: would the return to the village not be a solution for those families having difficulties with economic survival in cities? Other parts of this book deal with obstacles to return to villages and the heterogeneity of the views in internally displaced families on the subject of willingness to return among different age groups and among men and women. In response to the question above, a brief overview of the following issues will help to illuminate the matter. First, most of the villages from which residents have been evicted are in a state of disrepair and are inadequate for sustainable lifestyles. The infrastructure of these villages is inadequate, both in terms of infrastructure such as piped water and electricity, and in terms of public services such as education and healthcare. Moreover, serious measures need to be taken for the reinvigoration of the agricultural sector. In addition, now that more than 10 years have passed since the eviction of IDPs from their villages, their understanding of “a returnable village” has undergone several changes. Women, especially those under the age of 45, and most of the young generation do not wish to return to the village. When women were asked under what conditions they would consider returning to the village, education opportunities for their children and healthcare services constituted top priorities. For example, in the case of Ayşe (38), who was forced to migrate to Istanbul with her husband and children when they were evicted from their hamlet in the Karlıova district in the province of Bingöl in 1993, her two daughters were able to graduate from high school in Istanbul, and her husband had social security coverage so she was able to see a doctor or go to a hospital for her health problems. When asked under what conditions she would consider returning to her hamlet, Ayşe said:

Of course, if living conditions were different, I would go back. Of course I would go, why shouldn't I? ... But only if it were as I said. Do you know how many pregnant women died on the road from the village to the hospital? At that time, when I lived there [in our hamlet] there was one nurse, a midwife. Women used to die on the way to the hospital ... If living conditions were more modern I would go ... Even if houses were built [with the help of the Return to Villages and Rehabilitation Project (“RVRP”)], I wouldn't go back as long as conditions are the same. There is no help there, no healthcare, there is nothing. You wouldn't be able to bear it for 24 hours ... I can't go there.

Ayşe's view on return reflects the “rising expectations” regarding life in the village by those women who have been able to set up a life in the city. The crucial point here is that, even if their living conditions in the city are less than satisfactory, the idea (if not the practice) of having access to piped water, schools, healthcare clinics have raised many women's expectations about a decent lifestyle in villages. Similarly, young people who were brought up in the city and who have been able to find work do not wish to return. Yunus from Tunceli, quoted above, said: “My parents still want to return. But I don't want to. I came to Istanbul when I was very young; I've still got

things to do.” Zarife (19), who left her village in the Kulp district of Diyarbakır when she was seven years old and who now lives in the provincial center of Diyarbakır, said that even if her parents returned to the village, she would want to stay in the city. Zarife, who works as child caretaker, said: “What can I do? I’m not used to life in the village...”

2. THE VIOLATION OF SOCIAL CITIZENSHIP RIGHTS AS A RESULT OF DISPLACEMENT

The report by the investigation commission of the Turkish Grand National Assembly (“Turkish Parliament”) underlined that the eviction of villagers from their homes was unlawful and that, therefore, certain constitutional rights had been violated.⁷ In addition to the fact that forced migration happened suddenly and in a traumatic manner, because it was not carried out in accordance with any law, IDPs were not compensated for their damages until very recently and they were not provided with any financial/in-kind aid until at least 1999. Therefore, internally displaced families have not been able to benefit sufficiently from the constitutional rights conferred by the principle of “social state under the rule of law” which is one of the founding principles of the Turkish Republic. These rights can be referred to as “social citizenship rights,” or more generally as “social rights.”⁸ In fact, in research on social policy conducted in Turkey in recent years, social aid and social services have begun to be evaluated in terms of citizenship rights. Such studies argue that the strengthening of social rights will alleviate problems of social exclusion.⁹

The following example illustrates the connection between the violation of social citizenship rights and internal displacement. In cases where people are displaced from their homes in the course of development projects such as the construction of

7 In the parliament report, the articles of the constitution violated by the eviction of villagers were listed as follows: the principle of equality under the law (article 10); the right of all citizens to protect and develop their lives (article 17); respect for private and family life (article 20); respect for domicile (article 21); the right to property (article 35); the right to the protection of basic rights and freedoms (article 40); the right to education (article 42); and the right to just compensation for the expropriation of property (article 46). Turkish Parliament (1998).

8 Here, the concept of social citizenship is borrowed from T.H. Marshall’s classic work on citizenship. Marshall defined citizenship as the status bestowed to full members of a society and he stated that everyone holding citizenship status carries equal rights and duties. According to Marshall, historically citizenship rights in modern Europe started with the granting of *civil rights* (freedom of speech, thought, and belief, the right to own property and to conclude contracts, and the right to justice); *political rights* (the right to vote and get elected and participate in the exercise of political power and the political process) were acknowledged later; *social rights* (the right to a modicum of economic welfare and security, the right to share in full in the social heritage, the right to live the life of a civilized being according to the standards prevailing in the society) were the last to be acknowledged. Marshall (1950). Although it was criticized for reflecting an ideal rather than reality, Marshall’s definition of citizenship continues to form a basis for current research on citizenship. See for example Isin and Wood (1999) or Holston and Appadurai (1999). As was stated at the beginning of this article, the concept of social exclusion conveys the condition of being unable to benefit from said rights of citizenship.

9 See for example Buğra and Keyder (2003), Buğra and Sinmazdemir (undated), and Buğra (undated).

dams, or as a result of natural disasters, households whose property was expropriated or who lost their houses are given financial compensation and/or provided with housing according to longstanding practices under Turkish public law, and in accordance with the responsibilities of the state toward its citizens deriving from the constitutional principle of “social state.” However, no practices along the same principle took place following the displacement that occurred under the State of Emergency in Eastern and Southeastern Turkey. Considering that Law no. 5233 titled “Law on Compensation for Losses Resulting from Terrorism and the Fight against Terrorism” (“Compensation Law”) was only enacted in July 2004 and began to be implemented in October 2004, it is evident that the compensation of financial losses has been delayed by approximately ten years. In this ten-year period practices, such as the provision of housing, food aid, etc. for IDPs, were extremely insufficient. The following are the few cases in which a limited number of families were able to receive some form of aid. Some families that had been evicted from villages in the Hozat and Ovacık districts of Tunceli were settled into post-disaster housing in district centers; likewise, a few hundred families from the Lice district of Diyarbakır were settled into housing projects that had been built for survivors of a previous earthquake and for Iraqi refugees, and houses were built in Van for a few hundred internally displaced families some years after they were forced to migrate. In Tunceli and Van, some families received limited amounts of cash and food aid via the Social Aid and Solidarity Foundation (*Sosyal Yardımlaşma ve Dayanışma Vakfı* - “SYDV”). Yet, apart from these few examples, families from the provinces of Bingöl, Mardin, Batman, and Diyarbakır interviewed in Istanbul, and families from the districts of Lice, Kulp, and Hani interviewed in Diyarbakır, stated that they had not received any help from any institution in the first years after the migration. As a result, it would not be incorrect to say that aid for IDPs covered a very limited number of people and, that in any event, it was provided too late.

Likewise, aid toward return to villages was also provided very late. Although “Return to Villages Project” was initiated in 1994, the RVRP covering the whole of the region under the State of Emergency was not enacted until 1998.¹⁰ As discussed in detail in other parts of this book,¹¹ the RVRP is far from meeting the needs of people who wish to return to their villages.

In spite of all of this, especially in the 2000s, IDPs have increasingly been able to benefit from certain social aid programs available throughout Turkey. For example, interviews held in Diyarbakır and Istanbul revealed that ownership is quite widespread.¹² Of the currently valid Green Cards, 29 percent have been

10 See Ayata and Yüksekler (2005) and Ministry of Interior (2004).

11 See for example Çelik: “Evaluation of Fieldwork Conducted in the Province of Batman: The Socio-Economic Consequences of Internal Displacement and Obstacles to Return” in this chapter.

12 Green Card is a generic poverty alleviation scheme that provides free health care and meets 80 percent of the medication costs of citizens below a certain income level.

distributed in the 14 provinces within the scope of the RVRP.¹³ The ratio of Green Card owners in RVRP provinces to the total population of these provinces is 44 percent; the ratio of Green Card owners throughout Turkey to the total population is 16 percent.¹⁴ However, in this context there are also problems unique to internally displaced families. Certain heads of households who own land but who have not been able to cultivate it over the last 10 years are not able to fulfil the necessary conditions to obtain a Green Card because one of the conditions for eligibility is not to own any immovable property.

Another type of social aid that some IDPs are able to benefit from comes under the scope of the “Social Risk Mitigation Project” (“SRMP”), a USD 500 million loan that the World Bank has provided to Turkey in order to mitigate the negative effect of the economic crisis in 2001 on the “poorest of the poor.”¹⁵ One time only food, fuel, medication, and cash aid supplied by the SYDV to families and one time only clothing and stationery aid given to poor students fall under the scope of the “adjustment portion” of the SRMP credit (worth a total of USD 500 million). The “Conditional Cash Transfer,” given to poor families whose children attend school and who are regularly vaccinated, falls under the scope of the “investment portion” of the SRMP. According to the World Bank, the Conditional Cash Transfer covers more than 1.6 million children attending school throughout Turkey. IDPs living in Eastern and Southeastern Anatolia as well as in other urban centers where they constitute part of “the poorest of the poor” are able to benefit from these programs. Although there have been many criticisms against the implementation of the SRMP, the impression is that it is quite widespread in many Eastern and Southeastern provinces. However, there are no particular assessments about the reach of the SRMP among IDPs.

The Direct Income Support (*Doğrudan Gelir Desteği* – “DGD”) supplied every year to more than 2 million farmers within the scope of the “Agricultural Reform Implementation Project” (“ARIP”) in cooperation with the World Bank, is a type of aid from which some IDPs are able to benefit.¹⁶ This cash aid, designed within the framework of the process of harmonization with EU agricultural support policies, is not

13 These provinces are Bingöl, Hakkâri, Tunceli, Bitlis, Van, Muş, Elazığ, Adıyaman, Ağrı, Diyarbakır, Batman, Siirt, Mardin, and Şırnak.

14 Considering that according to the 2000 General Census the total population of the RVRP provinces formed 10.6 percent of the population of Turkey, this ratio is noteworthy (see Table 7). See also tables 6 and 7 under “Tables” at the end of the book.

15 According to updated information obtained from the Prime Ministry’s Office, General Directorate of Social Aid and Solidarity, the Conditional Cash Transfer program was planned to be terminated in June 2006, but was extended until December 2006 and later until 31 March 2007. The project was subsequently taken over by the General Directorate both in terms of human (since 31 March 2007) and financial (since May 2006) resources. Currently, the project is exclusively and fully funded by the Turkish government and is not subject to an expiration date. (Information received through a phone conversation with the General Directorate on 04 June 2007)

16 The ARIP, initiated in 2001, was originally planned to be terminated sometime in 2007, but the government is currently considering to ask the World Bank for an extension.

contingent on production and, therefore, actually covers IDPs who have been unable to cultivate their land for many years. Among the families interviewed by the TESEV Working Group were some who received DGD. Although the precise ratio of internally displaced households that benefit from this support program is not known, the available data indicates that access to the DGD is quite widespread. For example, the proportion of farmers in RVRP provinces who received direct income support in 2004 to the number of farmers countrywide who receive DGD (11 percent), is parallel to the ratio of the region's population to the population of Turkey (10.6 percent).¹⁷ The fact that agricultural land in the possession of farmers, through title deeds or usufruct rights, has been recorded under the "Farmer Registration System" even though they have not engaged in agricultural production for many years, can be considered a positive development for IDPs. However, the DGD implementation, criticized by the Chamber of Agricultural Engineers on the grounds that it indirectly privileges large landowners, could also be considered to exclude IDPs with small holdings. Another concern is that some returnee families or village guards who have never left their villages might have IDPs' lands (based on usufruct rights) registered in their own names in order to receive DGD aid. The TESEV Working Group heard allegations about such unlawful practices, but was unable to verify them.

When assessing social aid available for IDPs, two points require emphasis. First, some of the aid is one time only. Second, although the above-mentioned social aid programs cover IDPs, they were not specifically designed for them and, therefore, they disregard certain circumstances unique to IDPs. For example, families who own agricultural property are not able to benefit from the Conditional Cash Transfer and from the Green Card system, although they have been unable to use that land for more than a decade. This is because the poverty eligibility criterion for those programs is non-ownership of real estate.

As a result, the non-compensation of material damages arising from displacement, the limited nature of social aid, and IDPs' inability to earn a decent living in the cities have added new layers to the process of social exclusion experienced by the displaced. Within this process, families that were forced to settle in Diyarbakır or Istanbul have had to undertake a difficult struggle in order to earn a living. In what follows, the concept of "livelihood strategy" is used in order to describe all of these methods of struggle. The term "livelihood strategies" covers efforts to maximize income through the participation in the labor market of many members of poor households, as well as methods to minimize household expenses.¹⁸ Those efforts that are not long-term and that concern a daily living struggle can also be defined as "survival strategies."¹⁹ The survival and livelihood strategies of IDPs show that they

17 See tables 7 and 8 under "Tables" at the end of the book.

18 Gonzalez de la Rocha (1994).

19 See Gonzalez de la Rocha (2000).

actively try to cope with their situation. However, at times some of these efforts, such as the use of child labor, work to reinforce social exclusion.

Some of the strategies observed for minimizing expenses were: living in informal and unhealthy housing, limitation of food consumption (in other words, malnutrition), and cutting educational expenses by not sending some of the children to school. Livelihood strategies based on the effort to maximize income include mobilizing more than one member of the family to work in income-generating jobs and especially sending children to work. The next three sections of this article will explore these kinds of livelihood strategies, bearing in mind the concepts of social exclusion and social rights.

3. THE PROBLEM OF SHELTER AND UNPLANNED URBANIZATION

When displaced families migrated to new regions in environments where social aid is very limited, relatives and traditional solidarity networks constituted their most significant support system. However, in an environment where most relatives are also poor and most probably also IDPs, solidarity networks have not been particularly effective.²⁰

Some people who were interviewed in Diyarbakır explained that, when they first arrived in the city, they stayed with relatives for a few months. In fact, at times several families were accommodated in the same house. Therefore, there were cases where 20-30 people lived together in a 3-4 room apartment or in a shanty house for months at a time. Some people who left their villages in the summer said that they put up tents in empty areas in Van and Diyarbakır along with other IDPs, and that later on built their shanty house on the same spot. The TESEV Working Group visited shanty houses of this kind in the Aziziye and Benusen neighbourhoods of Diyarbakır. Some families who had found the opportunity to sell their livestock before leaving their village had been able to buy a shanty house or a cheap apartment.

In the first half of the 1990s, when tens of thousands of IDPs arrived, Diyarbakır underwent a process of very rapid and unplanned urbanization. The presence of thousands of families looking for shelter contributed to the creation of a significant rent economy within the housing market in historical areas of the city such as Suriçi and areas open to potential development such as the Bağlar district. Many buildings with no building permits and in violation of building codes, and many multi-storey buildings were constructed during this period. Rather than being simply an aesthetic problem, this situation constitutes a permanent issue because of the damage to the historical texture of the city, the risk of buildings collapsing, the deficiency in infrastructure, the unsanitary conditions of buildings, and of their surroundings as places of settlement. However, of course, internal displacement is not the only

■ 20 See for example M. Şen (2002).

reason behind unauthorized urban development in Diyarbakır. In addition to the impact of internal displacement and economic migration, loopholes in, and lax implementation of, building regulations have contributed to this process.

Migration from Southeastern Anatolia in the mid-1990s has also contributed to urban development problems in Istanbul. However, because the city receives migrants from all regions of Turkey and because of the existence of a long-standing informal housing market, it is impossible to establish direct causality between internal displacement and unplanned urbanization in Istanbul. However, IDPs' testimonies and findings of previous research on the subject matter show that internal displacement has created problems concerning housing in several ways: 1) Research carried out in the Sultanbeyli district of Istanbul shows that IDP families who arrived in the city in the 1990s lacked the means to build shanty houses and that they had to rent shanties built by previous occupiers of public land in this district.²¹ Research conducted in Ümraniye indicated a similar phenomenon.²² In fact, the testimonies of some IDP families interviewed in the Aydınlı village of the Tuzla district of Istanbul verify those findings. These families who had been forced to migrate without any preparation had no option but to rent shanty houses with no infrastructure. 2) Some IDPs were obliged to rent apartments in dilapidated neighbourhoods in the center of Istanbul. The Tarlabası neighbourhood in the Beyoğlu district and the Balat and Fener neighbourhoods in the Fatih district are examples. Social service workers in these areas say that one of the largest population groups in Tarlabası is IDPs from Mardin, Siirt, and Batman provinces. Families here live as tenants in houses that are near collapse and in physically unsanitary conditions.²³ 3) Other groups of IDPs have settled in industrial districts of Istanbul. In search of jobs, internally displaced families and single men have settled in neighbourhoods such as Yenibosna, Güneşli, Soğanlı, Esenler, and Bahçelievler. Although the urban development in these neighbourhoods is relatively better, it seems that rents are high because of the high number of manufacturing workshops in the area. Therefore, although there are more work opportunities in Yenibosna and Güneşli compared to Tarlabası, the burden of rent is much higher. 4) A much rarer housing "solution" the TESEV Working Group witnessed was that some families who were able to sell their livestock or some of their property just before displacement, had bought run-down houses in neighbourhoods such as Fener or Balat, or informal houses (*gecekondus*) in shanty towns. This situation however, was "an exception to the rule," since few families would have resources to do the same. To understand why this is an exception, one should recall the nature of urbanization fuelled by economic migration in Turkey in recent decades. Two main features of this process were that families often maintained economic contact with their villages, and that they often solved their housing needs in the city through

21 Işık and Pınarcıoğlu (2001).

22 Erder (1996).

23 See for example Yılmaz (undated).

building *gecekondus*. However, apart from a few exceptions, these two methods that facilitated survival in the city have not been available for IDPs. In addition to that, the deterioration of economic conditions during the 1990s, and the shrinking of urban land potentially available for informal housing, have made life in the city even more difficult for the displaced.²⁴

In summation, in Istanbul and Diyarbakır, IDPs faced an uphill struggle to meet their housing needs for a variety of reasons as explained above, with the result that they ended up living in inadequate, unsanitary, and unsafe housing. Considering that access to adequate housing must be within the scope of social citizenship rights, it is clear, therefore, that problems encountered by IDPs in meeting this need have added another layer to the processes of social exclusion.

4. LIVELIHOOD PROBLEMS, UNEMPLOYMENT, AND POVERTY

This section addresses livelihood strategies such as minimizing food expenses and increasing the household income. In cases where displaced families had been able to bring along their sheep when leaving villages, initially they sold their livestock (generally at lower than market value) in their new place of settlement and they attempted to make out a living with that income for a while. In some other situations, they kept their livestock for a long time, as a resource for food (or income). For example, until recently, animals were raised in basements and in ground floors of apartment buildings in the provincial center of Tunceli as well as its district of Ovacık, according to testimonies of IDPs. Likewise, sheep have been kept in *gecekondus* in poor neighbourhoods of Diyarbakır such as Hevsel Bahçeleri and Suriçi. Municipal officials in Diyarbakır say that this is an indication of the poverty of the migrant population and that it constitutes a serious public health hazard.

Most of the families interviewed in Diyarbakır and Istanbul said that when they arrived in the city they had difficulty meeting their food needs. In Diyarbakır and in the Tarlaşaşı and Balat neighbourhoods of Istanbul, some women said that there were days when they were not able to feed their children. The findings of some previous research carried out with internally displaced families in Diyarbakır show that adult women had to make tough decisions in order to minimize food expenses. For example, while food with high nutritional value such as yogurt and milk was given to older members of the family and to men, girls and adult women say that they had to make do with bread.²⁵ As mentioned in other chapters of this book,²⁶ malnutrition and imbalanced nutrition can cause serious health problems in IDPs, especially in children.

24 Keyder (2005).

25 See L. Şen (2005).

26 See Aker: "Evaluation of Fieldwork Conducted in the Province of Hakkâri: Causes and Psychological and Social Consequences of Internal Displacement and the Process of Return" in this chapter.

The most important livelihood strategy used by IDPs is to mobilize as many members of the household as possible for contributing to household income. Displaced families in Diyarbakır and Van do not have adequate opportunities for income-generation. Some of the work opportunities they have are the following: unskilled labor in construction sites or street vending/peddling for adult men; selling fruit and vegetables on the streets for boys; selling goods like tissue paper and bottled water on the streets for very young girls and boys; working in the food industry for men and women; childcare or housecleaning work for young and adult women; wage work in small-scale industry and the service sector (tourism, fast food, etc.) in cities like Ankara, Istanbul, İzmir and Antalya for young men and women; circular migration to the Mediterranean, Black Sea, and Aegean regions to work as seasonal agricultural laborers for the entire family.

Almost all of these types of work are informal and irregular. During the interviews in Diyarbakır and Istanbul, the TESEV Working Group observed that adult men, especially, are generally unemployed and that they are unable to contribute to the family cash flow, except for periodic work as street peddlers or as construction workers. Previous research concerning IDPs carried out in Diyarbakır and in Istanbul indicates similar findings.²⁷ The situation of adult women within the labor market is particularly noteworthy. While some men and older family members think it is inappropriate for women to work at an income-generating job outside the home, in an environment where men are not able to find employment, allowing young women to work can be the only option for certain families.²⁸ In Diyarbakır, the TESEV Working Group spoke to a few women members of families who were in this situation. The common wish among these women, generally aged 20 to 40, was the creation of opportunities for regular employment. The following presents a few examples.

A family that the TESEV Working Group interviewed had settled in the provincial center of Diyarbakır after having been evicted from their village in Kulp district. The boys had attended school, and, because the parents did not speak Turkish and were relatively old, the two daughters, aged 7 and 8 at the time, had supported the entire family. Zarife, whose name was mentioned above, worked as a nanny and, depending on the season, her sister either tilled cotton fields or worked in a cotton gin. Neither of them had attended school beyond first grade. The girls were now 19 and 20 years old, respectively, and they wanted to stay in the city to work; however, as they were unskilled, they were unable to find a regular job.

Zeliha (37) from the district of Lice, whose husband disappeared in custody in 1994 following their eviction from their village, first stayed in the town of Tarsus (in Adana province) for a time and worked as an agricultural laborer with her children; one year

27 Dağ et al. (1998), Ersoy and Şengül (2000), L. Şen (2005) and Yılmaz (undated).

28 L. Şen (2005).

later she settled in Diyarbakır. She continued to travel every summer to the Central Anatolian province of Yozgat with her children in order to work in the fields. She had no income other than the money they made as agricultural workers and the income from one of her son's job as an apprentice in a small restaurant in Diyarbakır.

Fatma (30), interviewed in Diyarbakır, had arrived in the provincial center in 1994 when she and her family were evicted from their village in Silvan district. A short time later, her father died and her brothers got married and began working as sharecroppers in tobacco fields in a different village. Fatma, who had never attended school and who did not speak Turkish, also got married shortly after moving to the city. She now had three school-aged children and her husband was unemployed. Fatma said that going back to her village was not an option for her because they did not have any land in the village; she needed work in order to look after her children. She had no choice other than to take cleaning jobs, which she was able to find from time to time.

In Istanbul, the TESEV Working Group encountered internally displaced women who contributed to their family budgets with such work as laboring in food factories, cleaning schools, and doing piecework at home such as stringing beads or embroidering scarves. Although there were many adult women who did not work at all in Istanbul, most of the teenage daughters worked in garment workshops.

Although the interviews were not based on a statistically representative sampling, as a general impression, it can be said that many internally displaced women do contribute to their family incomes in one way or another, and even if they do not, they wish to be able to work. Therefore, from a policy perspective, it is necessary to start discussing how to create opportunities for regular employment for women and how to create educational and training opportunities that will help women find employment.

Taking into consideration the totality of factors such as the economic crises of 1994 and 2001, the difficulties encountered in the creation of employment even during the economic growth of the last few years,²⁹ IDPs' lack of skills necessary to compete in the labor market and their low level of education in general (the fact that most adult women do not even speak Turkish), it is easy to comprehend why families who were forced to migrate have joined the ranks of the urban poor and why they have been unable to extract themselves from this situation.

5. CHILD LABOR

Livelihood strategies mentioned above show that while IDPs do not passively accept their own social exclusion, some of these strategies may fuel further processes of exclusion. The mobilization of child labor as a livelihood strategy is a serious problem from this point of view. The inability of adult men and women to find employment

■ 29 Buğra (undated).

results in placing a huge burden on the shoulders of children. The issue of “children working on the streets” or of “street children” has been in existence in provincial centers in Eastern and Southeastern Turkey and in large urban centers like Istanbul, Ankara, and İzmir since the 1990s. Municipal officials interviewed in Diyarbakır have emphasized that there is a direct link between internal displacement and the increase in the number of children working on the streets. According to the officials, in Diyarbakır, apart from the children working on the streets, there are also hundreds of children who take drugs and sniff glue and are involved in crimes such as mugging. A project has been developed in Diyarbakır with the participation of the Metropolitan Municipality, the Governorship, and NGOs aimed at the rehabilitation of substance-addicted children and at pulling children who work on the streets off of streets.

Social workers interviewed in Istanbul explain that the children of many internally displaced families living in districts such as Beyoğlu and Fatih are obliged to work on the streets in order to contribute to the family income.³⁰ During interviews held in neighbourhoods of Istanbul where there are a high number of industrial workshops, the TESEV Working Group discovered that young members of internally displaced families have been working in garment sweatshops from a very early age.

Before embarking on a discussion about the issue of child labor in internally displaced families, a cautionary remark must be inserted here. The exploitation of child labor in urban centers in Turkey nowadays is not an issue that only affects internally displaced families. There are several reasons behind this social problem, such as insufficiency of social services and child protection services, urban poverty, and the fact that children who were part of unpaid family labor in agriculture often continue to work after their families migrate to the city. What must be emphasized here is that the poverty that arises following internal displacement has caused the mobilization of child labor as a livelihood strategy. Otherwise, certainly this article does not claim that internal displacement is the only reason behind the problem of child labor.

According to the report by the research commission of the Turkish Parliament, formed in 2004 to examine the issue of street children, internal migration, poverty, and unemployment are the social forces “pushing children to the streets.”³¹ Social workers state that, both conceptually and in terms of policy formulation, it is necessary to differentiate between children who live on the streets (some of whom are substance addicts) and children who work on the streets but live with their families.³²

30 Betül Altuntaş’s book based on interviews with children who collect paper, sell tissue paper, polish shoes and sell simit (a kind of bread) on the streets of Ankara constitutes a very important research in this field. Altuntaş established that, apart from the bread sellers, the majority of the children in the other three groups came from internally displaced families. Altuntaş (2003).

31 The members of this commission conducted research on this issue in Diyarbakır, Şanlıurfa, Mersin, Adana, Antalya, Gaziantep, Kahramanmaraş, İzmir, and Istanbul. It is noteworthy that IDPs live in most of these provincial centers. Turkish Parliament (2005).

32 See for example, Karatay *et al.* (2003) and Turkish Parliament (2005).

The number of children who work on the streets is much higher than the number of children living on the streets. On the other hand, as children working on the streets are much more visible, they cause public reaction and, therefore, result in officials taking measures; on the other hand, not much is said or done to prevent children from working in workshops in the industrial districts of cities like Istanbul.³³

In the implementation in Istanbul, teams from the Social Services and Child Protection Agency (*Sosyal Hizmetler ve Çocuk Esirgeme Kurumu* - "SHÇEK") identify children who work on the streets and warn their families. If the families fulfil the necessary conditions, they are given the opportunity to benefit from the Conditional Cash Transfer in return for pulling their children out of the streets. In accordance with the new Law on Misdemeanours, if the same child is caught more than once working on the streets, the family is fined. Children living on the streets can be taken into custodial care with the purpose of rehabilitation. While this implementation covers children up to 18 years of age, there are no programs for youth above that age living on the streets. While it is nominally forbidden to employ children under 15, it is permissible to employ children over 15 as apprentices in workshops and factories. Supervision of the working conditions of children over 15 working in workshops falls under the Ministry of Labor. However, as social workers say, the Ministry does not regularly supervise either informal or formal businesses employing informal or underage workers. Therefore, although there seems to be a serious problem of child labor in workshops, it has not yet been brought to the public's attention because it is often invisible. Furthermore, some social workers say that the existence of a government program to prevent children from working on the streets pushes children above 12 years old to find employment in workshops where there is a lower risk of being caught by authorities.

The phenomenon of children working on the streets is generally perceived, both by the public and by the Turkish Parliament (in its above-cited report), as child abuse, that is, children are being forced to work by their families or by others. However, the issue is more complicated than that. According to the social workers interviewed in the Beyoğlu Community Center for Children, the employment of children is only the visible aspect of a much larger problem. In an environment where parents are unemployed and are unable to find work, the only option for many families is for children to bring home an income. Children working on the streets or in workshops are a manifestation of urban poverty, therefore this is a problem of the exploitation of child labor at a societal level, rather than being a problem of abuse by their families.

33 For example, Abdullah Karatay, Director of the Beyoğlu Community Center for Children, estimates that there are about 200 substance addicted children who live on the streets, but more than 10,000 children who work on the streets. Karatay said that, although the Social Services and Children's Protection Agency (*Sosyal Hizmetler ve Çocuk Esirgeme Kurumu* - "SHÇEK") does not have a program specifically directed at children who work in workshops, he thinks that the number of children who work in workshops must be higher than the ones who work on streets. Interview, August 2005.

During the fieldwork, the TESEV Working Group encountered this phenomenon many times. For example, in a family with eight children, two of whom were married, originating from the Hani district of Diyarbakır and now living in the Balat neighbourhood of Istanbul, the father worked informally as a waiter, earning YTL 15 a day and the mother earned some money from time to time embroidering scarves at home. The children who attended primary school sold tissue paper in the Eminönü district after school. While explaining this necessity, the mother said: “If you don’t work, you can’t eat. If you don’t work, how can you buy sugar for this tea [pointing at the glasses of tea she offered the TESEV researchers]?” The older children in the family previously worked in a garment sweatshop in Fatih. However, when the owner of this informal workshop closed up shop on the grounds of bankruptcy, he had not paid the children their wages.

The necessity of sending children to work can arise when the father is sick or elderly, if he is unable to find work, or if he has a sporadic relationship with the family (or if he has abandoned the family altogether). Ayfer’s family from the Dargeçit district of Mardin constitutes an example of this type. After they were evicted from their village in 1993, Ayfer (30) and her children stayed in the district center for 4-5 years and then moved to Istanbul to live with her sister in the Fındıkzade neighbourhood. Ayfer told the TESEV Working Group in Istanbul that, at that time, their only income came from her very young daughter who sold tissue paper. A few days a week, now, she cleans staircases in apartment buildings; otherwise she generally depends on her 12- and 6-year old children who sell tissue paper and bottled water. Her husband, in Ayfer’s own words, “doesn’t show much interest in the children;” he generally stays with his mother in Mardin, and when he is in Istanbul he works irregularly as a street peddler. Another example can be found in a family interviewed in the Balat neighbourhood. When the father became unemployed because street peddling was banned in Eminönü Square, this resulted in their children, who at the time attended school, being sent to work on the streets.³⁴

A similar situation is true for children and young people working in workshops. All of the eight youths from Batman, Van, Hakkâri, and Diyarbakır, interviewed in the Yenibosna neighbourhood of Istanbul said that they had been working since they were 10-12 years old. Of these 19-22-year-old youths, the five men had been evicted from their villages with their families, and they had moved to the provincial centers of Van and Hakkâri; they had quit going to school and sought to contribute to family finances by working as street peddlers or porters. They had come to Istanbul a few years ago to find work and had found informal employment in garment sweatshops. They stayed in squalid bachelor flats and sent most of their income to their families.

34 The Eminönü Square on the historical peninsula used to house an informal open-air marketplace on weekends serving the needs of poor people until it was banned by the Istanbul Metropolitan Municipality in 2004.

Likewise, the three young women in the same group had been forced to move with their families from the Lice and Sason districts to the provincial centers of Diyarbakır and Batman, respectively. At the end of the 1990s they had left their families and come to Istanbul with their married brothers and sisters. They explained that all three of them had been working in garment sweatshops since they were 11-12 years old. During this period, the families of two of them moved to Istanbul. They said that their other unmarried brothers and sisters also worked and that they gave most of their income to their families. Of the girls from Batman, Gül (19) had never attended school; and Sevgi (20), from Lice, had interrupted her studies after completing primary school, but now she was pursuing distance secondary school education.

Observations and research carried out on this topic show that most of the children working on the streets and in workshops are boys.³⁵ Very young girls generally sell tissue paper, bottled water, etc.; when they reach puberty they are taken off the streets by their parents. Some of these girls are then sent to work in workshops. However, if the concept of “work” is considered within a wider framework, it is important not to forget that while boys generally work in income-generating jobs, girls help with the housework often at the expense of going to school even if they do not financially contribute to their families.

Working on the streets at a very young age subjects the children to physical and mental health problems and to the risk of becoming involved in crime. Some people may consider working in workshops as not constituting as great of a danger for the safety and health of children, as working on the streets. Yet, working long hours in informal and, therefore, unsupervised businesses, in environments that are not properly ventilated or illuminated, constitutes a serious danger for adults as well as for children and young people. Therefore, the prevention of informal work and child labor and the supervision and improvement of working conditions for children over 15 is extremely important.

6. BENEFITING FROM EDUCATIONAL OPPORTUNITIES

One of the young people mentioned above, Sevgi, had health problems caused by breathing textile powder; she said that she would no longer be working in garment workshops. She wanted to go to high school and then attend a course of study in either accounting or fashion design; she believed that, from the point of view of her health, she would be more comfortable in that kind of environment. A few months after she was interviewed, while the TESEV Working Group was pursuing its fieldwork, mutual acquaintances brought news about her. Determined to finish distance education, Sevgi had gone to stay with her relatives in Diyarbakır, because courses in private education institutions (*dershanes*) that prepare students for distance education exams were cheaper in Diyarbakır.

■ 35 Altuntaş (2003) and Turkish Parliament (2005).

Sevgi's personal experience highlights an important phenomenon: the inability to benefit from the right to basic education and from other educational opportunities is a major problem common to the children of internally displaced families. There are various interconnected reasons why internally displaced children do not have access to educational opportunities. The first of these is that at the beginning of the 1990s, right before people were displaced, many rural schools in the region were already closed due to the armed conflict. Therefore, some children were already not attending school at the time that they were forced to migrate. Second, because the livelihood conditions of families worsened after displacement, many of them could not send their children to school in order to minimize expenses, or they had to make a choice regarding which of the children would attend school. Girls are often the first to be sacrificed in such situations. Third, in some cases, the children stopped going to school in order to make a direct contribution to the family income. As the previous section states, if the concept of "work" is considered within a wider framework, while boys stop going to school in order to work at income-generating jobs, girls are taken out of school after the fourth or fifth grade (and when they have reached puberty) to help with household chores. Among the families interviewed in Diyarbakır and in Istanbul, depending on the number of children in the family and their ages when they left the village, many children and young people had either interrupted their education or had not received any education after primary school.

In fact, children's schooling was considered to be important - even though in many cases not feasible - for most of the people interviewed by the TESEV Working Group. For example, some families interviewed had left some of their children with elderly relatives in the provincial centers of Batman and Diyarbakır so that they could complete primary school. Similarly, Yunus, from the district of Hozat in Tunceli, and his older brother worked in Istanbul in order to take care of their family; in the meantime their four younger brothers had stayed in the Hozat district center with their grandmother; two had graduated from high school and two had completed primary school. Then the whole family had moved to Istanbul, and the two brothers who had graduated from high school had begun to work so that their younger brothers could continue their schooling. So, in some cases, the whole family was mobilized so that some of the children could continue with their education.

In both Istanbul and Diyarbakır, in certain families, even if school-age children work on the streets, they also attend primary school. Likewise, there is some evidence based on previous research that IDP children who collect recyclable paper or sell tissue paper in Ankara have not dropped out of school.³⁶

One of the reasons why school attendance at this stage is relatively high among internally displaced children is that, currently, there are financial support

■ 36 Altuntaş (2003), 142-145.

mechanisms for the parents to keep their children in school. Apart from the Conditional Cash Transfer mentioned above, the free-of-charge distribution of school uniforms, books, and stationery has lowered the cost of sending children to school. Another reason why school attendance is relatively high may be that the education of children has become desirable for families who have severed their ties from village life (where education has traditionally not been so valued among agricultural producers), and who have been living in the city for many years.

Inability to benefit from the right to education and from educational opportunities, and social exclusion go hand in hand. In the first years after the internal displacement, many children were unable to go to school or had to interrupt their studies due to financial difficulties. In addition, at that time there were no programs that aimed at supporting the families of children attending school (such as Conditional Cash Transfer, book, and stationery aid, etc.). These children, who are now approximately 18 and older, were not able to benefit from the right to education. Therefore, they do not have the necessary skills to compete in the urban labor market. Under circumstances where return to the village is not very realistic for many reasons, breaking away from the vicious circle of poverty and social exclusion seems very difficult for IDPs.

Here, it should be recalled that poverty and lack of education place a very heavy burden on the shoulders of women and young girls. Among the IDPs interviewed by the TESEV Working Group in Diyarbakır and Istanbul, there were many single women, whose husbands have either joined the PKK, been arrested, died, or abandoned their families when faced with economic difficulties. In such conditions, the struggle of uneducated women to earn a living for their family becomes even more difficult. Considering that the education of young girls is most easily sacrificed when a family is faced with economic problems, the social exclusion of women due to being uneducated is perpetuated when they form their own families.

As a result, one of the first measures to be taken in order to stop the cycle of social exclusion within many generations of internally displaced families is to ensure that school-age children regularly attend school. Another priority should be the creation of literacy and vocational courses for adults. These opportunities need to be organized in a way so that especially women and girls can have easy access to them.

7. DISCRIMINATION IN URBAN SPACES

Another subject mentioned in the literature of social exclusion is that individuals are excluded through discrimination. Some of the IDPs interviewed in Istanbul believed that they were subject to discrimination in the areas of housing, employment, and education, but this perception of discrimination is related more to their Kurdish identity than to being migrants. It can be conjectured from some of their stories that they encounter difficulties due to being Kurdish and because of being “peasants.”

For example, the TESEV Working Group heard from many people that homeowners in certain neighborhoods are unwilling to rent apartments to Kurdish families, apparently because they have many children. In neighborhoods where a high number of Kurds live, generally fewer problems are encountered while looking for a job in small workshops. The fact that some of the workshops are owned by Kurds and that the majority of the labor force in those areas is Kurdish, explains this. However, it is likely that Kurdish migrants encounter more discrimination when they look for employment outside the network of their regional affiliations. For example, a young man from the province of Tunceli said that he did not feel subject to discrimination due to his origin when he was looking for a job; however he stated that in some establishments where he had worked as a waiter he observed that the business owners generally did not want to employ people from other eastern provinces.

Some families interviewed in the Fatih district of Istanbul said that some of the teachers at school treat their children roughly because they are Kurdish. Others in the same district believe that they do not receive proper service in healthcare institutions for the same reason. Naile, from the Hani district of Diyarbakır, said that officers from the police station in the Balat neighbourhood had manhandled her brother and one of her sons, and that they had come several times to search their home without a search warrant. Naile also charged that when the neighbourhood headman (*muhtar*) distributed aid to poor families, he gave preferential treatment to his townspeople (*hemşehris*) from a province on the Black Sea, and that he withheld aid from Kurdish families; she believed that the maltreatment by the police and by the headman derived from the fact that they are Kurdish and that they are “peasants.”

Because the TESEV Working Group’s fieldwork is based on a limited number of interviews with IDPs, it is not possible to make generalizations regarding the extent to which displaced Kurds are discriminated in access to public services, housing, employment and labor markets, and in the field of education. In order to be able to draw conclusions on the subject of discrimination, employers, public officials, and landlords also need to be interviewed or surveyed. However, the examples provided in this section show that many IDPs have the perception that they are discriminated against. There is journalistic evidence, although not much data based on social scientific research, that internally displaced and recent migrant Kurds in large urban centers have been subject to discrimination at various levels.³⁷ There have also been journalistic reports on tensions between Kurds and non-Kurds in some neighborhoods in several cities. There is an urgent need for more scholarly - quantitative and qualitative - research on the issue of discrimination.

37 Sema Erder’s book *Kentsel Gerilim* (Urban Tension), based on interviews with people living in a neighborhood on the Anatolian side of Istanbul, where displaced families also reside, is an exception to the dearth of scholarly information on this subject. Erder (1997).

8. CONCLUSION

In conclusion, social exclusion arising from internal displacement is multi-dimensional, and the factors that contribute to exclusion are not independent from one another. The process of exclusion in one field can trigger other processes, and the existence of one factor can aggravate the effect of another. Thus, as long as policies to combat it are not developed, social exclusion caused by internal displacement is likely to perpetuate itself over generations. However, as emphasized at the beginning of the article, internal displacement is not the only reason behind social exclusion in urban centres; moreover, the exclusion triggered by internal displacement has also been fed by existing economic policies and realities. Therefore, policies aimed at reversing the trend of urban poverty and exclusion have to take into consideration several factors.

- i. The social exclusion caused by internal displacement must be regarded as a question of “citizenship rights” and especially as an issue of social rights.
- ii. Young people and children must be empowered in order not to fall into the vicious circle of exclusion in the future, and first generation IDPs must be empowered to cope with exclusion. The empowerment must target access to education and opportunities for acquiring vocational skills. Furthermore, rehabilitation programs must be created to prevent the abuse or exploitation of child labor.
- iii. Given the fact that social exclusion affects, not only the individuals, but also the communities (neighbourhoods, cities) in which they live, loan opportunities with favourable repayment conditions must be designed with the goals of creating employment in cities, revitalization of the rural economy, and promotion of small businesses.
- iv. These goals can only be achieved through dialogue and cooperation between the state and civil society.

Evaluation of Fieldwork Conducted in the Province of Hakkâri: Causes and Psychological and Social Consequences of Internal Displacement and the Process of Return

A. TAMER AKER

This report aims to evaluate the psychological and social issues related to internal displacement that were identified following observations made and interviews held by the TESEV Working and Monitoring Group on Internal Displacement in Turkey (“TESEV Working Group”) with public institutions, non-governmental organizations (“NGOs”), municipal officials, and internally displaced persons (“IDPs”) in the provincial center of Hakkâri and in the district center of Çukurca.¹

At present, internal displacement or forced migration in Turkey is an urban issue affecting nearly the entire country, especially urban centers as much as rural areas in Eastern and Southeastern Anatolia. Therefore, the issue should not be evaluated only as a migration movement but as one of the most important social phenomena in Turkey in the last 20 years. No other migration movement, i.e. rural to urban migrations in the recent past that were triggered by economical reasons, has had similar importance from the social, political, legal, and economic points of view. In Turkey, this issue of migration, which is becoming thoroughly urbanized and in which a second generation has begun to emerge, shows a different pattern than most everywhere else in the world. It has caused important and permanent changes in the social structure of the country. It is therefore necessary to consider the internal displacement phenomenon in Turkey, along with its social and psychological dimensions, as a national/societal issue. Nationwide policies should be developed by using community based approaches. On the other hand, both the general features of internal displacement and certain specific features - such as in the case of Hakkâri which will be explored below - should not be disregarded during implementation of these policies.

The fieldwork was carried out in Hakkâri between 18 and 21 October 2005. Taking as a starting point the fact that, since many IDPs were settled in city centers, internal displacement is an urban problem as much as it is a problem of villages and

1 The fieldwork in Hakkâri was carried out by psychiatrist A. Tamer Aker and jurist Dilek Kurban of the TESEV Working Group and by assistant Derya Demirler.

hamlets from which the residents have been evicted, interviews and observations were concentrated in two areas: the provincial center of Hakkâri and the district center of Çukurca. The province of Hakkâri has a population of 236,581 according to the 2000 census.² The province consists of three districts and has 130 villages on record and more than 100 hamlets. The main means of livelihood in the province are agriculture and animal husbandry. There are no large-scale factories in the province. The majority of the population is of Kurdish origin and Muslim. Location-wise, the province borders Iran and Iraq. The fact that geographically it is surrounded by high and rocky mountains makes the area difficult to access. Çukurca is the district of Hakkâri that borders Iraq and in the last census its population was recorded as 11,080.

The TESEV Working Group contacted representatives of public institutions, municipalities, and NGOs in the area. None of the institutions rejected TESEV's request for interviews. The institutions and organizations interviewed were: the Governorship of Hakkâri, the Municipality of Hakkâri, the Migrants' Association for Social Solidarity and Culture (*Göç Edenler Sosyal Yardımlaşma ve Kültür Derneği* - "Göç-Der"), the Human Rights Association (*İnsan Hakları Derneği* - "İHD"), the Confederation of Public Employees' Trade Unions (*Kamu Emekçileri Sendikaları Konfederasyonu* - "KESK"), the Health and Social Care Employees' Trade Union (*Sağlık ve Sosyal Hizmet Emekçileri Sendikası* - "SES"), and the All Municipal and Local Administration Employees' Trade Union (*Tüm Belediye ve Yerel Yönetim Hizmetleri Emekçileri Sendikası* - "TÜM BEL-SEN"). The IDPs living in the Bağlar and Biçer neighborhoods of Hakkâri and in the district of Çukurca, who were more easily accessible and who were available, were interviewed. NGO officials from the municipality provided help in choosing the neighborhoods where interviews with IDPs were conducted. Households where interviews were held were chosen at random. Hosts in households were permitted to invite neighbors or relatives to participate in the interviews. Participants who spoke only Kurdish spoke through their relatives or acquaintances who could also speak Turkish. Interviews held with organization representatives or with households were conducted as group interviews and were led by a psychiatrist, a jurist, and a project assistant. All three interviewers were present at interviews. As the jurist Dilek Kurban had already participated in the fieldwork held in the province of Batman, she played a guiding role in the conducting of both fieldworks. The 13 interviews held in the region covered 42 IDPs and six organization representatives. Apart from the open-ended questions used also in previous fieldwork, main research questions about return, current conditions, compensation, socio-economic conditions, and demands for solution were also covered during the interviews. Interviewees gave the research team permission for taking notes and

2 Figures obtained from the Turkish Statistical Institute (*Türkiye İstatistik Kurumu*) - formerly known as State Statistics Institute (*Devlet İstatistik Enstitüsü*) - : (http://www.die.gov.tr/yillik/03_Nufus.pdf).

recording the interviews. TESEV researchers did not encounter any restrictions or face any pressure during their fieldwork.

1. REASONS BEHIND DISPLACEMENT

Regarding the cases and socio-demographic characteristics of displacement, there are stark differences between the attitudes of the governorship on the one hand, and the attitudes of the IDPs, NGOs, and municipal officials on the other. According to the Hakkâri Governorship, 18 villages and 120 hamlets in the province had their residents evicted, and they were all evicted by the Kurdistan Workers' Party (*Partiya Karkerên Kurdistan* - "PKK"). However, according to officials from Göç-Der, 221 villages were evicted on the grounds that their residents did not agree to become village guards. Municipal officials, NGO representatives, and IDPs claimed in interviews that all of the residents of the villages were evicted by the security forces (i.e. "the state," as interviewees often put it). They stated that as a result of migration, almost "no villages were left" in Hakkâri. Municipal and NGO representatives and IDPs reported that villagers who "grow and consume their own produce" encountered serious problems because of the clashes. These problems were significant and included being frequently taken into custody and being victims of bomb explosions and torture. Apart from all of these, the pressure to become village guards was also felt very intensely and villagers who did not agree to becoming village guards were forced to leave their places of settlement. The same sources reported that "feeding or supporting the guerrillas" was given as grounds by the security forces for evicting villages. What was striking among the stories reported was the collective, sudden, and unprepared evictions. Because the villagers had no opportunity to prepare, some of their immovable property had to be left behind. It was said that especially leaving small cattle behind was a tragedy for villagers. The TESEV Working Group was also told that the migration was concentrated in the direction of the provincial and district center of Hakkâri, the district of Yüksekova, and the province of Van.

The fact that the IDPs, NGOs, and public officials, who constitute the three most important elements towards finding a solution to the problem, are unable to reach a consensus as to the reasons behind these troubles, despite the fact that more than 10 years that have passed since the process of internal displacement, constitutes a significant obstacle to the solution of the problem. However, the accounts by all parties confirm that villagers had to leave their homes or their habitual places of settlement because of:

- i. having been forced or obliged;
- ii. the influence of armed clashes and the environment of violence in general; and
- iii. violations of human rights.

2. DISPLACEMENT ISSUES

2.1. POPULATION INCREASE AND INFRASTRUCTURE DEFICIENCY

According to information supplied by officials from the Hakkâri Municipality, while the pre-displacement population of the provincial center of Hakkâri was around 30,000, following the displacement, this figure rose to 80,000. Unplanned urban development and population density are among Hakkâri's main problems. The TESEV Working Group observed that "IDP neighborhoods" have emerged around the city center. According to information supplied by the municipality, the number of neighborhoods in the provincial center has almost doubled and the population has doubled, if not tripled. Neighborhoods like Yenimahalle, Bağlar, and Keklikpınar emerged with the displacement. Those interviewed stated that settlement in these neighborhoods took place under very difficult conditions. According to representatives of the municipality and of Göç-Der, when the migrants first arrived, they sold some of the possessions they had brought from the villages in order to construct little huts. Officials from Göç-Der said that before the forced migration, villagers would come to the provincial center of Hakkâri only to purchase products they could not produce themselves such as salt, sugar, tea and matches; that they met their other needs in the village; and that they sold animal products such as milk for their livelihood. Following the displacement, however, this structure underwent a complete change and IDPs were no longer financially self-sufficient. It was emphasized that the poverty prevalent among IDPs is yet another factor exacerbating their condition. Representatives of Göç-Der said that Hakkâri was considered "the far end" of Turkey and that this region's conditions were more difficult than that of others. The harshness of its geo-physical location was also given as a reason reinforcing this perception.

The TESEV Working Group observed a lack of sufficient coordination in the work carried out by the Hakkâri Governorship and the Hakkâri Municipality. The governorship stated that problems with the infrastructure in the IDP neighborhoods fell within the municipality's area of responsibility. Erdoğan Gürbüz, who was the Governor of Hakkâri at the time the fieldwork was carried out, stated that it was unfair that the district of Gebze (an industrialized town in the west of Turkey placed between Istanbul and Ankara highway) and Hakkâri should receive support on the same criterion, and said that he supported positive discrimination towards regions such as Hakkâri. Yet, municipal officials spoke about budgetary difficulties and about problems arising from not being able to pay workers' salaries and not receiving funding from the capital, Ankara.³

3 According to the officials, the municipality has a debt of YTL 23 million and 400 of its employees had not received their salaries for 20 months at the time of this writing. Local administrations' inadequate budgets are another difficulty municipal officials complain about. (As of June 2007, YTL 1 (Yeni Türk Lirası - New Turkish Lira) equals to USD 0.755.)

The TESEV Working Group was told that infrastructure problems were more serious in neighborhoods where there has been an influx of IDPs. Displacement was indicated as the most important factor behind the worsening of the already inadequate infrastructure in Hakkâri. It was said that in a city with serious infrastructure problems, this situation increased the current difficulties to a point where it became untenable. There were practically no asphalted roads in the provincial center. The TESEV Working Group was told that the main street had been paved with cobblestones by the governorship. Apart from this type of infrastructure problem, other striking situations exist in the provincial center. Large cattle wandering the streets was thought of as acceptable by local authorities and considered a normal part of everyday life. Apparently these animals had arrived with the IDPs and no one touched them because they were practically the only source in IDPs' struggle to make a living.

Water shortages constitute a serious problem in the provincial center; the TESEV Working Group was told that the city had not been given any water in the last few months. Municipal officials stated that the illegal use of water was very common and that they were unable to prevent it. Therefore, water bills could not be collected to the extent that it would meet the service costs. It was also said that the sewer system, which was made for a population of 30,000, was insufficient to cater to a population two or even three times as much. Governorship officials stated that they were working to cope with these difficulties. According to information provided by the Hakkâri Governor, piped water was taken to 27 villages in four districts and piping water to 100 villages with the contribution of the Ministry of Interior's Village Infrastructure Support Project (*Köy Altyapı Destekleme Projesi* - "KÖYDES") is in the works for next year. Another point of contention from the governorship against the municipality is that refuse is not collected frequently enough. In spite of all of this, inadequacies in services are generally acknowledged by both public officials and by NGOs. On a brighter note, the governorship is working to "improve the image of Hakkâri" and to highlight its tourist features. However, the scant cooperation between the municipality and the governorship seems to be the most important obstacle standing in the way of the solution to infrastructure problems.

Another unlucky feature of Hakkâri is its history of natural disasters. The earthquake of 25 January 2005 naturally affected the poorest part of the city, the regions that received forced migration, and that had infrastructure problems. Houses in IDP neighborhoods like Keklikpınar, Bağlar, Yenimahalle, Gazi, and Kıran collapsed during the earthquake because they were built by stockpiling materials. Post-disaster housing was constructed for people affected by the earthquake and sold to survivors on the installments, but both IDPs and NGO representatives have serious concerns about how these installments are going to be paid.

2.2. EDUCATION

IDPs say that when they lived in their villages, education “was less of a problem” because children had only the opportunity to attend primary school. However in Hakkâri, children and families now have higher expectations regarding education, and the inability to meet these expectations has resulted in education being cited as “a serious problem.”

The TESEV Working Group observed that education is also given special emphasis by representatives of the state. The Governorship has announced that a fund of YTL 37 trillion will be allocated to meeting infrastructure needs for education. Intensive efforts were made to open certain departments of Van Yüzüncü Yıl University in Hakkâri and signature campaigns were organized. The governorship stated that various student dormitories and vocational high schools had been opened in Hakkâri. However, even the governorship complains that bureaucracy constitutes a serious obstacle. In spite of the positive developments reported by the governorship, officials from the Education and Science Employees’ Trade Union (*Eğitim ve Bilim Emekçileri Sendikası* - “Eğitim-Sen”), an organization within KESK, stated that the situation has been increasingly deteriorating over the last five years. The same officials said that the main problems did not concern higher education but primary and secondary education.

Another significant fact was that children speak only Kurdish until school age and learn Turkish at school since it is Kurdish that is spoken in the home. During household interviews, all middle-aged women spoke Kurdish and the TESEV Working Group was only able to interview them through their younger Turkish-speaking relatives.

The governorship stated that there are 1,500 teachers in Hakkâri, whereas according to Eğitim-Sen the figure is closer to 2,000. However, both the governorship and the trade union representatives stated that the fact that “young teachers” are appointed by the government to Hakkâri is a serious problem because of their inexperience. Authorities and Eğitim-Sen representatives claim that these teachers work in Hakkâri for short periods of time and that they regard themselves as “temporary.” Because basic commodities such as housing and clothing are expensive, as soon as teachers complete two years of service, they leave the city. According to members of Eğitim-Sen, a lack of physical security also results in a decrease of productivity at work. It is reported that every year nearly 500 teachers leave Hakkâri as they are appointed to posts elsewhere, and 500 people begin service as trainees. Classroom teachers in primary schools encounter many difficulties. According to members of Eğitim-Sen, it is only by the time students reach the 5th grade, that they are more or less able to understand Turkish. Apparently this problem is much more common in schools on the outskirts of the city.

2.3. SECURITY

All parties agreed that an evident atmosphere of tension has been dominating Hakkâri during the second half of 2006. Governor Erdoğan Gürbüz stated that 22 members of security forces had been killed in the previous six months. According to officials from NGOs, “pressure by the state” increased noticeably in July and August 2005. The killing of two non-commissioned officers in a bomb attack in the city in July and the burning of a few deserted villages in the summer months resulted in a tense atmosphere. Municipal officials claimed that a short time before the fieldwork was carried out, Kavaklı village in the central district and two villages in the district of Çukurca were burned by the security forces during the operations they carried out in these deserted villages. An old woman interviewed in the Biçer neighborhood of Hakkâri confirmed that the tent she had erected to spend the summer in the Kavaklı village had been burned, but she said that she did not know who the perpetrators were. Although there is no return, in the real sense of the word, in Hakkâri, municipal officials have said that IDPs generally spend the summer in tents erected in their villages, but that the recent wave of village burning had caused a new wave of forced migration. Officials from İHD said that in Çukurca especially, villagers encountered serious difficulties in 2005 and had once again been forced to abandon the villages where they spent summers because their crops had been burned.

According to officials from the NGOs, landmines constitute a dire security threat. The same officials also stated that there was a significant increase in crime rates and that frequent police checks are perceived as pressure by the population. It was claimed that members of political parties such as the Democratic People’s Party (*Demokratik Halk Partisi* - “DEHAP”), felt this kind of pressure more intensely. According to NGOs, the dominant presence of units such as the Special Operations Unit, the Anti-Terror Unit (*Terörle Mücadele Şubesi* - “TEM”), the Anti-Smuggling Unit, the Gendarmerie Intelligence and Anti-Terror Unit (*Jandarma İstihbarat ve Terörle Mücadele Şubesi* - “JİTEM”), and village guards in the city center also constitute pressure. Another significant issue raised by the same people is that residents of Hakkâri are seen as criminals. NGO representatives are of the opinion that an environment of peace is being prevented by people who are trying to revive the rent economy of the 1990s. There seems to exist the belief that the citizens of Hakkâri do not enjoy the same rights as all other citizens of Turkey and representatives of NGOs believe that a special law is implemented in this region.

2.4. UNEMPLOYMENT AND ECONOMIC DIFFICULTIES

Although the level of unemployment in Hakkâri is 11 percent according to official records, officials from both the municipality and the government state that the true rate is around 70-80 percent. Moreover, there are insufficient employment opportunities in the province and wages are very low. Lack of infrastructure, such as

the state of roads, is said to be the one of the main obstacles to attracting investment to the province. Investment incentives by the state are criticized by state officials who believe that it is wrong for the incentive criteria developed for western provinces to be adopted in Hakkâri. The governorship advocates the implementation of certain tax exemptions for Hakkâri.

Defined as illegal by the governorship, the fact that there can be no border trade with Iran is described as one of the main factors affecting the means of livelihood in the province. NGO officials state that entry and exit is possible through Esendere, the border-crossing with Iran, but that only fruit and vegetables for immediate consumption can be legally traded. The NGO officials emphasize the importance of opening the Esendere Border Gate. The smuggling of fuel oil is said to have constituted an important source of income in the past. Residents of Hakkâri widely state that that this continues to be the case in Van, but that it is not permitted in Hakkâri. According to municipal officials and information obtained during household interviews, this interdiction arises because of “political discrimination.” Municipal officials and NGO representatives said that in Van, where the mayor is a member of the ruling Justice and Development Party (*Adalet ve Kalkınma Partisi* - “AKP”), lorries carrying fuel oil come and go freely every day, but in Hakkâri, where the mayor is a member of pro-Kurdish Democratic People’s Party (*Demokratik Halk Partisi* – “DEHAP”⁴), an embargo has been in place for the last three years. Yet the governorship states that there are certain legal issues in this matter. Trade is generally carried out with Van and is for daily consumption.

Certain NGO representatives who are also tradesmen have said that small scale investments cannot be made because of the uncertainty caused by the environment of insecurity. Among the problems in the urban life of Hakkâri said to have been caused by internal displacement, are the emergence of children working on the streets, of beggars, and substance addicts along with the increase in crime rates. According to municipal officials, prostitution emerged after the displacement and has been increasing over the years. However, according to officials from Göç-Der, the number of children working on the streets is low in Hakkâri compared to other provinces. It has been said that this figure is not as high as that of Mardin, because there are not many fields in Hakkâri in which children can be employed. Jobs that children can do in Hakkâri include shoe shining, rubbish collecting, and selling small items. In contrast, jobs that exist in Diyarbakır, like selling newspapers or cigarettes on the street or working in industrial sites, are stated to not exist in Hakkâri.

The transformation of people from producers to consumers brings about serious economic problems. Usually the most important customers for merchants in Hakkâri are civil servants appointed to the city who earn a regular income. However, these

■ 4 Consequently renamed as Democratic Society Party (*Demokratik Toplum Partisi* - “DTP”).

individuals also cause a rapid increase in the amount of rents in the city. The fact that two or three civil servants rent flats together has been put forward as the major reason for this increase in the price of flats.

It has also been stated that animal husbandry in Hakkâri has completely come to an end. That the province specializing in the export of Turkey's small cattle livestock in the past should now have to import livestock and animal products is an economic transformation that the residents and administrators of the city report with sadness. Some NGOs state that 90 percent of the currently inhabited villages act as village guards who receive salary from the state. The system of village guards has alienated the villagers from production and has turned them into people who depend on the state for livelihood.

NGOs complain that there are no investments aimed at increasing employment opportunities in Hakkâri. While rug-making is considered an important source of employment, there are very few people who work in this field and the sector has not sufficiently developed. Officials from Göç-Der have said that there is only one rug-making company of which the Special Administration is an important shareholder. The other three or four companies are small-scale businesses employing 10-20 people. The TESEV Working Group was told that women work in rug-making workshops and that students do this kind of work for short periods during the summer. Although production is quite limited, products are also sold abroad. The group was also told that vocational courses in rug-making have been initiated. According to officials from Göç-Der, the rug-making sector is very badly planned, is not durable, and is used with the aim of obtaining a rent economy. It is therefore necessary to implement better planned and durable projects in this field which will create opportunities for employment of trained manpower. Projects are mainly supported by the European Union ("EU") and by the State Planning Organization. Members of Göç-Der have claimed that because of favoritism and political discrimination, they have received no answer to their requests to the State Employment Office to develop their businesses. Besides rug-making, the fields of apiculture, tobacco, walnut growing, and feed production could constitute a sector each. However, production in these fields has completely ceased due to a lack of investments. Officials from Göç-Der stated that they are thinking of applying to the EU with various projects in order to create fields for investment.

2.5. COMMUNITY LIFE

Just as community life in Hakkâri was beginning to revive, the population has started to draw back once again because of recent incidents. People say that they generally do not wish to go out after dark. While home get-togethers and picnics in rural areas were frequent in the past, these have apparently not been taking place for a long time due to the armed conflict. Relations between neighbors have also weakened.

It is said that pressure has a very significant effect on community life. Hakkâri is not perceived as being a safe city. It appears that incidents from the last few months have only served to reinforce this feeling. The fact that the governorship and local people interviewed should have different opinions about the kidnapping of one person, and the fact that another person was found dead, is cause for concern. While a segment of the community talks about “extrajudicial killings,” the governorship says that “the incidents [happened] as a result of armed clashes.” The presence of village guards in the city makes people uneasy. They also feel that it is the village guards and the members of special operation teams who create a rift between the local population and the army.

Internally displaced women in particular have difficulty in adapting to life in the city. They generally live a very closeted life and see themselves as “prisoners.” Daytime interviews by the TESEV Working Group were always conducted with women, who stated that domestic violence has decreased after the move to the city. The language barrier prevents many from benefiting from public services. Keeping up with daily news is especially difficult for women who are middle-aged or older and who do not speak Turkish. They generally receive information from their husbands and children. Families generally tend not to speak openly among themselves about what has happened during displacement. However, terms such as “torture” are sometimes used within the everyday language, especially when shouting at their children. The governorship is said to be alienated from the population. There is a significant issue of mistrust in the province. The aid provided by the state and by the NGOs is deemed to be insufficient. IDPs are of the opinion that it is the better off who are able to make use of the laundry opened by the governorship in one of the IDP neighborhoods. Clothing aid coming from other provinces is considered inadequate because the clothing is very worn. The state provided coal aid in 2005. The cows, sheep, dogs, and hens seen on the streets of the provincial center are a part of the community life.

Although the clan structure in Hakkâri has weakened, it still survives. From time to time, landlords exercise their influence on community life. The TESEV Working Group was told that no displacement has taken place in villages like Durankaya, where the villagers had agreed to becoming village guards. There are no blood feuds in that village because all of its residents are members of the same clan. Yet, from time to time, some residents abandoned the village and moved to the city because of certain personal conflicts.

Officials from Göç-Der stated that migrants encountered problems in adapting to city life. They said that the native residents of the city at times ostracized the newcomers, that friction occurred between the two groups, and that the adaptation issue was felt most intensely in schools.

2.6. HEALTH AND PSYCHOLOGICAL PROBLEMS

Officials from Göç-Der stated that children in particular were healthier before displacement. Then, villagers would rarely go to Hakkâri for health problems to see a health professional. An increase in health problems for IDPs of all age groups, but especially for children, followed the forced migration. Malnutrition and inadequate housing are indicated as the main reasons for these problems. Representatives of NGOs and of state institutions agree that health constitutes a serious issue in the province. Insufficient infrastructure also creates health problems. According to officials from Göç-Der, illnesses such as dysentery and typhoid fever are seen very frequently in the summer months because the water system is inadequate. Because heating is insufficient and homes are cold, rheumatic pains are the illnesses women complain about the most in winter. The population generally prefers to go to the province of Van, which is four hours away by car, for their health problems. It has also been said that traditional or local healing methods are no longer much in use. According to NGO representatives, poverty and the lack of social security constitute another significant obstacle preventing access to healthcare services. Municipal officials have stated that in the past there was political discrimination in the Green Card implementation, but that such discrimination had not been observed recently.

The TESEV Working Group heard from many sources that the former sub-provincial administrator of the Çukurca district had slapped a doctor in the face for “disrespecting” him. After the doctor in question asked for her transfer, a period of about six months followed where there were no doctors in the district. At the time of the fieldwork, a new doctor had just been appointed. In the interim period, the shortage was met by the provisional appointment of personnel from the provincial center of Hakkâri. There is a state hospital in the provincial center, as well as various private polyclinics, but there is a shortage of doctors. Doctors appointed to Hakkâri tend to stay for a short period. There are no mental health experts in the province. According to officials from SES, although Hakkâri is in an earthquake region, conditions at the hospital are very poor and extremely limited health aid was provided to the region after the last earthquake.

IDPs said that they have obtained information regarding birth control and reproductive health from the mother and child health centers, and that their children had received vaccinations. NGOs wish to carry out various projects concerning women’s health. Municipal officials also carry out health screening.

According to officials from SES, one of the main problems encountered by health care personnel is the language barrier. Relatives of patients who speak both Turkish and Kurdish act as interpreters between patients who do not speak Turkish and doctors who do not speak Kurdish, but diagnostic errors increase because a sound doctor-patient relationship cannot be established. Other problematic fields for healthcare

personnel are the shelter issue and infrastructure deficiency in areas where they work. The lack of a social life makes it more difficult for people coming from other places to work there.

Labeling psychological problems as “insanity” prevents people from seeking psychological help. Interview questions concerning psychological problems were perceived by IDPs as searching for “signs of insanity.” The pressure suffered before internal displacement had negative effects on IDPs psychological health. The inability to adapt to city life aggravated existing problems. IDPs encounter difficulties especially in talking about psychological issues related to the traumas they have experienced or in talking about the traumas themselves. This situation, as well as the language barrier, minimizes the search for psychological help among IDPs. Psychologically motivated fainting (dissociative reactions) and physical complaints (findings related to somatization) were expressed frequently during the interviews. NGOs have also taken some initiatives in the field of psychosocial health. However, they have not yet initiated the Women’s Rehabilitation Center Project due to lack of funding.

3. RETURN TO THE VILLAGE

Both Governor Erdoğan Gürbüz and Deputy Governor Sezgin Üçüncü stated that, although the vast majority of IDPs do not wish to return to their villages and that they will not return, there are no obstacles to return. Yet, it is clear from the accounts of NGO representatives that return to many villages in Hakkâri is still not permitted, and that return to some villages was only permitted very recently. An IDP from the village of Işıklı on the border with Iraq, interviewed in the district of Çukurca, said that they were still not permitted to return to their village. An IDP from the Narlı village in the district of Çukurca, interviewed in the Bağlar neighborhood of Hakkâri, said that they were not permitted to return to their village until 2004. Officials from NGOs said that in cases where return was permitted, IDPs could only return to their villages provisionally in the summer in order to pick their fruits and vegetables. Contrary to the opinion of the governor and the deputy governor, NGOs believe that IDPs are very nostalgic about their villages. In fact, almost all of the IDPs interviewed, male and female, old and young, expressed their wish to return.

NGO representatives and IDPs said that no assistance was provided for return to villages. IDPs spent the summer of 2005 in their villages, in tents they obtained from the Red Crescent or which were their own. IDPs are not trying to build homes in the villages where they spent their summers. Uncertainty regarding the future and the feeling of insecurity are the main reasons given for this. Fearing that they may be evicted again from their villages, IDPs are not constructing any permanent housing in the villages. The tension felt in the second half of 2005 seems to have reinforced these beliefs. IDPs, NGOs, and municipal officials also complain about the frequent ID checks by security forces on the streets of Hakkâri.

The construction aid given within the scope of the Return to Villages and Rehabilitation Project (“RVRP”) is said to be insufficient. On the whole, NGO representatives and IDPs stated that RVRP aid was highly insufficient, that there were many IDPs who had not received any aid at all, and that political relationships played a role in the distribution of RVRP aid. For example, an IDP interviewed in Çukurca said that favoritism was observed in the provision of RVRP aid. Another IDP in Çukurca said that he had applied to the RVRP but that the sub-provincial administration had not taken his request into consideration. According to NGO representatives, the five sheep given to each IDP returning to their villages were in poor health and died soon after. It seems that if economic and social infrastructure and security conditions are improved, there will be an increase in the return to villages, and that compensation provided within the scope of Law No. 5233 titled “Law on Compensation for Losses Resulting from Terrorism and the Fight against Terrorism” (“Compensation Law”) will facilitate return. According to some NGO officials, especially people who have been benefiting from the opportunities of the city - for example, families of children attending school - may not wish to return. However, all of the IDPs interviewed expressed their wish to return to their villages. This was verified by many NGO officials. The negative living conditions of the provincial center of Hakkâri were given as the main reason for this desire.

NGO officials said that landmines constitute another obstacle to return. Although there are uncertainties regarding their location and their number, there are many landmines in the province as a whole. The landmine problem in the province is also acknowledged by the governorship. Governor Erdoğan Gürbüz admitted that IDPs cannot return as long as the mines are not cleared.

4. SOLUTION PROPOSALS

The enlivening of the economy is one of the solutions unanimously espoused by all the interviewees. However, NGO officials, IDPs, and residents of the city center have stated that ensuring an environment of peace and safety is the main path toward the enlivening of the economy. Permission to conduct border trade and the invigorating of animal husbandry are among the main measures advocated by the NGOs. IDPs, on the other hand, have expressed the necessity of invigorating means of livelihood in the village. Both NGOs and IDPs emphasized the importance of reparations provided through the Compensation Law for damages incurred during and after displacement. The construction of schools, state-run primary health clinics and mosques, and the reconstruction of people’s homes in the villages where return will take place are among the demands of IDPs and NGO officials.

The municipality, along with NGOs, is carrying out various projects aimed at enlivening the social structure. A city council has been established within the framework of Local Agenda 21 (Yerel Gündem 21) and is working on various projects. Although there

is sufficient awareness on this subject, the lack of trained personnel constitutes an important obstacle to the actualization of projects. NGO representatives have requested that academics join in the work to gather information and develop solutions to problems. Various organizations have developed plans to establish rehabilitation centers. NGOs and the municipality have organized festivities entitled “Istanbul - Hakkâri Bridge of Art” with the aim of enlivening community life in the province, which apparently give hope to the population. A large number of artists came from Western Turkey to Hakkâri for these festivities, and this left a good impression on the city.

Some NGO representatives stated that in order to solve the issue of internal displacement, it is necessary to solve the Kurdish issue first. Among the other points emphasized was the need for democratization in Turkey, the amelioration of disparities among various regions of the country, and the conferring on Kurds the right to education in their native language. NGO representatives stated that an amnesty for PKK militants should be declared, that PKK members in prisons should be released, and that people who had joined the PKK should be reintegrated into society.

NGO representatives, municipal officials, and IDPs suggested that the village guard system should be abolished. According to municipal officials there are about 6,500 provisional village guards in the province. Municipal officials proposed that village guards should be disarmed, and that they should be provided with alternative employment, such as in the Ministry of Education.

5. CONCLUSION

Hakkâri is among the regions where internal displacement is experienced under the harshest conditions. Combined with the region’s social, economic, and geo-physical structure, the consequences of internal displacement have resulted in serious problems. The already inadequate infrastructure of the city center has collapsed to a major degree with the influx of IDPs and has practically transformed Hakkâri into a “large village.” This is one of the main features that differentiate Hakkâri from other provincial centers that received forced migration. Although in other provinces IDPs are able to find various opportunities to develop themselves, it is very difficult for those in Hakkâri to do this. Therefore, although some provinces have become centers of attraction as a consequence of internal displacement, Hakkâri is in no such condition. Hakkâri has the characteristics of a place where only IDPs in very difficult circumstances took refuge. In a sense, the provincial center of Hakkâri is where mainly disadvantaged IDPs settled. Unemployment, economic problems, the difficulties of community life, the feeling of mistrust, and incidents that evoke the past block all positive initiatives. Due to this, it is not very realistic to consider the whole of Eastern and Southeastern Anatolia - where internal displacement has occurred - as a single homogeneous region. It is clear that in Hakkâri there is need for special and original projects.

Internal Displacement and Reparative Justice: Implementation of the Compensation Law in the Province of Hakkâri

DİLEK KURBAN

This article is based on the fieldwork that the TESEV Working and Monitoring Group on Internal Displacement in Turkey (“TESEV Working Group”) carried out in Hakkâri between 18-21 October 2005.¹ It emphasizes that the implementation of Law No. 5233 titled “Law on Compensation for Losses Resulting from Terrorism and the Fight against Terrorism” (“Compensation Law”) in particular, and the effects of internal displacement in general, cannot be considered independently from the negative political environment prevalent in Hakkâri since the summer of 2005. NGO representatives, lawyers, politicians, and the population interviewed as part of the fieldwork pointed to the connection between internal displacement and the Kurdish issue and emphasized that the former problem cannot be solved without first solving the latter. This view shows that obstacles to the implementation of the Compensation Law should not be considered as independent from the general political environment. Therefore, this article evaluates the implementation of the Compensation Law not solely within a “legal” framework, but also in light of the general political environment and the human rights violations in Hakkâri.

With this objective, the first part of the article reflects the views of the relevant actors on the Compensation Law. The second part, entitled “access to justice,” explores to what extent the public officials, non-governmental organizations (“NGOs”), and lawyers facilitated or prevented the access of the internally displaced persons

1 This article is based on the fieldwork carried out by TESEV Working Group members A. Tamer Aker and Dilek Kurban and project assistant Derya Demirler in the provincial center of Hakkâri and the district of Çukurca between 18-21 October 2005. Within the scope of the fieldwork, the team interviewed the governor, the deputy governor in charge of implementing the Compensation Law, the acting mayor, lawyers, and members of the Human Rights Association (*İnsan Hakları Derneği* - “İHD”), the Migrants’ Association for Social Solidarity and Culture (*Göç Edenler Sosyal Yardımlaşma ve Kültür Derneği* - “Göç-Der”), the Confederation of Public Employees’ Trade Unions (*Kamu Emekçileri Sendikaları Konfederasyonu* - “KESK”), the Healthcare and Social Care Employees’ Trade Union (*Sağlık ve Sosyal Hizmet Emekçileri Sendikası* - “SES”), and the Municipal and Local Administration Employees’ Trade Union (*Tüm Belediye ve Yerel Yönetim Hizmetleri Emekçileri Sendikası* - “TÜM BEL-SEN”). The project team also held focus group interviews with 42 internally displaced persons (“IDPs”), 29 of whom lived in the provincial center of Hakkâri and 13 in the district center of Çukurca. The information concerning the implementation of the Law No. 5233 titled “Law on Compensation for Losses Resulting from Terrorism and the Fight against Terrorism” (“Compensation Law”) was updated in accordance with additional information obtained through phone calls and e-mail correspondence after the completion of the fieldwork.

(“IDPs”) to the law under two headings: “the dissemination of information about the law” and “abuse of the law and conflict of interest in the lawyer-client relationship.” The third part deals with the impartiality and independence of the commissions responsible for implementing the Compensation Law. Within this framework, the Law on Civil Servants, which foresees that civil servants should repay the state for damages they may cause out of negligence or imprudence, is discussed as an obstacle preventing commission members from fair implementation of the law. The fourth section examines the problems encountered in the implementation of the Compensation Law, such as the burden of proof imposed on petitioners for the documentation of damages they incur, and the unsuitable working conditions of the commissions. The fifth part deals with the obstacles preventing IDPs who are unable or unwilling to settle with the commissions from going to court. The sixth part examines the impact of the negative political atmosphere that has dominated Hakkâri since Summer 2005 and the human rights violations that have occurred against IDPs, who constitute the major part of the city’s population. The seventh part evaluates the proposals made by public officials, NGOs, and lawyers to address the internal displacement issue. The conclusion points out the special situation of Hakkâri as one of the provinces with the highest number of forced evictions and human rights violations under the State of Emergency, where the armed conflict has recently resumed. It proposes that measures to be taken in order to solve Turkey’s internal displacement problem be initiated in this city.

1. PERSPECTIVES ON THE COMPENSATION LAW

Public officials in Hakkâri have a generally positive opinion of the law. Governor Erdoğan Gürbüz has stated that although he is generally satisfied with the law, the fact that the scope of the law reaches as far back as 1987 creates difficulties in the documentation of damages. He said that in order for petitions to be assessed more speedily and more effectively, damage assessment commissions, which are currently established only at the provincial level, should be formed in districts as well. Gürbüz was supportive of the suggestion to give commissions a professional structure, on the grounds that compensating commission members for the additional work would be an incentive to “work more willingly.”²

According to Deputy Governor Sezgin Üçüncü, in a state based on the rule of law, damages caused by terrorism should be compensated. Üçüncü stated that the exclusion from the scope of the law of soldiers and public officials who died, were injured, or disabled during the fight against terrorism, and who thereafter received compensation from the state, “disturbs his conscience.” Furthermore, although

2 The professionalization of damage assessment commissions was among the proposals the TESEV Working Group made in its first report titled “The Internal Displacement Problem in Turkey: Assessment and Suggestions for Solution,” and published in October 2005. Aker *et al.* (2005).

Üçüncü acknowledges that the YTL³ 14,000 that the law earmarks for death “does not compensate the worth of life,” he also believes that the state would not be able to afford paying higher amounts.

On the other hand, although NGOs and lawyers in general consider the law as a political measure taken by the government to satisfy the European Union (“EU”)⁴ and to avoid paying high compensation amounts at the European Court of Human Rights (“ECtHR”),⁵ they are still of the opinion that the law is a positive development as long as it is implemented correctly and fairly.

2. ACCESS TO JUSTICE

Just as in the fieldwork carried out in Batman, the TESEV Working Group tried to understand how and to what degree the Compensation Law was accessible to IDPs in Hakkâri. What is meant here by “access to justice” is not a positivist approach concerning solely whether IDPs are aware of the law’s existence or not, but is rather to what extent IDPs know and understand which damages can be compensated by the law and to what degree, who are entitled to benefit from the law, who can file a petition under the law, how petitions are filed and the scope of the rights conferred by the law. In this context, the circumstances that make it possible for IDPs to access the law and the obstacles preventing such access were considered within the framework of “access to justice.” With this in mind, the role played by public officials, NGOs, and lawyers in facilitating or preventing IDPs’ access to the law was also questioned. The acts of some IDPs and some lawyers aimed at taking advantage of the law were also assessed as an element preventing access to justice.

2.1. THE DISSEMINATION OF INFORMATION ABOUT THE LAW

It seems that public institutions in Hakkâri have not taken any initiative to disseminate information on the law among their citizens. In this context, also, the work that NGOs have carried out to make sure that IDPs who are eligible to apply to the law were informed about their newly gained rights is inadequate. Although officials from Migrants’ Association for Social Solidarity and Culture (Göç Edenler Sosyal Yardımlaşma ve Kültür Derneği - “Göç-Der”) have said that when the law was enacted, they distributed its text among IDPs, they did not specify how many people they reached. Moreover, providing IDPs - most of whom are illiterate and do not understand Turkish - with a text that is arcane, even for educated people, is certainly

3 As of June 2007, YTL 1 (Yeni Türk Lirası - New Turkish Lira) equals to USD 0.755.

4 In fact, the Preamble to the Compensation Law recalls that in the Turkish National Program for the Adoption of the *Acquis Communautaire*, the Turkish government committed to enact the law in 2004. Official Gazette (2004a).

5 In fact, the Preamble clearly states that the law is prepared with the objective of preventing people who have incurred damages because of terrorism or the fight against terrorism from making use of the compensation they would receive from the ECtHR as “a means for unfair enrichment.” Official Gazette (2004a).

insufficient in terms of informing them about the rights conferred on them by law. In fact, a group of IDPs interviewed in the Bağlar neighborhood, formed within the provincial center of Hakkâri following internal displacement, told the working group that they applied to a lawyer after they heard of the law on television, but that they did not have any details about the law. Therefore, it seems that lawyers did not sufficiently inform their clients about their rights.⁶

The IDPs interviewed were generally aware of the law through hearsay or from television but had insufficient knowledge about the content of the law or the rights it conferred on them. On the whole, women had either not heard of the law at all or they had only vague knowledge about it.⁷ Considering that the vast majority of displaced women are illiterate and that the majority of women, especially those above middle age, do not speak Turkish, it is natural for the family's link to the law to be established through men. However, this imbalance in the access to law between men and women underlines the importance of holding information sessions on the Compensation Law in Kurdish and to feature programs in the Kurdish broadcasts of Turkish Radio Television Corporation (*Türkiye Radyo Televizyon Kurumu* - "TRT"). That some of the women interviewed⁸ had heard of the law through Roj TV⁹ indicates the importance of the recognition of language rights in raising Kurdish IDPs' - especially women's - awareness of their rights.

Under the law, applicants can petition the commissions individually or through a lawyer. For IDPs, many of whom suffered losses due to the actions of security forces, applying to the commissions run by state officials individually may be intimidating. Instead, a majority of them seek legal counsel to apply to the law. In Batman, many IDPs sought the assistance of human rights organizations in finding legal representation.¹⁰ In Hakkâri, where the relationship between the state and civil society is much more strained and politically sensitive, particularly in the aftermath of the re-initiation of armed clashes in Summer 2005, IDPs may prefer to avoid human rights NGOs. Human Rights Association (*İnsan Hakları Derneği* - "İHD") directors

6 Of the two adult women and three adult men from three separate families, also interviewed in the district of Çukurca, only the men were aware of the law, who had filed petitions under the law via lawyers, and they did not have any significant knowledge about the rights the law conferred on them or about the legal process.

7 For example, in a village of Çukurca, a woman in her forties who was the head of a family of 13 consisting of 11 children, an old woman nearly 100 years old and herself, was not aware of the law. An adult man who accompanied the working group in this interview, who was himself an IDP and a member of İHD, stated that, as a neighbour, he had hired a lawyer in order for this family to file a petition.

8 A group of women interviewed in the Bağlar neighborhood said that they did not watch the Kurdish broadcasts of the TRT but that they watched Roj TV regularly.

9 Based in Denmark, Roj TV broadcasts mainly in Kurdish and is accessible to viewers in Turkey via satellite. The Turkish Government's recent diplomatic initiative to have the Danish Government ban Roj TV has so far failed.

10 See Kurban: "Internal Displacement and Reparative Justice: Implementation of the Compensation Law in the Province of Batman" in this chapter.

stated that IDPs prefer to keep their distance from İHD for fear of not receiving compensation. The directors further stated that, out of 19 IDPs who reported to İHD that they had incurred damages in two villages of the Çukurca district in Summer 2005, only one sought İHD's assistance to petition the law, even though the sub-provincial governor confirmed that the villages had been burned by the security forces.¹¹

2.2. ABUSE OF THE LAW AND CONFLICT OF INTEREST IN THE LAWYER-CLIENT RELATIONSHIP

Just as in Batman, there were allegations also in Hakkâri that some IDPs and lawyers took advantage of the Compensation Law. Both Governor Erdoğan Gürbüz and Deputy Governor Sezgin Üçüncü pointed out that there were cases of abuse in the petitions. What is meant by abuse here is either that IDPs inflated the damages they incurred and thereby requested higher compensation than they were actually entitled to, or that individuals who were not heads of household at the time of displacement and are not eligible to receive compensation, petitioned the law claiming otherwise. Officials from the governorship alleged that lawyers share responsibility for abuse of the law. Pointing out that lawyers represent clients on a contingent fee basis in return for a percentage of the final settlement, Üçüncü argued that this causes lawyers to inflate their clients' claims for damage. According to Üçüncü, it is the petitioners who will be at the losing end here, because they would have received the same compensation had they petitioned the law individually.

The claim that some lawyers who represent petitioners to the Compensation Law see the process as a "source of income generation" has also been expressed by public officials and even by some lawyers themselves in both Batman and Hakkâri.¹² Indeed, considering that fairly large amounts of compensation are in question, that the lawyer's power of attorney entitles them to a part of the compensation, and that there is a multitude of petitions but a scarcity of lawyers, it is clear that these claims are not entirely unfounded. This situation is disconcerting on multiple grounds. First of all, such behavior on lawyers' parts - which causes adverse reaction among public officials with good reason - entails the risk of further fueling the feeling of mistrust between the state and Kurds, already quite widespread in the region. Secondly, and in connection with the first point, the thought that the law is being abused may cause commissions, consisting predominantly of public officials, to be prejudiced in their assessment of petitions. Thirdly, working on a contingent fee basis, whereby lawyers are entitled to a percentage of the compensation that their clients will receive

11 That the two villages in the district of Çukurca (and also the Kavaklı village connected to the central district) were burned down by the security forces in September-October 2005 was also stated by municipal officials. The officials said that these villages were empty and that the residents spent only the summer there.

12 For discussions on this issue in Batman, see Kurban: "Internal Displacement and Reparative Justice: Implementation of the Compensation Law in the Province of Batman" in this chapter.

from the commissions, would be preferred by many lawyers over filing a lawsuit in administrative courts, which is a more lengthy and difficult process. Considering that, even though few in number, some IDPs - especially families of individuals who have been murdered by unidentified perpetrators and families of those who have disappeared in custody - choose to go to court, it is clear that such behavior on the part of lawyers would impede upon their clients' access to justice. This can result in a conflict of interest between the clients and the lawyers, who are required by the rules of professional conduct and by law to represent their clients' best interest. In light of this discussion and, considering that, according to a lawyer, each of the eight lawyers in Hakkâri handle about 1,500 petitions,¹³ it seems impossible for these lawyers to represent the interest of their clients in the best possible way. The lack of necessary preparation and care might result in petitions' rejections by the damage assessment commissions or in low compensation amounts, which is a cause of concern in terms of IDPs' access to justice.

3. THE IMPARTIALITY AND INDEPENDENCE OF COMMISSIONS

The compensation commissions' independence from the executive branch is a major concern in Hakkâri, as it is elsewhere. A lawyer stated that the major causes of implementation problems are commission members who "behave with the mentality of civil servants" and "wait for Ankara's approval." According to him, in order for commissions to work more expeditiously, a clear political message should be delivered by the government, instructing the governors to ensure that commission members implement the law impartially and fairly. Indicating that the commissions are practically fulfilling a judicial function in implementing the law, he found it inappropriate for this function to be carried out by public officials with no legal background. Another lawyer, who drew attention to the necessity of political will for the improvement of the implementation of the law, emphasized that it is not sufficient for merely the commissions in some provinces to function well. According to him, a systematic improvement in the implementation is dependent upon the "state accepting responsibility for the eviction of villagers." The lawyer positively noted that, following the ECtHR's *Doğan and Others* decision¹⁴ and before its *İçyer* decision,¹⁵ the Ministry of Foreign Affairs sent circulars to governorships via the Ministry of Interior, instructing commissions to be more expeditious and flexible in the implementation of the law. However, he pointed out that circulars are not "above the law" and that commission members believed their primary responsibility rested with the law, not with the executive instructions.¹⁶ According to him, an explanatory

13 Taking into account that as of 31 January 2006, 21,597 petitions have been filed and that most of the petitioners have hired lawyers, it is probable that the lawyers are dealing with a much higher number of petitions. See Table 9.

14 ECtHR (2004f).

15 ECtHR (2006).

16 For the said decisions of the ECtHR, see Chapter IV, Kurban: "Human Rights Watch, Kurdish Human Rights Project, and the European Court of Human Rights on Internal Displacement in Turkey, in this book.

and legally binding note on the implementation of each article of the law, prepared by the government, would “put the commissions at ease.”¹⁷

In this context, it is necessary to point out that the Compensation Law does not confer on commission members, who carry out a fundamentally legal duty, the legal security that is conferred on judges regarding their decisions. On the contrary, the fact that members of damage assessment commissions consist predominantly of public officials, makes them responsible for financial losses they may cause the state to incur while carrying out their duty. Six of the seven members in each commission are civil servants.¹⁸ The relevant provision of Law No. 657 on Civil Servants foresees that “if the administration incurs damages due to intent, fault, negligence, or imprudence [on the part of civil servants], the relevant civil servant is required to pay for the damage at the current market value.¹⁹ Thus, the state reserves its right to recourse for damages caused by civil servants. The risk of recourse - which in the words of Haluk İmga, governor of Batman, acts like “the sword of Damocles” - is the reason why commission members who might be willing and well-meaning concerning the implementation of the Compensation Law, do not take seriously even circulars originating from the Ministry of Foreign Affairs.²⁰

Mikail Demiroğlu, a lawyer, indicated that the composition of commissions, consisting predominantly of public officials, is objectionable in terms of their impartiality. He pointed out that this was also a concern for the commission members’ ability to benefit from the law themselves. He gave the example of a commission member in Hakkâri, who could not disclose the fact that he himself was an IDP, who had suffered damages, and was thus entitled to apply to the Compensation Law.

In accordance with the law, one of the seven members of the damage assessment commission is a lawyer who is a member of the bar association. The first lawyers who began serving in commissions in Hakkâri were appointed and commenced work in January 2005. This means that Commission no.1 met for approximately five months without the presence of the lawyer member, and Commission no.2 for approximately three months. It seems that during this time the commissions evaluated petitions and made decisions in the absence of lawyer members.²¹ Likewise, even after lawyer members became part of the process, the commissions could still meet and make

17 A similar proposal was included in the TESEV report: Aker *et al.* (2005).

18 For the structure of commissions, see Chapter III in this book.

19 Official Gazette (1965): Article 12 (2).

20 For information on this subject, see Kurban: “Internal Displacement and Reparative Justice: Implementation of the Compensation Law in the Province of Batman” in this chapter.

21 This information was obtained through phone interviews with employees of the Hakkâri Special Provincial Administration which acts as the secretariat for the commissions, 18 April 2006. Rojbin Tugan, a lawyer interviewed during the fieldwork, stated that the other members of the commission where she serves had met and made decisions before she joined them.

decisions in their absence.²² In fact, the law does not preclude this.²³ However, the problematic nature of a process whereby civil servants - who have no legal background and who may be inclined to defend the interests of the state because of their positions - make what is equivalent to legal decisions without consulting a lawyer's opinion is obvious. Therefore, it is extremely important that the lawyer member be present during the commissions and that decisions are not made in his/her absence. This need becomes even more apparent when one considers that, in practice, commissions frequently function as if they consist of two members: the deputy governor and the lawyer member. In light of the hierarchical state structure and the culture of bureaucratic obedience in Turkey, it is quite difficult for the other members, who are public officials, to express an opinion or vote against the deputy governor, who is their administrative superior and has power over their professional advancement.

4. IMPLEMENTATION OF THE COMPENSATION LAW

At the time of the fieldwork, there were two damage assessment commissions in Hakkâri. Commission No. 1 was formed on 19 August 2004 and Commission No. 2 on 27 October 2004, and they began work on the same date.²⁴ While one of the commissions accepts petitions originating from the district of Çukurca and the provincial center of Hakkâri, the other is responsible for the districts of Yüksekova and Şemdinli. Commissions meet once or twice a week to assess the petitions.

As the Compensation Law is not limited to damages incurred by IDPs but covers all kinds of material damages arising from terrorism and the fight against terrorism, the petitions in Hakkâri are not limited to IDPs. People who have incurred damages caused by the bomb explosions in the provincial and district centers of Hakkâri in the summer and autumn of 2005 and due to midnight raids carried out by people wearing snow masks are also eligible to file petitions with the commissions.²⁵ İHD

22 In fact, Kadir Adıyaman, a lawyer who serves on a commission, stated that at times the commission meets and makes decisions in his absence. Adıyaman said that the decisions made in his absence also included rejections.

23 According to Article 13 of the regulation, the commissions meet on an absolute majority basis and decisions are made with the absolute majority of all members. Official Gazette (2004b).

24 Document obtained from the Hakkâri Governorship Office of Social Relations on 10 February 2006. Hakkâri Governorship (2006).

25 Many of those interviewed during the fieldwork complained frequently that a bomb attack on a car on 29 July 2005 in the provincial center in which two non-commissioned officers died was followed by a series of bomb attacks in the city and that people wearing snow masks raided houses in the middle of the night. In a press interview they gave following the fieldwork, TESEV Working Group members drew attention to the atmosphere of fear and tension observed in Hakkâri. Düzel (2005). In fact, two days after the publication of this interview, a bookstore was bombed in the Şemdinli district of Hakkâri on 9 November 2005. When it became clear that two non-commissioned officers and a renegade PKK member-turned -"informant" for the state were behind the incident, public attention was drawn to the extra-legal situation in Hakkâri. For an evaluation of the incidents occurring in the province in the summer and autumn of 2005, see Bayramoğlu (2005b).

officials stated that they received a high number of petitions in July-August 2005. Among those petitioning the Compensation Law, are also families of members of the security forces who lost their lives during the incidents in the summer-fall period.

According to Deputy Governor Sezgin Üçüncü, as of the end of September 2005, of the 1,043 petitions that were finalized, 783 were rejected and 260 were admitted for evaluation.²⁶ Üçüncü stated that although the deadline set aside under the law had expired, the commissions continued to accept applications. Üçüncü said that, in terms of implementation, governorships were ahead of the Ministry of Interior, which had sent a circular to governorships drawing attention to the fact that an amendment to the law was being drafted which would extend the deadline for applications, and instructing them to continue accepting petitions. According to more up-to-date information provided by the Hakkâri governorship, as of 31 January 2006, a total of 21,597 petitions have been filed with damage assessment commissions; 1,325 of these have been finalized. Of the finalized petitions, 481 resulted in the awarding of compensation and, for 357 of finalized petitions, declarations of friendly settlement were sent to the petitioners. In 293 cases, petitioners agreed to settle with the commissions.²⁷ Thus, during the 16 months following the enactment of the law in October 2004, only a little more than 6 percent of the petitions have been finalized.

For Hakkâri, which is one of the provinces with the highest number of eviction cases and human rights violations, this is evidence of a very weak performance.²⁸ Moreover, the fact that more than three quarters of the finalized petitions have resulted in rejections is cause for great concern for the implementation of the law in Hakkâri.²⁹

As for the amounts of compensation: the amount foreseen in the 357 declarations of friendly settlement sent to petitioners is YTL 4,186,500; the amount foreseen for declarations of friendly settlement that have been agreed on is YTL 3,906,000; and the total amount paid for 160 declarations of friendly settlement is YTL 1,109,502.³⁰

At the time of the fieldwork, on-site investigations related to the petitions of villagers who have incurred material damages during and as a result of their eviction by

26 Interview held on 19 October 2005. Üçüncü did not specify the total number of petitions filed as of the end of September 2005. However, according to the document requested from the Hakkâri Governorship following the fieldwork, which shows the final situation, a total of 21,398 petitions were filed and of these 1,052 were finalized. Hakkâri Governorship (2005a).

27 Document obtained from the Hakkâri Governorship Office of Social Relations on 10 February 2006. Hakkâri Governorship (2006). For information compiled from this document, see Table 9.

28 Mikail Demiroğlu, the lawyer member of one of the commissions, has stated that as of the date of the fieldwork, both of the damage assessment commissions had not held a meeting for three months and it was thus impossible for the petitions to be finalized in the three-year timeframe foreseen by law.

29 Among the rejection decisions there may surely be rejections which rest on justifiable grounds where the damages in question do not fall within the scope of the law. However, the high number of rejection decisions based on lack of information and documentation are troubling in that many IDPs may have been excluded unjustly from the implementation in Hakkâri. This subject will be further evaluated in the following section of this article.

30 Document obtained from the Hakkâri Governorship Office of Social Relations on 10 February 2006. Hakkâri Governorship (2006). For information compiled from this document, see Table 9.

security forces had not yet begun.³¹ In fact, this situation is consistent with the implementation in other provinces as of that date. However, in other provinces such as Batman, the evaluation of petitions concerning evicted villagers had not yet begun because the commissions preferred to prioritize assessing less complicated applications such as those relating to death and bodily harm. In Hakkâri, on the other hand, the fact that on-site investigations related to petitions by evicted villagers had not yet been carried out, was not because priority was given to petitions that were easier to evaluate, but because petitions regarding damages to immovable property were often rejected due to the heavy burden of proof imposed on the petitioners. This matter shall be dealt with in detail below.

4.1. PROBLEMS ARISING FROM THE BURDEN OF PROOF IN THE DOCUMENTATION OF DAMAGES

The implementation in Hakkâri constitutes an “example” because it shows the difficulties brought about by the burden of proof, especially for IDPs who were either evicted from their villages by the security forces or forced to leave their villages because of the environment of armed conflict. Deputy Governor Sezgin Üçüncü said that the flexibility brought in the documentation of damages with the amendment³² made on 15 September 2005 in the relevant regulation³³ did not affect their work much, that they had been flexible from the start, and that they were awarding the highest possible compensation amounts to IDPs who were able to provide even the smallest document to prove their losses. He stated, for example, that in the case of petitions concerning injuries, even if IDPs were not able to provide medical reports, the commissions tended to award them compensation. However, official figures regarding the implementation of the Compensation Law in Hakkâri cast doubt on this claim.³⁴ By the end of September 2005, of the 1,043 finalized petitions, 783 were rejected. For 285 of these, the reason for rejection was “lack of information and documentation.”³⁵ As of 31 January 2006, the number of finalized petitions had reached 1,325. The number of rejected petitions among these was 844, and the number of petitions rejected for lack of information and documentation was 309.³⁶

31 A lawyer who has been closely observing the implementation stated that both commissions had decided to meet at the end of 2005 or at the beginning of 2006, to evaluate the petitions concerning evicted villagers. Phone conversation, 31 January 2006.

32 Official Gazette (2005).

33 Official Gazette (2004b).

34 The opinion of the deputy governor is also questioned by lawyers in Hakkâri. A lawyer stated that the amendment made to the regulation to alleviate the burden of proof on petitioners did not bring about any changes concerning the practices of the commissions.

35 According to the information provided by deputy governor Üçüncü, the detailed breakdown for the other rejections is as follows: 26 for falling outside the scope of the law; 441 for having received compensation previously; 24 for falling outside the time period covered by the law (because the incidents that gave rise to damages happened before 1987); and 7 for other reasons. Interview held on 19 October 2005.

36 Document obtained from the Hakkâri Governorship’s Office of Social Relations. Hakkâri Governorship (2006). For information compiled from this document, see Table 9.

When Üçüncü was asked about the kinds of petitions for which “lack of information and documentation,” - the ground for the rejection of more than 25 percent of the petitions,- was cited as the deciding factor, he said that the petitions from people who claimed that they had been forced to migrate “because of clashes”³⁷ were most difficult to evaluate. Emphasizing that petitioners’ claims of being forced to abandon their villages because of fear for their safety cannot be proven with any kind of documentation, Üçüncü said that they rejected this kind of petition.³⁸ Üçüncü indicated that, while he personally believes the damages of people who were genuinely forced to migrate because of fear for their safety should be compensated, the law does not, in his opinion, permit such compensation and that “there is nothing that the implementers can do.” That is to say, according to Üçüncü, the problem arises from the scope of the law and not from implementation. Therefore, he believes that the improvement of the implementation is beyond his will and authority and can only be remedied by the legislator.

Petitions by IDPs who claim that they were evicted from their villages by the security forces and who request compensation of damages to their property and of losses they have suffered for lack of access to their property, constitute another kind of petition for which documentation is problematic. In accordance with official policy, public officials in Hakkâri have emphasized that villagers were either evicted from their villages by the Kurdistan Workers’ Party (*Partiya Karkerên Kurdistan* - “PKK”), or left their villages voluntarily. However, all of the IDPs interviewed reported that they had been evicted from their villages by the security forces. NGOs and municipal officials in Hakkâri claim that no villagers were evicted by the PKK. Although this claim could not be verified, there is no doubt that many, if not most of the villagers were evicted from their villages by the security forces. At this point, the approach of commissions towards the assessment of these kinds of petitions by this group of IDPs is extremely important. During the fieldwork, commissions presented a negative attitude. As stated above, commissions tend to reject petitions by those who are unable to document the damages incurred. This attitude constitutes a serious problem for petitions concerning villagers evicted by the security forces. Moreover, the refusal on the part of the commissions to hear witness testimonies in order to identify how the damage-causing incidents occurred³⁹ results in IDPs who

37 Whereas those who are forced to abandon their places of settlement due to armed clashes or the environment of conflict are included in the definition of displaced persons according to the “Guiding Principles on Internal Displacement” (“Guiding Principles”). UN (2005a): 1. For the definition in the Guiding Principles, see Chapter I.

38 However, a lawyer interviewed a few months after the fieldwork stated that commissions had begun to evaluate petitions by those who left their villages on security grounds. 31 January 2006.

39 Deputy Governor Sezgin Üçüncü was asked whether it was possible for IDPs who could not obtain the documents required by the commissions, to prove through witness testimony their claim that they were evicted from their villages by the security forces or because of the environment of clashes. Üçüncü replied that commissions did not accept witness testimony.

were evicted from their villages by the security forces being unfairly excluded from the scope of the law.

A member of a damage assessment commission stated that in order to evaluate the petitions of IDPs who claimed to have been evicted by the security forces, they had no choice other than to ask the Gendarmerie to verify these claims. According to him, what is actually necessary is, “that the state should come out and say that it has evicted the villagers.” On the other hand, Mikail Demiroğlu, a lawyer, said that asking the Gendarmerie for an incident report was no different from “expecting a thief to acknowledge its theft,” and that the Gendarmerie would never admit to having evicted villagers. Demiroğlu believes that in a province like Hakkâri, where a high number of villagers were evicted by the security forces under the State of Emergency, the commissions’ request for IDPs to document their damage “does not reflect good will.” Furthermore, the documents which IDPs were made to sign by the governorship a year before the law was enacted and which state that “they had been evicted from their villages by the PKK,” should be brought out and used as evidence.⁴⁰

The TESEV Working Group also petitioned the Hakkâri Governorship under the Right to Information Law and asked what kinds of documents were required for petitions that had been rejected due to lack of information and documentation. The answer indicated the drawbacks of the commissions receiving information from the Gendarmerie and giving priority to this information in the evaluation of petitions. According to the information provided by the Governorship, as of 31 January 2006, the reason for the rejection of 309 out of 1,325 finalized petitions was “the absence of crime scene reports regarding the occurrence of the incident and the absence of such information from the documents obtained from Military, the Police, and the Public Prosecutor’s Office.”⁴¹ In other words, more than one quarter of the petitions were rejected because IDPs were not able to supply official documents proving that they had been evicted from their villages by the security forces or that they left their villages due to a safety concern arising from the environment of clashes.

A concrete example may help to draw attention to the unlawful situation arising from the rejection of petitions solely on the basis of information provided by the Gendarmerie. According to information obtained from Demiroğlu, Commission No. 1 rejected the petition from a person who claimed that he had been evicted from his village by the security forces in 1996 and that he had been unable to access his property since then.⁴² The grounds for the rejection by the commission was as

40 What Demiroğlu aims to emphasize here is that although these people were evicted from their villages by the security forces, because damages caused by the PKK are considered to fall within the scope of the law, these documents that he claims are held by the governorship would solve evidentiary issues.

41 A document dated 10 February 2006, obtained from the Hakkâri Governorship. Hakkâri Governorship (2006). Orthographical errors are not the author’s.

42 See Hakkâri Governorship (2005a). Two members of the commission, including the lawyer, dissented this decision.

follows: “It is clear [from the official report obtained from the Gendarmerie Command of the Province of Hakkâri] that the Tümsek hamlet of the Otluca village is open to settlement, that it has been inhabited continuously since 1987, the year in question, that the said petitioner had left the hamlet voluntarily in 1997 and had moved to the provincial center of Hakkâri, and that he did not suffer any damages.”⁴³ This decision constitutes a concrete example that commissions accept the information obtained from the Gendarmerie as grounds for rejection by itself, without deeming it necessary to verify it through other information or documents. However, the rejection of a petition without the commission carrying out any investigation is not compatible with the principle of legality. However, the even more striking aspect of this decision is that it conflicts with a final judgement of the administrative court in the province of Van in 1999. In a civil suit filed by another resident of the village of Otluca, the court decided that the villagers had been evicted from that village on 24 August 1996; that entry to the village was subsequently forbidden; that the controlled entry and exit of villagers was subject to special permit, and that villagers were unable to access their immovable property.⁴⁴ That is to say, instead of admitting as evidence a final and binding court decision presented by the petitioner to the commission, the commission has accepted as conclusive evidence the information presented by the Gendarmerie - the party that was claimed to have caused the damage - and has thereby unfairly rejected a petition which clearly fell within the scope of the law.

The efforts of state officials to prevent the abuse of the Compensation Law through unfounded petitions are no doubt based on legitimate concerns. However, this objective can be fulfilled with less restrictive means and without placing a heavy burden of proof on petitioners. In Hakkâri, where the eviction of villagers and the burning of villages by the security forces have been established through national and international reports and court decisions, the rejection of petitions on the grounds of lack of documentation will cause and is causing numerous IDPs whose damages fall under the Compensation Law to be unfairly excluded from the process. The fair implementation of a law, which aims at “*rapprochement* between citizens and state,” can only be possible if the state relies on the word of its citizens, who claim that their rights have been violated and who provide witness testimony to support such claims. Otherwise, subjecting compensation claims for damages inflicted on individuals through an administrative practice that took place under the extraordinary circumstances of the State of Emergency⁴⁵ to the routine legal

43 The report referred to in the commission’s decision is the official report dated 7 December 2004 (*Ibid.*) attached to a letter from the Gendarmerie Command of the Province of Hakkâri, Law and Order No. 7130-622-04-2207/14947 dated 17 December 2004.

44 See Van Administrative Court (1999).

45 A report issued by the Turkish Grand National Assembly (“Turkish Parliament”) established that the eviction of villagers that occurred under the State of Emergency constituted an extra-legal practice which lacked legal grounds. Turkish Parliament (1998). For the Turkish Parliament report see Chapter IV, Yükseker: “Research Findings on Internal Displacement in Turkey: National Reports” in this book.

process, and imposing on IDPs an evidentiary burden they can not meet, conflicts with the law's aim to "contribute to peace."

4.2. PROBLEMS ARISING FROM THE WORKING CONDITIONS OF THE COMMISSIONS

Problems arising from the commissions' lack of professional structure are felt even more intensely in Hakkâri because of the personnel shortage in public institutions. At the time of the fieldwork, the position of one of the two deputy governors in Hakkâri and the position of sub-provincial governor of the Çukurca district were administered by proxy. It was apparent that Sezgin Üçüncü, the only deputy governor on duty, had a heavy work load and worked under stressful conditions. Apart from his own duties, Üçüncü was the proxy deputy governor, as well as the sub-provincial governor of Çukurca, and he was chairing a damage assessment commission by right and the other by proxy. He was also responsible for the implementation of the Return to Villages and Rehabilitation Project ("RVRP").

Üçüncü stated that the problems they encountered in the implementation of the Compensation Law arose especially from the unfavorable working conditions of the commissions. Üçüncü said that he and the employees of the Special Provincial Administration, who acted as secretariat employees, worked late hours in order to deal with the heavy workload and that in spite of the serious responsibility placed on their shoulders,⁴⁶ "they didn't even receive an honorarium" in return for their hard work.⁴⁷ Stating that it is impossible for all petitions to be finalized in time, Üçüncü said that the legislators should have foreseen that the process would not last for less than 10 years.

The effective and just implementation of the law depends on the well-meaning and unprejudiced approach of the officials responsible for the implementation, as well as on their provision of the necessary working conditions and resources. The professionalization of the damage assessment commissions and their equipment with the requisite financial and human resources, as proposed in the first report of the TESEV Working Group, should therefore be among the first steps to be taken swiftly.⁴⁸

46 What Üçüncü means here by "responsibility" is the risk of recourse faced by commission members if they cause damage to administration due to their negligence or imprudence.

47 With an amendment made to the Compensation Law on 3 January 2006, a payment per meeting was provided for members of damage assessment commissions. However, this payment of YTL 20 per meeting, as provided by law, is no more than an "honorarium." Official Gazette (2006a). For information on this subject, see Chapter III.

48 Aker et al. (2005).

5. THE PROCESS OF JUDICIAL REVIEW

It seems that because of the high number of rejections by the commissions, Hakkâri will play an important role in setting precedents in administrative courts. According to both governorship officials and lawyers, lawsuits have already started to be filed under the Compensation Law. However, it is not clear how many IDPs - the vast majority of whom are destitute - will prefer, or rather, will afford to go to court. The fact that petitions made to damage assessment commissions are free of charge is one of the most positive features of the Compensation Law in terms of IDPs' access to justice.⁴⁹ Yet, according to several lawyers in Hakkâri, the fact that the petitions of IDPs who will be forced to or who will choose to go to court are not exempted from court fees, will result in many destitute IDPs being unable to take advantage of article 12, which allows judicial review.⁵⁰ Rojbin Tugan, a lawyer, believes that administrative courts actually have the possibility to interpret the provision which provides exemption "from all kinds of fees" in favor of petitioners seeking compensation under the Compensation Law,⁵¹ and in order to facilitate the filing of civil suits under this law. In fact, the statement in the provision that "petitions to be made regarding the implementation" of the Compensation Law are free of charge, shows that, not just petitions made to damage assessment commissions, but *all* petitions related to this law are free of charge.

On the other hand, it seems that administrative courts will not interpret this provision broadly such that IDPs will be granted legal aid. According to Tugan, the administrative court in the province of Van has already rejected petitioners' request for their court fees to be covered by the administration. This development will make it harder for destitute IDPs, whose petitions are rejected or who consider the compensation proposed by the damage assessment commissions too low, to benefit from the right to go to court. Therefore, as proposed in the TESEV Working Group's earlier report on internal displacement,⁵² in order to make the right conferred on petitioners to seek judicial review meaningful, it is extremely important that a special arrangement be made for the Compensation Law. Towards that end, the legislature should state very clearly, without leaving any room for interpretation, that petitions made under the law to administrative courts are exempt from all fees, including court fees.

49 Official Gazette (2004a): Article 15.

50 Article 12, paragraph (e) of the Compensation Law states that "petitioners reserve the right to go to court when disagreements cannot be solved via friendly settlements." Official Gazette (2004a).

51 Article 15, paragraph (a) states that "All petitions, declarations, documents to be prepared, transactions to be carried out by official bodies and notaries and donations and aid to be given in order to be used in accordance with the objectives stated in the Law, are exempted from all taxes, duties and fees." Official Gazette (2004a).

52 Aker et al. (2005).

On the other hand, the question remains as to which law will be used as a basis by administrative courts in the case of petitions made by individuals who do not want to settle with the compensation commissions or whose applications have been rejected by these commissions. Drawing attention to the fact that a fixed amount of compensation has been set by the Compensation Law for cases of death, injuries, and disabilities,⁵³ Tugan believes that administrative courts should not take into consideration a law which conflicts with the general principles of compensation law in Turkey. Lawyers like Tugan believe that it is unclear at this phase whether administrative courts implement the Compensation Law in petitions filed by IDPs, or whether they will apply the general principles of compensation under Turkish law. According to Tugan, courts in these circumstances have no alternative other than to implement the Compensation Law,

Who is then able to choose to go to court in Hakkâri? Two types of IDPs are foreseen as likely to go to administrative courts: those whose petitions are rejected and those who reject friendly settlement declarations on the ground that the compensation amounts proposed by the commissions are too low. Official figures obtained from the Hakkâri Governorship give an idea about the number of potential plaintiffs in these two groups: as of 31 January 2006, there were 844 people whose petitions were rejected (one could predict that among these 844, especially the 309 people whose petitions were rejected due to lack of information and documentation, will possibly want to go to court) and there were 64 people who had not yet signed the declarations of friendly settlement sent to them (of course, one could predict that the said 64 people might be in the decision making phase and that some or maybe even many will agree to settle with the commissions).⁵⁴ Lawyers believe that mainly families whose relatives have been murdered by unidentified perpetrators will exercise their right to go to court. Naturally, when talking about “the preference of IDPs,” their lawyers must also be taken into consideration. As explored above, the Compensation Law can cause a conflict of interest between lawyers and their clients. For most lawyers, obtaining compensation following a relatively easy and speedy friendly settlement process in return for a pre-set contingent fee, is an option often preferred to a long and difficult legal process with an unpredictable outcome. Therefore, when discussing which option IDPs would prefer, it is necessary to question to what degree these preferences have been personally weighed and consciously made.

The distinction between wanting to go to court and being able to go to court must also be made. The issue here is that those who seek justice are destitute people who were subject to sudden and traumatic internal displacement, who have not received any compensation for their property and the violation of their constitutional rights,

53 Official Gazette (2004a): Article 9. For information on how the compensations are calculated and for compensation amounts, see Chapter III in this book.

54 Document obtained from the Hakkâri Governorship Office of Social Relations on 10 February 2006. Hakkâri Governorship (2006). For information compiled from this document, see Table 9.

and who have had to survive for years relying solely on social networks - without receiving any social or economic assistance from the state. As many lawyers stated, for most of these people, venturing into a long and expensive legal process with an uncertain outcome, rather than accepting a helping hand extended after many years and a small amount of compensation, is not a very realistic option. As the report of the Batman fieldwork examines in detail,⁵⁵ in comparison to the friendly settlements foreseen by the Compensation Law, certain dissuasive factors are inherent in the option of going to court: petitions filed with damage assessment commissions are exempt from fees, whereas when petitions are filed to courts, the payment of fees proportional to the compensation requested (which can reach very high amounts especially in the case of petitions concerning immovable property) is required; administrative courts generally reject requests for legal aid; and it may take six to eight years for cases to be brought to a conclusion at the Van and Diyarbakır regional administrative courts, which already have a very heavy work load, and then at the Council of State. Therefore, for the majority of IDPs, the right to go to court conferred by article 12 of the Compensation Law is inapplicable in practice.⁵⁶ Lawyers state that only the families that are economically better off can take the risk that a long and expensive legal process involves.

6. THE GENERAL POLITICAL AND HUMAN RIGHTS SITUATION IN HAKKÂRİ

The issue of internal displacement in Hakkâri cannot be considered separately from the general environment that has pervaded the city especially since the summer months of 2005. Considering the major increase that forced migration has caused in the population of the city,⁵⁷ the fact that the majority of the city's current population consists of IDPs cannot be denied. Therefore, it is both impossible and incorrect to differentiate between the problems of IDPs who settled in the city center of Hakkâri and the problems of the native residents of the city.⁵⁸

The prevalent atmosphere of fear and unease observed by the TESEV Working Group during the fieldwork has caused NGO and municipality representatives and local

55 See Kurban: "Internal Displacement and Reparative Justice: Implementation of the Compensation Law in the Province of Batman" in this chapter.

56 Official Gazette (2004a).

57 Estimates show that the population of Hakkâri has risen from circa 30,000 to 70,000-80,000 following internal displacement. That is to say, probably more than half of the population of the provincial center consists of IDPs. For information on the increase in population, see Aker: "Evaluation of Fieldwork Conducted in the Province of Hakkâri: Causes and Psychological and Social Consequences of Internal Displacement and the Process of Return" in this chapter.

58 The political tension dominating Hakkâri not only negatively implicates on IDPs' human rights in general (for example, officials from KESK, SES and TÛM BEL-SEN, whose members include IDPs, have stated that they "couldn't breathe," carry out trade union activities, could not exercise their right to associate, that their personal safety was not ensured and that they were kept under police surveillance) but it also aggravates the sense of loss which is unique to their situation. For example, NGOs state that the negative environment in and around the city and the re-emergence of armed clashes have been preventing IDP return to villages.

lawyers to be concerned about a possible return to the circumstances of the 1990s when there were frequent human rights violations in Hakkâri, which at the time was placed under the State of Emergency. Officials from Göç-Der have listed the following as the actions said to have been carried in Summer 2005 out by “special squads” consisting of people “wandering the streets” of the city center, wearing snow masks, and carrying kalashnikov rifles: kidnapping, extrajudicial killings, midnight raids, and house searches without court orders, and ID checks.⁵⁹ Göç-Der directors stated that squads from Special Operations Team (*Özel Harekât Timi*), Anti-Terror Unit (*Terörle Mücadele Şubesi* - “TEM”), Anti-Smuggling Unit (*Kaçakçılık Şubesi*), Gendarmerie Intelligence and Anti-Terror Unit (*Jandarma İstihbarat ve Terörle Mücadele* - “JİTEM”), and even village guards are present in the city center and that each of these units “is a source pressure in and of itself” on IDPs. İHD officials stated that the atmosphere has been very strained in Hakkâri since the summer months of 2005, that midnight raids of the houses of civilians conducted by people wearing snow masks have intensified, particularly in July and August, and that this type of action generally targeted IDPs. They pointed out that these incidents began after two non-commissioned officers died as a result of the explosion of a car-bomb in the city center in July 2005.

During the fieldwork, Erdoğan Gürbüz stated that there had recently been explosions in the city and that 22 members of the security forces had lost their lives in the last six months. Stating that claims of midnight raids by people wearing snow masks on homes were “a figment of the imagination,” Gürbüz said that in accordance with the new laws enacted within the EU accession process, it was impossible to conduct house searches without a court order. In response to questions regarding NGOs’ claims of recent kidnappings and extrajudicial killings, the governor stated that only one person had been kidnapped and had later been found alive, and that “executions” were out of the question.

The situation of IDPs in Hakkâri cannot be considered independently from the bomb explosions, human rights violations, and the strained political atmosphere prevalent in the province in recent months. The incident surrounding the death of Yusuf Yaşar - which is considered an “extrajudicial killing” by NGOs, municipal officials, and lawyers, but which the governorship refers to as “the killing of a terrorist in an armed clash”⁶⁰ -

59 Officials from İHD shared examples of many petitions filed with them on these issues. These petitions are on file at TESEV.

60 According to the statement to the press by the Hakkâri Governorship dated 13 August 2005, Yusuf Yaşar was a “terrorist” killed on 12 August 2005 during a clash with the security forces while he was trying to lay a mine on a road used by military units. However, according to civil society representatives, he was a civilian who was kidnapped by perpetrators unknown and subjected to an “extrajudicial killing.” In the report that followed the investigation on the death of Yaşar based on witness testimonies, the crime scene report and the autopsy report, İHD has come to the conclusion that the incident was an “extrajudicial killing.” İHD (2005a). For an article on the Yaşar incident that was covered by the press following the Şemdinli incidents, see Bayramoğlu (2005b).

constitutes a concrete example of the gap in Hakkâri between the state and society. Whatever the circumstances of the incident, the fact that it is evaluated completely differently by public officials on the one hand, and by the society on the other, is a problem in and of itself. Even if Yaşar was not executed, that the population believes he was and considers the state responsible shows that, in the case of Hakkâri, major obstacles remain toward arriving at the “rapprochement between citizens and state” and “peace,” as aimed at with the Compensation Law.⁶¹

7. STAKEHOLDERS’ PROPOSALS FOR SOLUTION

The differing opinions of people in Hakkâri about how the internal displacement issue should be solved points to a fundamental schism. While public officials state that the issue, which according to them is fundamentally an economic one arising from unemployment and poverty, can be solved through policies generating employment; according to NGOs, municipal officials, and lawyers, the issue is a political one and, therefore, the solution should also be political. According to Deputy Governor Sezgin Üçüncü, unemployment is the main problem for IDPs. Üçüncü, who claims that paying compensation to these people is necessary but not sufficient, believes that, in addition, the state should provide IDPs, especially those living in the cities, with employment and vocational education. According to Üçüncü, who states that the RVRP is not a meaningful project for anyone but elderly IDPs who want to return to their villages, the expenditure allocated for return must be transferred to cities. Conversely, according to a municipal official, the issue of internal displacement cannot be solved without solving the Kurdish issue. Stating that “in order to achieve an environment of peace and safety a political dialogue needs to be established among the authorities,” this official listed the other steps to be taken as follows: alleviating socio-economic inequalities between different regions of Turkey, conferring on the Kurds the right to hold TV broadcasts in Kurdish and the right to education in Kurdish, declaring an amnesty and taking the necessary steps in order to “release prisoners and reintegrate into society those who have joined the PKK,” and abolishing the village guard system.⁶² Also, according to İHD members, in order to solve the issue it is necessary to declare amnesty and to secure a cease-fire.

According to a group of trade union activists from the Confederation of Public Employees’ Trade Unions (*Kamu Emekçileri Sendikalar Konfederasyonu* - “KESK”), the Healthcare and Social Services Employees’ Trade Union (*Sağlık ve Sosyal Hizmet Emekçileri Sendikası* - “SES”), and All Municipal and Local Administration Employees’ Trade Union (*Tüm Belediye ve Yerel Yönetim Hizmetleri Emekçileri Sendikası* - “TÜM BEL-SEN”) - some of whom were IDPs - neither internal displacement nor any other

61 Official Gazette (2004a): Preamble to the Law.

62 This official proposed that the 6,500 provisional village guards in Hakkâri be placed on the payroll of the Ministry of Education.

problems of Hakkâri can be considered separately from the Kurdish issue. They also said that the speech given by Prime Minister Tayyip Erdoğan in June 2005 in Diyarbakır, where he acknowledged the existence of the Kurdish issue, had raised their hope that steps would be taken towards a solution, but that after the Prime Minister had “backed down” from his statements, they had been disappointed once again.

8. CONCLUSION

Problems incurred during the implementation of the Compensation Law in Hakkâri arise not only from the unsuitable working conditions of the damage assessment commissions, but also from the ambiguity of the texts of the law and the regulation. These problems are also exacerbated by the fact that the government does not provide the necessary guidance to the commissions to address the problems arising in implementation. Taking into consideration the pressure exercised by the Law on Civil Servants - which foresees that civil servants who cause damages to the state may be taken to recourse - on commission members who are subject to this legislation, the important role the government would play in the achievement of effective implementation by showing an unambiguous and strong political will becomes even more obvious.

However, messages coming from Ankara have been insufficient and inconsistent. The fact that the circulars sent by the Ministry of Foreign Affairs to commissions before the *İçyer* decision of the ECtHR ceased immediately after that ruling, was interpreted by lawyers to reflect the government’s loss of its resolve for timely and effective implementation of the law. On the other hand, even if such instructions were to continue, as long as the risk of recourse “hangs like the sword of Damocles” over the heads of commission members, circulars that stand below the law from a legislative hierarchical point of view will not suffice to ease the concerns of commission members. Moreover, for the implementation to be improved, it is the Ministry of Interior - which has authority over the personnel matters of the commissions -⁶³ not the Ministry of Foreign Affairs, that should show political will. For these reasons, the political will expected from the government is not only public statements clearly declaring that it stands behind the law, but also certain concrete legal steps. The first such step should be to confer upon commission members the immunity granted to judges for the decisions that they make in good will. Also, the government should prepare an explanatory and binding note for each article of the law and instruct the commissions to strictly adhere to such guidelines.

However well-prepared they may be, laws that are not supported by strong and clear political will, sufficient financial resources, and an effective supervision mechanism will not be adequate in solving a political problem, particularly that of internal

■ 63 This is naturally not valid for the lawyer members of the commissions, who are not civil servants.

displacement. Although the Compensation Law aims at compensating only the material damages incurred by IDPs, were it implemented effectively, it could be a very significant tool for the solution of internal displacement in Turkey. However, the Compensation Law is far from meeting IDPs' expectations for justice: it was enacted to appease the EU and to prevent cases from being taken to the ECtHR; it is perceived by both the government and the implementers as a "technical" legal arrangement; it lacks a clear political will supporting its effective implementation, and it is trying to be implemented in a political environment where the state still has not accepted its responsibility in the eviction of villagers. For the law to achieve "*rapprochement* between citizens and state" and "contribution towards peace" aimed at in the Preamble, it is important that the government and especially the prime minister make public statements which communicate the importance of the law and show that the government stands firmly behind its effective implementation.⁶⁴ Most important of all, just as the prime minister acknowledged the existence of the "Kurdish issue," he should also acknowledge that Turkey has an "internal displacement problem" to solve and that the state has made "mistakes" in the past - namely that security officials have committed gross violations of human rights against the civilian population. Such a political move would be very effective in breaking the resistance and dispelling the fear of public officials responsible for implementing the law.

Now, for a final word on the special situation of Hakkâri. The statement by a member of KESK that "Turkey ends in Van; Hakkâri is the buffer zone," says a lot about the state of mind of the people of Hakkâri. The fact that the Kurdish residents of this city believe that they are being discriminated against, that they are deprived of the rights and opportunities given to the rest of the population in the country, and that they are not "citizens" shows that achieving the desired result of "*rapprochement* between citizens and state" remains distant in the case of Hakkâri. During the course of the fieldwork, the TESEV Working Group observed frequent ID checks, checkpoints, and military tanks wandering in the city center, which it had not observed in Batman or in Diyarbakır. This situation gives the impression that the State of Emergency - which was legally abolished in the entire region in 2002 - continues in Hakkâri in practice. Both for this reason, and because Hakkâri is the province with the highest number of evicted villagers and the most rampant right violations, steps to be taken towards addressing internal displacement in Turkey should perhaps start in Hakkâri, which is truly a "unique" place.

■ 64 Official Gazette (2004a): Preamble to the Law.

CHAPTER VI
CONCLUSION

DİLEK KURBAN
DENİZ YÜKSEKER
AYŞE BETÜL ÇELİK
TURGAY ÜNALAN
A. TAMER AKER

Towards a Solution to Turkey's Internal Displacement Problem: Social Reconciliation and Rehabilitation

The problems that have arisen from the displacement of hundreds of thousands of people - the majority of whom are Kurdish - in the clashes between 1984 and 1999 in Eastern and Southeastern Anatolia have not yet been solved, although major steps have been taken in the last few years. The TESEV Working and Monitoring Group on Internal Displacement in Turkey ("TESEV Working Group") believes that Turkey's problem of internal displacement cannot be dealt with independently from the Kurdish issue, which has societal, economic, cultural, and political dimensions.

Turkey needs to develop serious socio-economic projects, compensate financial as well as non-pecuniary damages, take steps to improve public and mental healthcare, and adopt policies to truly bring an end to the time of clashes and to achieve reconciliation. Moreover, the effectiveness of the said projects depends on the projects themselves being products of democratic processes based on the active participation of relevant non-governmental organizations ("NGOs") and of representatives of internally displaced persons ("IDPs").

In fact, studies conducted in other countries with similar problems show that the re-construction of regions where internal displacement has occurred, the enlivening of the economy in areas where return has taken place, the re-integration of IDPs into society, the re-establishment of citizenship rights, the protection of vulnerable groups such as women and children, and the re-integration of those who have been involved in the clashes into society need to be simultaneously carried out in order to achieve a durable solution. The government's inclusion of relevant NGOs and of representatives of IDPs to seek a solution has played an important role in the positive results obtained in countries considered to be relatively "good examples" for the solution of internal displacement.

This last section of this book briefly summarizes problematic areas regarding the issues of: 1) the effectiveness of governmental policies and the participation of civil society; 2) return and rural development; 3) socio-economic measures in urban areas; 4) the education of stakeholders; 5) the compensation of damages; 6) psychosocial rehabilitation; and 7) reconciliation, including a series of policy proposals aimed at a durable solution.

1. EFFECTIVENESS OF GOVERNMENTAL POLICIES AND PARTICIPATION OF CIVIL SOCIETY

The decision of principle, entitled “Measures on the Issue of IDPs and the Return to Villages and Rehabilitation Project” accepted by the Council of Ministers in August 2005, constitutes the general framework of the measures that the government is taking and intending to take to address internal displacement. The main feature of this document, which qualifies as a “Framework Document” defining the government’s policy on this matter, is that it expresses a political commitment to the “Guiding Principles on Internal Displacement” (“Guiding Principles”) developed by the United Nations (“UN”). However, the Framework Document does not bring about a new point of view, or one that is different from previous policies concerning internal displacement in Turkey. There are serious deficiencies in the document such as the lack of commitment for the abolishment of the village guard system or lack of concrete proposals concerning IDPs living in urban areas. Moreover, although the government, as a party to the Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-personnel Mines and on their Destruction (“Ottawa Convention”), has committed to clear all landmines by 2014, there is no reference to this responsibility in the Framework Document; there is only mention that “problems within the framework of return resulting from” landmines deployed by the Kurdistan Worker’s Party (*Partiya Karkerên Kurdistan* - “PKK”) will be dealt with. It is necessary for the government to identify and correct this and other deficiencies in the document with the participation of NGOs specializing in internal displacement and to urgently develop a concrete “action plan” in accordance with the principles contained in the document. TESEV hopes that the policy proposals in this section will facilitate the development of such an action plan.

The findings of the study, commissioned by the government and conducted by the Hacettepe University Institute of Population Studies (“HIPS”), which aimed at estimating the number of IDPs and at identifying their problems, have finally been released on 6 December 2006, nearly one year after the completion of the study.¹ However, HIPS has only made public the findings of the quantitative component of the “Research on Migration and Displaced Persons in Turkey” (*Türkiye Göç ve Yerinden Olmuş Nüfus Araştırması* - “TGYONA”). It is extremely important for solving the issue of internal displacement and defining the next steps to be taken that the findings of the qualitative component, as well as the survey questionnaire, are also made public.² As of June 2007, six months after the release of the report, the government has not made any public statements - with the exception of a statement by the Minister of Interior during the launch of TGYONA - about the Hacettepe study nor has it taken

1 HÜNEE (2006).

2 For a critical assesment of the findings of TGYONA in a news commentary by TESEV Working Group member Dilek Kurban, see addenda Kurban: “What the Report Leaves Unsaid” and “Open Letter to the Ministry of Interior” in this book.

any steps to show that it is indeed, as promised by the Minister of Interior, taking into account the findings of the survey in designing/reviewing its policies on IDPs. HIPS has not translated the report into English and has not taken any steps to ensure its wide dissemination, with the exception of mailing it upon demand.

Immediate disclosure of the qualitative findings of TGYONA will also be useful for shaping action plans both at the national level, as the government has committed to, and at the local level in provinces formerly ruled under the State of Emergency, along the lines of the Van Action Plan developed by the Van Governorship in cooperation with the United Nations Development Programme (“UNDP”) and based on consultations with civil society.³ While some local human rights NGOs reported that they were initially excluded from the process of drafting, the Van Action Plan, initiated as a pilot project in accordance with a protocol signed between the UNDP and the Ministry of Foreign Affairs, is still a significant first step towards developing a participatory local model of cooperation between public institutions, NGOs, and the UN toward the solution of internal displacement. However, it is disconcerting that, as of the end of June 2007 – nine months after the launch of the Van Action Plan on 29 September 2007 – there has been no progress in its implementation due to lack of financial resources. The TESEV Working Group hopes that this pilot project will be launched without further delay and that it serves as a positive model for further local initiatives in Turkey, particularly in the eastern and southeastern regions. It is also important that the support of the World Bank and of the European Union (“EU”) as well as the participation of NGOs on equal footing with the government and the UNDP be ensured in similar projects in the future.

2. RETURN AND RURAL DEVELOPMENT

While the government has claimed⁴ that about one third of the approximately 360,000 IDPs have returned, the actual number of returnees may be much lower. In fact, the ratio of returnees is much lower. The Hacettepe study has shown that the estimated number of IDPs is nearly three times higher, ranging between 953,680 and 1,201,200.⁵ According to the study, the number of returnees ranges between 112,000 and 124,000.⁶ Thus, the ratio of IDPs who have returned to the total number of IDPs is only around 11.5 percent.⁷ Furthermore, one needs to bear in mind that returns are often not durable or permanent. The lack of infrastructure and public services in places where return is taking place causes internally displaced families to spend only the summer months in the villages, or for only some family members to return to the

3 Van Governorship (2006).

4 The Ministry of Interior, on various occasions, stated that the number of IDPs is around 355,000 – 380,000. For more on this, see Chapter III.

5 HÜNEE (2006), 61.

6 *Ibid.*, 63.

7 *Ibid.*

villages. Furthermore, these negative conditions are also preventing those who live in cities from returning to their villages. Most urban IDPs are not able to return due to their poor economic situations and the insufficiency of aid provided by the state within the scope of the Return to Villages and Rehabilitation Project (“RVRP”). This assertion is verified by the findings of the Hacettepe study, which shows that 91.3 percent of returnees say that their expectations have not been met.⁸ Respondents cited the inadequacy of compensation amounts, the insufficiency of government aid, the lack of employment opportunities, and the lack of security among the reasons why they are not satisfied.⁹

Another significant obstacle preventing returns is the security conditions. The persistence of the provisional village guard system; the presence of landmines and unexploded ordnance (“UXO”) in rural areas; the recent re-institution of the ban on the use of pastures in some areas in the region where animal husbandry is the main source of livelihood; the increase of operations by the security forces and of attacks by PKK during 2005, and the intensification of both the operations and the attacks in May-June 2007 with the expiration of the ceasefire declared by the PKK are factors that prevent return and that threaten returning IDPs. Some of the steps that must be taken are as follows: mapping where landmines and unexploded ordnance are located, initiating centrally coordinated awareness-raising and training activities on the danger of landmines and UXO, marking and fencing off the areas where landmines and UXO are located or are believed to be located in and around places of settlement, clearing landmines and UXO from border zones and places of settlement, and the initiation of physical and psychological rehabilitation programs for victims of landmines. Moreover, village guards must be prevented from harassing returning villagers. Complaints on this matter must be swiftly investigated and security conditions in regions where return is taking place must be improved.

To ensure a durable solution to internal displacement, the largest possible number of IDPs must be able to benefit from the right to return. With this in mind, the RVRP should be implemented effectively and justly. The Hacettepe study’s finding that 88.5 percent of returnees have not received any financial or in-kind aid from the government raises concerns about the allocation of resources under the RVRP.¹⁰ Expenditure within the scope of the RVRP should be limited to IDPs wishing to return to settlements of their choice, and the use of this budgetary allocation for those who have not been internally displaced should be prevented. The effective and just implementation of Law No. 5233 titled “Law on Compensation for Losses Resulting from Terrorism and the Fight against Terrorism” (“Compensation Law”) should result in the provision of financial support for people wishing to return.

8 *Ibid.*, 94.

9 *Ibid.*

10 *Ibid.*, 93.

However, considering that all IDPs will not be able to benefit from the Compensation Law and from the RVRP, a comprehensive local rural development program should be developed in order for return to become more widespread for those wishing to do so. Public institutions, the private sector, and NGOs need to develop common projects in order to remove obstacles preventing development and to eliminate rural poverty. In doing this, various projects that take into consideration the different problems and needs within the region should be developed, instead of a single project for the whole of the region. In addition, people who have moved abroad following their displacement should also be given the right to benefit from the right to return. Moreover, those in this group who are eligible to receive state aid intended for IDPs should be allowed access to such aid.

3. SOCIO-ECONOMIC MEASURES IN URBAN REGIONS

The solution of problems caused by internal displacement cannot be limited to policies regarding return alone. Both the government policy and situation assessments in the European Commission's Progress Reports give priority to "return to villages." However, the vast majority of IDPs live in cities and the majority of them may not return, may not wish to return or may not be able to return to their original homes in rural areas. The major problems of IDPs living in provincial and district centers in Eastern and Southeastern Anatolia and in urban centers in the west and south of Turkey are: unemployment, poverty, lack of social security, lack of shelter in good conditions, children's inability to benefit from the right to education and/or children being forced to work in order to earn a living and the inability, especially of women and children, to access healthcare services. In addition, IDPs living in urban centers in the west and south of Turkey are at times subject to discrimination in the fields of education, housing, and employment because of their Kurdish identity.

Social policies should be developed which aim to facilitate children's and young people's access to formal education and adults' access to non-formal education. Besides education for school-age children, the expansion of literacy and vocational courses, especially for women and young girls, is also important. Furthermore, the implementation of the Green Card must be expanded, application and card renewal criteria must be simplified, made clear and transparent, programs such as conditional cash transfers aimed at families with children and direct income support for farmers must become permanent, and IDPs' access to such programs should be ensured. In addition, access to low-interest loans for small enterprises should be facilitated for IDPs who live in cities; micro credit projects should be expanded. However, it is crucial to bear in mind that credit projects for small and micro initiatives cannot be effective unless they are supported by employment and investment incentives in the service and production sectors compatible with the agricultural economy in provincial and district centers in the region. Moreover, the investigation and punishment of discrimination against Kurds in the fields of education, employment, and housing will be useful in preventing this kind of behavior.

4. THE TRAINING OF STAKEHOLDERS

Although the government has taken significant steps to address the internal displacement issue, such as the enactment of the Compensation Law and the publication of the Framework Document, there has been a great delay in the training of stakeholders on the scope of the policies and their implementation. The need to hold a meeting regarding the Compensation Law, which was enacted in July 2004 and which started to be implemented in October 2004, emerged for the first time during a meeting held in December 2005 by the Ministry of Interior with deputy governors from 14 provinces within the scope of the RVRP. In the said meeting, where issues such as the Compensation Law, the Framework Document and the RVRP were dealt with as off-the-agenda items, deputy governors requested that an educational meeting be held concerning the Compensation Law, with the participation of all of their colleagues nationwide. As a result, the Ministry of Interior organized the first meeting on the law with the participation of all deputy governors on 22 March 2006; that is to say, 17 months after the implementation of the law started.

At another meeting held in Mersin in June 2006 at the request of the UNDP, members of damage assessment commissions operating in the region formerly governed under the State of Emergency were trained, on the Guiding Principles and on international experiences in damage assessment (by officials from the UNDP and the Ministry of Interior). The fact that not only deputy governors but also some commission members - including lawyers - participated in this training constitutes a positive step. In late 2006 and early 2007, the Ministry of Interior took steps towards achieving harmonization in the nationwide implementation of the Compensation Law through issuing standardized guidelines on compensation amounts for the use of provincial commissions.

The government has also begun training stakeholders on the subject of the Guiding Principles. The first concrete step in this area was taken when the Norwegian Refugee Council ("NRC") held a training seminar for the deputy governors of the 14 provinces during the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons' ("the Representative") visit to Ankara on 4-6 May 2005. A similar meeting took place in Ankara on 24 February 2006 with the participation of the Representative, the Minister of Interior, and the governors of the 14 provinces. These training sessions should be expanded so as to include relevant public officials in governorships and sub-provincial administrations.

There is no doubt that the training of NGOs is also of extreme importance for an effective and democratic solution of the internal displacement issue. In this sense, it is necessary that training on the Guiding Principles, initiated by the UNDP and the NRC and handed over to local and national NGOs on 8-9 June, is continued. Furthermore, NGOs that serve IDPs should have guidebooks based on the Guiding

Principles prepared for the use of the population, for IDPs and for public institutions in areas directly or indirectly affected by internal displacement. In addition, long-term training and informative projects should be enacted according to the precepts of these guidebooks.

5. THE COMPENSATION OF DAMAGES

The Compensation Law is the most important step taken by the government to address the internal displacement issue. However, the scope and implementation of the law are far from achieving the aims of “rapprochement between citizens and state” and “contribution to peace,” as stated in the Preamble. The achievement of these goals can be possible if the law is endorsed by public officials and if it inspires confidence in the citizens. This can only be achieved if the government publicly endorses the law in a way that dispels all doubts about its good faith in adopting the law and its commitment to effective implementation. If the Prime Minister were to declare that the Compensation Law is meant to atone for the human rights violations committed by state officials in the past, this would contribute greatly both to IDPs’ trust in the government’s sincerity regarding the real objective of the law, and to the solution of the problems in the implementation of the law, particularly by alleviating the evidentiary burden of proof on applicants.

The TESEV Working Group has proposed a series of amendments in the law in its first report issued in October 2005. Among these was the compensation of non-pecuniary damages, the setting of compensation amounts for death and injuries according to the subjective circumstances of victims and the increase of civil society representatives on commissions. The TESEV Working Group is aware that it is unrealistic to expect these changes to be enforced nearly two years after the commencement of the implementation. Therefore, while emphasizing these deficiencies in the substance of the law once again, the TESEV Working Group calls upon the Ministry of Interior to urgently take a series of measures in order to improve the implementation.

As of the end of February 2007, only 21 percent of the petitions have been brought to a conclusion, although the implementation had started in October 2004. Besides, the differences that exist in the nationwide implementation of the law are cause for concern. The major reason for these discrepancies is that officials in each province have different interpretations about the scope and the implementation of the law. The slowness and inconsistency of the implementation not only weaken the IDPs’ trust in the state, but also conflict with the principle of the rule of law. Moreover, the fact that commission members, who carry out a quasi-legal function, have not been given the legal immunity conferred on judges means that they run the risk of being impugned for the financial losses they might cause the state to incur. This explains why commission members, whose personnel matters and professional careers fall under the purview of the Ministry of Interior, show resistance in implementing the law.

For these reasons, the government should forthwith articulate an explanatory note to be sent to the commissions that discusses the aim and scope of each and every article in the law and which contains answers to all the questions sent by the commissions to the Ministry of Interior up to the present. This note should state in particular that commissions, in accordance with the amendment made to the law, should not impose an evidentiary burden of proof on applicants, and that they should not evaluate the information provided by the Gendarmerie as decisive evidence since the Gendarmerie is often responsible for the damages suffered by IDPs. The note should also lay out clear and binding criteria that the commissions should follow in implementing the law. In that regard, reports that the Ministry of Interior has issued guidelines to achieve the nationwide standardization of compensation amounts awarded by the commissions is a promising progress. However, the guidelines should be accessible for lawyers and NGOs, and the Ministry of Interior should closely monitor their implementation. Furthermore, on-site investigations should be carried out by experts and fair standards should be brought to fees paid to these experts. To that same end, commission members nationwide should meet more frequently to discuss issues arising from the implementation of the Compensation Law. If high level officials from the Ministry of Interior were to attend these meetings and express a clear message that the government stands behind the implementation, this would be important for breaking commission members' resistance based on the fear of recourse. The communication to the commissions that the government is committed to the effective and fair implementation of the law could help alleviate the worries of bureaucrats who fear that compensating "terrorists" or giving high amounts of compensation could jeopardize their future career.

Significant responsibility for achieving peace lies with NGOs and lawyers who act as intermediaries between the state and the citizens. One of the most negative effects that the State of Emergency has had on the region is the deepening senses of mutual mistrust and suspicion between the state and the Kurds. Lawyers need to take into consideration this situation and the fact that commission members carry out their duty in the shadow of the risk of recourse. They should not only avoid abusing the process, but also advise their clients accordingly. In this context, serious responsibility lies also with the Turkish Bar Association and regional bar associations towards ensuring that their members who represent petitioners under the Compensation Law act in accordance with rules of professional conduct. They should also duly investigate lawyers who abuse the law.

Moreover, there is a need to establish a higher administrative authority to review the rejection decisions taken nationwide up to the present and to act as a sort of appeals body to re-evaluate the petitions that were unjustly rejected. In addition, for IDPs whose petitions have been rejected or who consider the proposed compensation amounts insufficient and who wish to go to court, an exception should be made for

the Compensation Law by exempting applicants from legal fees in administrative courts and providing them with legal aid. Taking these steps has increasingly become pressing following the European Court of Human Rights' ("ECtHR") *İçyer* decision.

For the evaluation of petitions to speed up, it is also very important that the number of commissions is increased, that the commissions acquire a professional structure and that their financial, personnel, and logistical needs be met. But bringing petitions to a conclusion as soon as possible should not be the only aim. Although speedy implementation is important, what matters more is that petitions are evaluated justly. Therefore, taking into consideration that the law started to be implemented in October 2004 but that due to the harsh winter conditions, on-site investigations could only start in the spring of 2005, the extension of the two-year period foreseen for the evaluation of petitions under the law should be extended to a more realistic date; as this will alleviate the current political pressure on the commissions.

6. PSYCHOLOGICAL AND SOCIAL REHABILITATION

Internal displacement in Turkey is a traumatic phenomenon from the social and psychological perspectives as well. IDPs may have been subjected to traumatic events such as armed clashes, torture, physical or sexual violence, rape, death threats and the loss of loved ones. Besides the traumatic aspects of the pain caused by the past, uncertainty regarding the future can create many negative feelings, such as loss of hope, lack of confidence, loneliness, and skepticism.

Therefore, considering its potential consequences, internal displacement qualifies as a manmade disaster and as such it constitutes a public health issue. There is, therefore, need for the development of a sustainable and durable program, which would cover multiple decades and which would not be limited to the healthcare sector, but would be multi-disciplinary and multi-sectoral. Community-based approaches would be beneficial in this instance. Thus, reaching a common ground is necessary for the state, NGOs, IDPs, and citizens to work together.

The education, information, and infrastructure capacity of migration receiving and sending areas should be developed in the areas of physical and mental healthcare. For example, healthcare personnel should receive training focused on internal displacement and the physical and health problems of IDPs. Measures must be taken to facilitate IDPs' access to healthcare services. With this objective, on one hand the number of first-stage public healthcare institutions and their employees should be increased in urban areas inhabited by IDPs, and on the other, healthcare services should be taken to rural settlements where return is taking place. Moreover, measures to facilitate access to healthcare can include providing IDPs with social security.

While some of the steps suggested above will require changes in healthcare policy nationwide, there are also measures that need to be taken swiftly in Eastern and

Southeastern Anatolia and in city centers which have received an influx of IDPs. Among these measures is increasing the number of currently existing community centers and ensuring their cooperation. It is important that these centers work closely with state-run primary health clinics in the region. Apart from social care experts, these community centers should also employ healthcare personnel and psychological consultants and should work in cooperation and in a participatory way with NGOs and the state. Psychological and social counseling and basic health training can be offered in community centers. These centers can contribute to initiating and sustaining psycho-social programs. Moreover, counseling services and participatory activities can be organized on the subject of substance abuse, the rehabilitation of street children and of children working on the streets, and women's issues. In order for services in the field of mental health and public health to be effective and in order to overcome the language barrier which is a frequent problem both in community centers and in healthcare organizations, new practices must be developed to facilitate the communication of healthcare problems in Kurdish.

What is meant here by rehabilitation is not just the healing of trauma arising from internal displacement, but also a more general rehabilitation. In this context, the TESEV Working Group would like to draw attention to the fact that the Turkish Republic is a social state based on the rule of law, and to the principle of "social risk" stated in the constitution.¹¹ For years, apart from their social support networks such as families and relatives, IDPs have been unable to find an authority to help them. In spite of the financial hardships they encountered, most families did not give up their fight to build a respectable life for themselves in their new places of settlement. However, already worn out as a result of the neo-liberal economic policies (regarding employment, agricultural subsidies, social security, healthcare, etc.), traditional support networks have become unable to carry the burden of internal displacement. It is obvious that the phenomenon of internal displacement feeds into certain negative social processes such as the widespread mobilization of child labor as a means of livelihood, the reasons of which need much more in-depth research. The TESEV Working Group would like to draw attention once again to the fact that the major responsibility for the prevention of these problems and for the rehabilitation of people and groups affected by these problems lie with the state, in accordance with the principles of a social state based on the rule of law. In this context, society as a whole also has important duties to fulfill for the solution of the internal displacement issue.

7. RECONCILIATION

Even if the suggestions above were to be recognized, if the security conditions in the region worsen or if the environment of clashes resumes, it might not be possible to

¹¹ The social risk principle endorsed in the Turkish Constitution rests on the objective responsibility, i.e. strict liability, of the administration. Accordingly, it requires the state to compensate losses which it could have prevented but failed to do so. This principle does not seek the establishment of fault on the part of the state for the payment of compensation.

effectively implement said policies. Indeed, both attacks by the PKK and operations by the army significantly escalated in May/June 2007 amid discussions of a possible intervention into Northern Iraq to “eradicate” the PKK, a demand voiced by the Turkish armed forces. Furthermore, socio-economic projects, the compensation of financial damages and social and psychological rehabilitation projects alone may not be sufficient to achieve mutual trust between IDPs and state institutions and for the re-establishment of faith in justice.

Therefore, in order for the steps taken towards the solution of Turkey’s internal displacement problem to be durable and sustainable, it is important that the period of conflict is left completely behind and that reconciliation is achieved. With this objective, security conditions in the region must be improved and PKK members and village guards must be disarmed and reintegrated into society. It is very regrettable and disconcerting that the government recently took a measure in the opposite direction by enacting a law on 27 May 2007 which authorizes the recruitment of up to 60,000 additional provisional village guards if needed.¹² There are new reports that the recruitment of additional voluntary village guards also continues. The escalation of the armed conflict as well as the hiring of additional village guards in the eastern and southeastern regions pose a threat for the safety of returnees and will likely discourage IDPs contemplating return.

Achieving reconciliation will no doubt be a long and difficult process. But however difficult the achievement of that goal is, it is necessary to begin the hard work in this area as soon as possible. The main steps to be taken can be listed as follows: open acknowledgement by the government that the eviction of villagers in the region under the State of Emergency qualifies as a violation of constitutional rights; public acknowledgement by the government of human right violations that occurred during internal displacement for which the state is responsible; the uncovering of rights violations committed in the same period by security forces and by village guards and the trial of perpetrators; cooperation between public institutions and human rights NGOs and IDPs in order to dispel the social enmity that emerged in the region during the period of clashes; following the disarmament of PKK members, examination of the feasibility of a legal arrangement to facilitate the reintegration into society of those who have not committed crimes; and following the disarmament of village guards, the creation of re-employment projects for them in fields other than security and education.¹³

¹² Official Gazette (2007b).

¹³ The education sector is highlighted because of sporadic local government initiatives in some provinces in the east and southeast for the employment of village guards in schools. The employment in schools of civilians who were once armed and were part of the conflict has obvious risks for the physical and psychological well-being of children. The reason for singling out the security sector is clear: village guards are currently employed in this field notwithstanding the fact that security is a service which should be provided exclusively by trained army professionals, not by untrained civilians. Having said that, the TESEV Working Group acknowledges that those two are not the only two areas where the employment of village guards would not be acceptable.

Finally, the need for NGOs to participate in the process of reconciliation must be further stressed. NGOs can play an important role in the identification of problem areas, in establishing cooperation with local administrations and state institutions and in the representation of IDPs. The most effective projects for the solution of internal displacement as a whole and for the establishment of the necessary environment for return in particular can only be achieved if the state, IDPs, the people of the region as well as national and international NGOs come together to work in a cooperative and participatory way. Workshops and meetings where the various problems arising from internal displacement can be discussed in a participatory way should continue to be organized.

There is a need for large-scale funding in order to implement the proposals made in this section. Therefore, international organizations and institutions such as the UN, the EU, and the World Bank need to contribute to the state's and NGOs' efforts to provide aid and services to IDPs both in terms of know-how and finance.

TESEV Working Group

Turkey's Internal Displacement Problem: Solution Proposals

A. IDENTIFYING THE PROBLEMS OF INTERNALLY DISPLACED PERSONS

- The definition of the target groups in all laws and policies on the internal displacement issue, including the Law no.5233 titled “Law on Compensation for Losses Arising from Terrorism and the Fight against Terrorism” (“Compensation Law”) and the Return to Villages and Rehabilitation Project (“RVRP”), should be brought into conformity with the definition of internally displaced persons (“IDPs”) set forth in the “Guiding Principles on Internal Displacement” (“Guiding Principles”).
- The findings obtained through the qualitative component of the “Research on Migration and Displaced Persons in Turkey” (*Türkiye Göç ve Yerinden Olmuş Nüfus Araştırması* - “TGYONA”) carried out by the Hacettepe University Institute of Population Studies (“HIPS”) as well as the questionnaire used in the quantitative component should swiftly be made public. The report of the quantitative study released in December 2006 should be translated into English, and both Turkish and English versions should be widely disseminated.
- Non-governmental organizations (“NGOs”), public institutions, and universities should be encouraged to carry out more work in order to identify the problems and the needs of IDPs.

B. GOVERNMENT POLICIES

- The principles in the decision entitled “Measures on the Issue of Internally Displaced Persons and the Return to Villages and Rehabilitation Project” (“Framework Document”) accepted by the Council of Ministers in August 2005 should be fully implemented by the government.
- Deficiencies in the Framework Document, which lays out the principles of government policies on IDPs, should be addressed in light of the views of NGOs that work in this field and/or that represent IDPs and in light of the findings of the Hacettepe study.
- In accordance with the Framework Document, a strategic action plan to address the problems of both IDPs who have returned/who wish to return and of those

who remain in the cities should be prepared and swiftly enforced. The action plan should be based on the findings of the Hacettepe study.

- This action plan should be carried out in cooperation with NGOs that specialize on internal displacement.
- The Ministry of Interior should immediately make public the reported plans about establishing a new department on IDPs within the ministry which will oversee the implementation of the Compensation Law, the RVRP, and the national action plan. The relevant draft law prepared by the Ministry should not be deliberated at the parliament before it is disclosed to civil society and the international community.
- The government should ensure that the said department is adequately financed and staffed and that it is given the requisite authority to perform its tasks.

C. RETURN

- In accordance with the commitment made in the Framework Document, the necessary measures must be taken to facilitate returns on a voluntary basis.
- The RVRP should be strengthened, implemented effectively, and all IDPs should benefit from this measure without discrimination.
- In order to facilitate return, developmental work in infrastructure such as electricity, piped water, and roads should be accelerated; programs to develop agriculture and animal husbandry should be promoted and implemented. Measures need to be taken to decrease rural poverty.
- In order to achieve return in peace and safety; measures should be taken by public institutions in cooperation with the relevant NGOs to solve animosities between the members of the armed organization, the village guards, and the IDPs.
- The provisional village guard system should be abolished. The new law which entered into force on 2 June 2007 and which authorizes the recruitment of additional provisional village guards should be repealed. The government should ensure that the hiring of voluntary village guards ceases immediately.
- Work should be initiated swiftly for the mapping, marking and clearing of landmines and unexploded ordnance in the regions where return is taking place and for the rehabilitation of victims. Awareness-raising projects should be carried out in Turkish and Kurdish.
- Healthcare services should be taken to rural places of settlement where return is taking place and primary schools should restart their teaching activities.
- People who moved abroad following internal displacement should be given the opportunity to benefit from the right to return, and those who have not applied for political asylum should be made to benefit from relevant state aid.

D. URBAN PROBLEMS

- The problems of IDPs in provincial and district centers in Eastern and Southeastern Anatolia and in cities in Western and Southern Turkey should be dealt with swiftly.
- With this objective, projects should be developed that aim to increase employment opportunities and facilitate the social reintegration of IDPs; loan programs should be developed for the benefit of small enterprises; micro-credit programs should be expanded.
- Priority should be given to women, children, and young people for access to non-formal and formal education.
- In order to prevent the use of child labor as a means of livelihood for the family, measures need to be taken to alleviate the urban poverty which is widespread among the internally displaced population.
- In this context, social aid programs that target IDPs in particular should be established; access to existing social aid programs should be facilitated and made permanent; unconditional cash transfer programs should be developed for internally displaced and poor families.
- The implementation of the Van Action Plan launched in September 2006 should start with no more delay. The government should allocate sufficient financial resources towards that end.
- The government should ensure that similar action plans addressing the needs of urban IDPs in other provinces in Eastern and Southeastern Turkey are also developed through close cooperation between the governorships, NGOs, municipalities, and the international community.
- Awareness-raising work should be carried out to prevent IDPs from encountering discrimination in social life. In fields such as employment, housing, and education, where discrimination is unlawful, criminal sanctions should be implemented.

E. COMPENSATION OF DAMAGES

- The government should explain to the public opinion the significance and the objective of the Compensation Law through the mass media. The aim of the law to compensate for the human rights violations that happened in the past and to achieve peace should be emphasized by senior government officials.
- The displaced persons living abroad (refugees) should be informed of the Compensation Law, and their petitioning of the law should be facilitated.
- In order for the Compensation Law to be brought into conformity with the Guiding Principles and for it to cover all IDPs, the expression “suffered due to the armed

conflict” should be added to Article 1 and 2, and the scope of the law should be extended to start from 1984.

- Compensation should be provided for non-pecuniary damages.
- Commissions should be empowered to determine compensation amounts for death, injuries and disabilities according to the subjective circumstances of each incident and each victim, rather than a fixed amount to all applicants irrespective of their differences.
- Taking into consideration the delay in the start of the implementation and the problems encountered during implementation, the assessment period for petitions, which is currently two years, should be extended to a more realistic timeframe.
- In order to ensure consistency in the law’s implementation and to show that the government stands behind the law, a binding and clear “explanatory note” should be prepared concerning each and every article of the law and sent to damage assessment commissions.
- This note should emphasize that on-site investigations should be carried out by experts in accordance with the procedures to be established by the Ministry of Interior, and the experts should be compensated meaningfully for their work.
- The same note should state that commissions should be flexible in evidentiary matters and that they should not rely on the information provided by the Gendarmerie as conclusive evidence.
- The Ministry of Interior should disseminate to NGOs as well as lawyers representing the IDPs the standardized guidelines it has reportedly sent to damage assessment commissions. It should closely monitor the implementation of these guidelines.
- The Ministry of Interior should bring together damage assessment commissions more frequently and should organize participatory educational meetings where problems are discussed.
- In these meetings, the government should seek to dispel the concerns of commission members regarding the risk of recourse.
- A higher administrative body should be established for the evaluation of rejected claims and the review of decisions upon the objection of the applicants; petitions rejected unjustly should be sent back to the commissions for re-assessment.
- The Turkish Bar Association and regional bar associations should ensure that their members, act in accordance with rules of professional ethics in representing IDPs who apply to the Compensation Law, and they should launch investigations against lawyers who exploit the law.

- Lawyers should be meticulous about preventing their clients from taking advantage the Compensation Law.
- A special legal arrangement should be made to exempt those IDPs who may choose to opt for judicial review from fees in administrative courts and to award indigent IDPs with financial aid.
- Commissions should acquire a professional structure, their numbers should be increased, their working conditions should be improved and they should be provided with operational financial resources. Higher budgetary allocations should be set aside by the Ministry of Interior for the payment of compensations without delay.
- The predominance of civil servants in commissions should be altered to achieve a balance between NGOs and the public sector.

F. PSYCHOLOGICAL AND SOCIAL REHABILITATION

- Internal displacement should be accepted as a public health issue concerning the whole country.
- In addressing the problem, multi-disciplinary practices should be implemented; it should be taken into consideration that steps taken in the field of rehabilitation will gain momentum and become more efficient if supported by political will.
- Physical and mental health problems of IDPs should be identified.
- Healthcare personnel working in areas in which there are IDPs should be trained in the issues and needs unique to IDPs.
- Public health and mental rehabilitation services should be expanded in provincial and district centers, and their accessibility should be facilitated.
- In order to provide health and rehabilitation services, the language barrier should be overcome; in particular, methods should be developed to facilitate the IDPs' expression of their health problems in Kurdish in the relevant institutions.
- The number of community centers able to provide service in the fields of mental and social rehabilitation should be increased; these centers should work in a participatory manner and in cooperation with NGOs and public officials.
- Policies should be developed for including IDPs under the scope of social security.
- Awareness should be raised in all segments of the population regarding this problem.

G. MEASURES CONCERNING SOCIAL RECONCILIATION

- It is not necessary to wait for armed conflict to end in order to solve the problems arising from internal displacement. However, it should be remembered that for

the steps to be durable and sustainable, it is necessary to address the root causes of the conflict and displacement.

- The escalation of the armed conflict in May/June 2007 with PKK's fatal attacks on the armed forces and the army's intensified operations is very disconcerting for the safety of returning IDPs and for the achievement of social peace. In particular, the declaration of a "security zone" between the provinces of Şırnak, Siirt, and Hakkâri raises concerns about a new wave of displacement and the declaration of a new state of emergency regime. The government should work towards developing a political solution to the Kurdish question based on democracy and the rule of law.
- Following the improvement of security conditions in the region, arrangements should be made for the disarmament of PKK members and village guards, and for their re-integration into society.
- The government should accept that the eviction of villagers that occurred under the State of Emergency violated certain constitutional rights; in cases where the state is responsible for the violation of rights that occurred during internal displacement, these violations should be publicly acknowledged by the government; rights violations committed by the security forces and by village guards in the same period should be uncovered and the perpetrators brought to trial.

An extensive society-wide dialogue must be sustained on all of the above-discussed subjects; besides state institutions, NGOs active in the area of human rights, IDPs, as well as political parties and academics should also participate in this process. It should be born in mind that developing durable solutions to internal displacement in particular and the Kurdish question in general is contingent on the collaborative efforts of the government and society.

TABLES

Table 1: The distribution of internally displaced persons across continents as of the end of 2005

Region	Number of Countries	Number (million)
Africa	20	12.1
Asia-Pacific	11	2.8
America	4	4
Europe	10	2.7
Middle East	5	2.1
TOTAL	50	23.7

Resource: Norwegian Refugee Council, 2006

Table 2: The breakdown of petitions under the compensation law as of 31 December 2005 (Selected Provinces)

	General Situation			Reasons for Rejection					
	Total Number of Petitions	Total Number of Finalized Petitions	Total Number of Petitions Resulting in Compensation or Damages	Total Number of Rejections	Falling Outside the Scope of the Compensation Law	Having Already Received Compensation	Falling Outside the Timeframe of the Compensation Law	Lack of Information And Documents	Other Reasons
Adıyaman	197	127	21	106	84	18	3	0	1
Ağrı	3,007	154	3	151	6	126	3	0	16
Bingöl	13,878	886	392	494	231	207	46	1	9
Bitlis	8,263	526	346	180	9	148	0	0	23
Diyarbakır	31,157	1,974	1,232	742	70	487	2	0	183
Elazığ	3,731	1,354	737	627	300	101	9	203	14
Hakkâri	21,483	1,216	384	832	29	467	26	303	7
Mardin	14,516	847	115	732	160	272	223	31	46
Muş	7,922	811	204	607	49	68	0	1	469
Siiirt	11,631	691	174	517	65	412	36	4	0
Tunceli	13,496	826	176	650	195	353	49	10	43
Van	10,889	552	143	409	75	318	6	1	9
Batman	7,901	482	336	146	21	125	0	0	0
Şırnak	22,551	1,415	191	1,224	4	1,184	14	15	7
Bursa	124	11	0	11	2	6	3	0	0
Erzincan	677	180	47	133	38	84	0	0	11
Erzurum	336	111	13	98	14	82	1	0	1
Mersin	117	112	43	69	11	56	0	2	0
İstanbul	399	279	232	47	35	0	11	1	0
İzmir	39	39	13	26	14	8	1	0	3
Kars	1,784	143	24	119	15	101	2	0	1
Manisa	122	4	0	4	0	4	0	0	0
K. Maraş	274	145	48	97	57	22	2	15	1
Sivas	154	83	31	52	1	33	0	0	18
Şanlıurfa	316	149	34	115	14	46	5	10	40
İğdir	1,494	155	55	100	9	78	0	13	0
Nationwide Total	177,416	13,940	5,114	8,826	1,650	5,144	474	634	924

Table 3: The nationwide state of petitions under the compensation law as of the end of May 2006*

NUMBER OF PETITIONS	195,463
NUMBER OF FINALIZED PETITIONS	27,011
NUMBER OF PETITIONS RESULTING IN COMPENSATION OF DAMAGES	11,899
Death	2,364
Injury	832
Disability	355
Damages Concerning Movable and Immovable Property	3,180
Damages Concerning Agriculture and Animal Husbandry	821
Damages Arising from Inability to Access Property	4,311
Other	36
NUMBER OF REJECTIONS	15,112
For Having Already Received Compensation	5,777
For Falling Outside the Scope of the Compensation Law	4,980
For Falling Outside the Timeframe of the Compensation Law	727
Lack of Information and Documents	1,213
Other	2,418
COMPENSATION AMOUNTS REQUESTED	YTL 113,256,430
TOTAL PAYMENTS MADE	YTL 69,606,961

*Compiled based on the data of the Ministry of Interior

Table 4: Work conducted by the Diyarbakır damage assessment commission as of 28 April 2006*

NUMBER OF PETITIONS	35,569
NUMBER OF PETITIONS FINALIZED BY THE FOUR COMMISSIONS	3,797
NUMBER OF PETITIONS WHERE IT WAS DECIDED TO COMPENSATE FOR DAMAGES	2,759
NUMBER OF PETITIONS WHERE NO SETTLEMENT HAS BEEN REACHED	33
NUMBER OF REJECTIONS	1,003
AMOUNT OF REQUESTED BUDGETARY ALLOCATION	YTL 39,200,051.56
BUDGETARY ALLOCATION GRANTED	YTL 18,601,972.24
BUDGETARY ALLOCATION TO BE GRANTED	YTL 20,598,079.32

* Compiled in light of information obtained from the Governorship of Diyarbakır.

Table 5: Work conducted by the Batman damage assessment commission as of 14 June 2006*

NUMBER OF PETITIONS	9,699
Death	694
Disabilities	92
Damages to Movable and Immovable Property	8,709
Number of Petitions Made on Account of Injuries	204
NUMBER OF PETITIONS FINALIZED BY THE FOUR COMMISSIONS	708
NUMBER OF PETITIONS WHERE IT WAS DECIDED TO COMPENSATE FOR DAMAGES	442
NUMBER OF PETITIONS WHERE NO SETTLEMENT HAS BEEN REACHED	4
NUMBER OF REJECTIONS	266
For Having Already Received Compensation	166
For Falling Outside The Scope Of The Law	100
BUDGETARY ALLOCATION GRANTED	YTL 5,491,034.00
DECLARATIONS OF FRIENDLY SETTLEMENT WHERE PAYMENTS HAVE BEEN MADE	YTL 5,457,294.00
DECLARATIONS OF FRIENDLY SETTLEMENT THAT HAVE BEEN SIGNED	414
NUMBER OF PETITIONS PENDING PAYMENT	80
AMOUNT TO BE PAID FOR THE 80 PETITIONS	YTL 961,573.00

* Compiled in light of information obtained from the Governorship of Batman.

Table 6: Nationwide green card ownership^a

Number of Green Cards Nationwide	10,781,536
Number of Green Cards in RVRP Provinces ^b	3,144,498
Ratio of Green Card Ownership in RVRP Provinces Compared to Nationwide Green Card Ownership	29 %

a Compiled from the Table entitled "The Breakdown of Green Card Owners According to Province" prepared by the Ministry of Health: See (http://tdms.saglik.gov.tr/ojspdemos/ykbs/ykbs_ilaktif.jsp).

b The provinces within the scope of the RVRP are Bingöl, Hakkâri, Tunceli, Bitlis, Van, Muş, Elazığ, Adıyaman, Ağrı, Diyarbakır, Batman, Siirt, Mardin and Şırnak.

Table 7: Ratios of nationwide and RVRP-wide green card ownership^a

Total Population of Turkey according to the 2000 Census	67,803,927
Ratio of Green Card Owners within the Total Population	16 %
Total Population of RVRP Provinces according to the 2000 Census	7,167,344
Ratio of Green Card Owners in RVRP Provinces within the Total RVRP Population	44 %
Ratio of Population in RVRP Provinces within the Total Population	10.6 %

a Compiled from the 2000 General Census data (www.tuik.gov.tr) and green card records of the Ministry of Health: See (<http://tdms.saglik.gov.tr/ojspdemos/ykbs/ykbs.ilaktif.jsp>).

Table 8: Comparison of direct income support payments between RVRP provinces and all of Turkey in 2004^a

	RVRP PROVINCES				Turkey-Wide Total	Ratio of RVRP Provinces within the whole of Turkey
	February	March	April	Total		
Number of Farmers	197,866	63,807	35,384	297,077	2,731,699	11 %
Area Supported (Thousand Square Metres)	15,349,027	4,539,981	3,380,681	23,269,689	165,387,545	14 %
Amount Given in Support (YTL)	153,490,270	45,399,810	33,806,810	372,315,029	2,646,200,728	14 %

a YTL 10 of the YTL 16 to be paid per thousand square meters within direct income support for the year 2004 has been paid as three groups, taking into account the socio-economic development level of districts. In accordance with this, the amounts supported in the RVRP provinces shown in the table have been established as YTL 10 per thousand square meters for the period February-March-April. However, amounts to be supported in RVRP provinces and in Turkey as a whole have been calculated so as to include a payment of YTL 6 per thousand square meters as planned for the year 2006 as well: See (<http://www.tugem.gov.tr/tugemweb/dgdvecks.html>); (http://www.tarim.gov.tr/arayuz/g/icerik.asp?efl=desteklemeler/Tugem_destekleme/destek.htm&curdir=\desteklemeler\Tugem_destekleme&fl=dgd2004.nisanweb.htm).

Table 9: Work conducted by the Hakkâri damage assessment commission as of 31 January 2006*

NUMBER OF PETITIONS	21,597
NUMBER OF PETITIONS FINALIZED BY THE TWO COMMISSIONS	1,325
NUMBER OF PETITIONS WHERE IT WAS DECIDED TO COMPENSATE FOR DAMAGES	481
NUMBER OF REJECTIONS	844
For Lack of Information and Documents	309
NUMBER OF PETITIONS WHERE DECLARATIONS OF FRIENDLY SETTLEMENT WERE SUBMITTED	357
AMOUNT OF COMPENSATION RECOMMENDED	YTL 4,186,500.00
NUMBER OF DECLARATIONS OF FRIENDLY SETTLEMENT THAT HAVE BEEN SIGNED	293
TOTAL AMOUNT OF FORESEEN COMPENSATION FOR DECLARATIONS OF FRIENDLY SETTLEMENT	YTL 3,906,000.00
NUMBER OF DECLARATIONS OF FRIENDLY SETTLEMENT WHERE PAYMENTS HAVE BEEN MADE	160
TOTAL PAYMENTS MADE	YTL 1,109,502.00
BUDGETARY ALLOCATION GRANTED	YTL 1,121,750.00
BUDGETARY ALLOCATION TO BE GRANTED	YTL 2,785,496.00

* Compiled in light of information obtained from the Governorship of Hakkâri.

ADDENDA

What the Report Leaves Unsaid*

DİLEK KURBAN

‘Survey on Migration and Internally Displaced Population in Turkey,’ conducted by the Hacettepe University Institute of Population Studies and the State Planning Organization, rebuts the presumption that the state was not at fault in internal displacement

12/01/2007

The report eagerly anticipated by the academics, non-governmental organizations and international institutions that closely follow forced migration in Turkey has finally been made public. The results of the “Survey on Migration and Internally Displaced Population in Turkey” (“TGYONA”), conducted by Hacettepe University Institute of Population Studies (“HIPS”), under the coordination of the State Planning Organization (*Devlet Planlama Teşkiatı* - “DPT”) between July 2004 and June 2006, were presented to the public, after months of delay, on 6 December 2006. This study which contains significant findings regarding the causes, consequences and quantitative dimensions of forced migration - or internal displacement - that took place in Turkey between 1984 and 1999, has not been given due consideration in the press. To the extent that it has, the media has not adequately presented the report’s significance and substance to the public.

The title of TGYONA may make the study seem like an ordinary population survey to those who do not follow the issue closely or are not familiar with exactly what is meant by the phrase “internally displaced population.” In fact, a news report published under the title of “Half of Turkey Migrated” describes this study as “a survey on population movements” (Radikal, December 7). Actually, the press release issued by HIPS sets the ground for publishing exactly such news reports. The press release opens up by introducing the objective of the report as “to estimate the quantitative dimension of displaced persons in Eastern and Southeastern Anatolia in the last 20 years, to determine ... the reasons for their migration and their expectations.” Less circuitous expressions are presented in the report’s foreword: “The data of public institutions as to the figures of population displaced due to ... security concerns arising from terror are rather different from the predictions of international institutions and relevant non-governmental organizations and they are controversial,” and the objective of

* Commentary on Hacettepe Survey Published in Radikal 2 (Sunday edition of the Turkish daily newspaper, Radikal) on 31 December 2006.

TGYONA is to make accurate estimations concerning the dimension and the causes of the problems.

Then, what we have in hand is not a general population survey, but a “specific” study on forced displacement that took place in a given region and time during a painful political period. The report answers two questions that have received divergent responses from the state and civil society for years: 1) How many people were displaced; and 2) why and by whom were they displaced? Limitation on the length of this article does not permit both questions to be answered here. Therefore, let’s address the second question in this article and evaluate the first question and other findings of the report in another article next week.

COMPENSATION LAW

Before doing so, let’s first mention a finding that needs to be urgently taken into consideration by law-makers. According to the report, 46.6 percent of displaced people are not aware of the “Law on Compensation for Damages Arising from Terrorism and the Fight against Terrorism” (Law No. 5233, known as the “Compensation Law”) which was enacted for them in July 2004. That is to say, even though two years have passed since the enactment of the law, nearly half of the beneficiaries are unaware of its existence. Therefore, as was stated in 2005 by TESEV’s Working and Monitoring Group on Internal Displacement in Turkey (“TESEV Working Group”), with which I am affiliated, the state has not fulfilled its responsibility for disseminating information about the law. Moreover, the deadline for applying to the law is 3 January 2007! As the DPT has had the HIPS report in hand since last spring and thus the Ministry of Interior was informed of these data for a long time, why was the deadline for applications not extended? This is all the more worrisome when one considers the fact that the period for the evaluation of applications has just been extended for another year, through an amendment to the law made on 13 December 2006, just a week after the release of the HIPS report. The government, having evaluated only 20 percent of the applications during the two years the law has been in effect and having failed to appropriately fulfil its responsibility, gives itself a second chance. Yet, it does not give any similar chance to the victims who are not aware of the law. Furthermore, why have half of the beneficiaries not heard of the law? Then, the proposal we made in our first report dated October 2005 still holds true: The deadline for application to the Compensation Law should be extended for another year and the government should do its share of the task this time, announcing the law through a comprehensive communications campaign so as to reach all beneficiaries. Perhaps, the unpopular Kurdish news bulletins of Turkish Radio Television (*Türkiye Radyo Televizyon Kurumu* - “TRT”) will actually turn out to be functional, and the victims may be informed of the law through the television of their own state rather than Roj TV, which broadcasts from Europe.

As for the second question posed at the beginning of the article; who is “the population having migrated due to security concerns?” This population is comprised of Kurdish (and, though few, Yezidi, Arab, etc.) citizens of Turkey, most of whom were forced out of their villages by gendarmerie and village guards in an environment of clashes in eastern and southeastern parts of Turkey between 1984 and 1999, some of whom were forced to migrate by the Kurdistan Workers’ Party (*Partiya Karkerên Kurdistan - “PKK”*), and some of whom were obliged to migrate due to concerns over security of their lives and sustenance. This is ascertained both in the 1998 report of the Parliamentary Research Commission and also in the reports of human rights organizations. The fieldwork we conducted as the TESEV Working Group also confirms this. The report of TGYONA makes a similar description more indirectly and implicitly, without uttering the word “Kurdish” at any point. According to the report, the population was displaced on the grounds of “eviction of numerous villages and fields due to security concerns and terror” (p.5) and “concerns over security of life and property, eviction requests to those living in small residential areas upon hardships experienced by security forces due to harsh geographical conditions in providing security of people living in these areas, pressures to join the terrorist organization, requests to become village guards, controlled passage of food, and bans on the use of pastures due to problems likely to arise in ensuring security of life and property” (p.55).

WHO IS THE SUBJECT?

The first outstanding point in the description of TGYONA is the absence of the subject. The pressure to join the terrorist organization must surely have been imposed by the said “terrorist” organization. Well, who was the one that “requested” the eviction of residential areas or that residents become village guards? Or the one that imposed controlled passage of food or the ban on the use of pastures? HIPS authorities replied to this question in the press meeting as “requests by security officers and village guards.” According to another finding of the report, nearly half of the displaced persons had “been given notice prior to migration” (p.78). Who gave this notice? The report does not reveal this either. In response to one question, HIPS authorities stated that the notifications were “in large part made by security officers.” A careful reading of the 142-page report, written with a cautiously selected language, reveals other noteworthy findings regarding displacement. According to the “summary findings of the qualitative study” attached to the report, “reluctance to become village guards and requests for village eviction were mentioned in the interviews as among the most important reasons for abandoning the village” (p.129). In this appendix, there are also clues as to the time granted for the civilian population who are “requested” to abandon their village: They were granted “times occasionally extending to one month” (p.128).

Another detail between the lines: In the process of making the “decision to migrate,” “taking into account women’s opinions... [has] not been in question” (p.128). The report, on the one hand, introduces a civilian population who was forced to abandon

their villages by security forces, stuck between the state and the PKK, unable to make a living, and on the other hand, it just utters that Kurds did not consult with their women while making such a vital “decision,” as if there were in a position to decide on their own will. While the subject that forces migration remains obscure, the object that is forced to migrate is subjectified and portrayed as a body of men that ignores women’s opinions.

THE REPORT REFUTES THE STATE

Taken together, the answers of HIPS authorities, the whole body of quantitative survey report, and the summary findings of qualitative survey point to one conclusion. This semi-official report - which according to Minister of Interior Abdülkadir Aksu will guide the government in developing its policies - concludes that security forces evicted villagers. That is to say, the state’s own report refutes the state’s discourse. Herein lays the significance of the report. However, in order to see the big picture, we need to know how security officers conveyed the “verbal notice,” what happened to those who refused, and how the “request” for becoming a village guard was conveyed, and the how those who refused were “requested” to leave their villages. Actually, the studies of the TESEV Working Group and of many other human rights organizations demonstrate answers of these questions. We have known for years that a significant portion of the internally displaced was subject to the security officers’ pressure to either “become a village guard or abandon the village.” Those who were not willing to become village guards were forced to leave their villages, such “notifications” were mostly conveyed by force of arms, and during village evictions, houses were burnt down, livestock was murdered, people were “disappeared” in custody, and murders were committed whose perpetrators remain unidentified. The perpetrators of these rights violations were security officers, as confirmed in numerous decisions by the European Court of Human Rights and admitted by Turkish government in some amicable settlement declarations. Undoubtedly, some persons were obliged to leave their villages as a result of PKK pressure. Yet, almost all of the victims we interviewed in Diyarbakır, Batman, Hakkâri and Istanbul told that they were forced to migrate by security officers or had to leave their villages due to pressure to become village guards.

Well, then, why is it so important for the known facts to be repeated in the HIPS report? It is because although some positive steps have been taken to improve the situation of victims in recent years, the state has not still acknowledged its responsibility in village evictions. The official discourse and data are founded on the perception that the state has had no fault in displacement of citizens, the number of whom reaches one million. What we have been told so far are the stories manufactured by the state, whereas this time it was the victims who spoke, and it was their real voices and real stories that were reflected in the findings of a report procured by the state. For the first time the narratives of the displaced have been put in the official records. It is now time for us to demand our right to read those narratives in the state’s own report.

“Open Letter to the Ministry of Interior: A Citizenship Claim”*

DİLEK KURBAN

In an article that appeared in *Radikal 2* last week, I discussed the “Survey on Migration and Internally Displaced Population in Turkey” (“TGYONA”), conducted by the Hacettepe University Institute of Population Studies (“HIPS”) on commission from the State Planning Organization (*Devlet Planlama Teşkilatı* - “DPT”), the results of which were announced on 6 December 2006. In that article, I pointed out that this important survey, which has not been given due consideration in the press, answered two fundamental questions regarding forced migration that took place in the eastern and southeastern regions of Turkey over the past twenty years: 1) How many people were displaced by force, 2) why and by whom were they displaced? Seeking an answer to the second question in particular, I noted that a careful reading of the entire report, which was written in a highly cautious and passive language devoid of subjects, would disclose a truth that the official discourse has avoided admitting for years. This truth is that security officers “requested” (to use the language of the report) that the mostly Kurdish civilian population become village guards and evicted those who refused. That means a semi-official report - reluctantly commissioned by the state at the request of the United Nations, the results of which were announced under pressure from civil society and international community after an unsatisfactorily explained months-long delay - reveals that the state forcibly displaced its own citizens and put them on the street during a certain period and in a certain region of Turkey.

Let’s now seek an answer to the first question which could not be addressed last week due to lack of space. Perhaps, the most eagerly anticipated finding of the HIPS report was the quantitative dimension of the displaced population, which was a matter of big controversy between the state and non-governmental organizations (“NGOs”) for years. Most of the attendants at the Ankara press conference where the report’s findings were made public searched first for an answer to this question in the report and in the press release. The answer, anticipated since the commencement of the HIPS survey with an enthusiasm nearly as great as enthusiasm created by the Nobel or Oscar awards, was included at the end of the press release, again in a way that would elude the attention of insufficiently informed reporters: “It is observed that the

* Commentary on Hacettepe Survey Published in *Radikal 2* (Sunday edition of the Turkish daily newspaper, *Radikal*) on 07 January 2007.

approximate size of the population having migrated from the urban residential areas of 14 migrant-sending provinces due to security concerns is likely to be between 953,680 and 1,201,000.”

In other words, over the past 20 years, between 950,000 and 1.2 million people were forced by security officers and the PKK to leave their lands, or were obliged to do so because of the environment of clashes, and entered the ranks of the urban poor. This figure, before all else, reveals that the state knowingly misinformed the public, persistently claiming for years that the number of displaced was around 350,000-370,000 despite all objections of the NGOs and researchers. I say knowingly, because the official data asserted by the Ministry of Interior were not based on any scientific survey or database. They represented only those victims who, after being forced to migrate, live on the streets without shelter, and deprived of food and water, applied desperately to governors and sub-provincial governors to meet their urgent needs to food, shelter and clothing. Now, let's ask in light of the report's findings: Of the Kurdish citizens whose villages were evicted, burnt down and destroyed, whose families, relatives and neighbours were murdered, tortured or disappeared under custody by the state's own security officers, how many could dare knock at the door of the same state, especially under the conditions of a state of emergency? The answer to this question is (and was) well-known by the officials of the Ministry of Interior as well as anybody who is cognizant of the dynamics of the Kurdish issue and the unlawfulness of the State of Emergency rule. Yet, the official policy still based on denial of the obvious prevents them from being able to answer this question sincerely. This policy still denies village evictions by the state's hand and claims that displaced persons left their areas of living due to pressure by the Kurdistan Workers' Party (*Partiya Karkerên Kurdistan* - "PKK") or "by their own will." This insistence on denying what is known to everyone is so ironic that, in the press conference launching the HIPS report, which reveals as indirectly and implicitly as possible that the state was involved in village evictions, Minister of Interior Abdülkadir Aksu stated, "many of our citizens have been obliged to leave their villages, lands and houses because of the separatist terrorist organization," thus ignoring the report's finding that security officers, in addition to the PKK, forced the civilian population to migrate. If the intention is to say "if it were not for the terrorist organization, the state would not have been obliged to do all these things," it must be known that in a state of law public authority cannot use terrorism as a justification for violating its citizens' constitutional rights.

In spite of its passive language lacking subject reference, the implicit mention of certain critical findings, and the disconnect between its findings and recommendations, the HIPS report contains important data that cannot and must not be ignored by academics, human rights advocates, NGOs and, of course, the state. For instance, given the fact that the actual figure relating to the displaced population

is almost three times as big as the official figure, the official data relating to returns also turns out to be inaccurate. The report demonstrates that the proportion of returnees is only 11-12 percent, not one third as claimed by the Ministry of Interior (p.63). Furthermore, half (49.9 percent) of the displaced persons are not aware of government aid to returnees under the Return to Villages and Rehabilitation Project (“RVRP”). According to the report, 88.5 percent of returnees state that they have not received any state aid so far, and 91.3 percent state that their expectations have not been met. Given that YTL* 57 million New Turkish Lira have been spent within the scope of the RVRP during 2000-2006 (according to the information provided by the Ministry of Interior officials at an international symposium organized by TESEV in Istanbul on 4-5 December 2006), who benefited from these funds? We know that some of these expenditures were allocated to infrastructure services. What about the rest? Since the aid under the RVRP -the budget, aim, and scope of which remains untransparent- did not reach the rightful beneficiaries, whom did they reach? Then, the “mistrust in public bodies” expressed by the displaced as one reason for not applying to the Compensation Law and RVRP, is not incomprehensible under current circumstances (p.90).

In last week’s article, I touched upon the importance of hearing the victims’ stories in their own words in order to find out about the conditions under which around one million citizens were displaced and their experiences during and after that process. However, HIPS has not yet shared these stories with us. TGYONA is comprised of a quantitative study based on surveys conducted in nearly 6,000 households and a qualitative study based on in-depth interviews with 70 people. HIPS only released the findings of the quantitative study to the public on 6 December 2006. The questionnaire and complete findings of the qualitative study, which are of vital importance for interpreting and explaining these findings, are still confidential. HIPS representatives avoided giving any substantial answers to questions about when the findings of the qualitative survey would be released through replies along the lines of “this is it from us.” Let’s then direct the same question to the DPT, the study’s sponsor, which received both the qualitative and quantitative reports in the spring of 2006, and to the Ministry of Interior, which bears political responsibility for the study: When are you going to announce the results of the qualitative survey and the questionnaire? As long as these data are not released, the public will have been inadequately informed, and the questions that arose with the announcement of the HIPS report months after its delivery to the DPT will remain unanswered. We understand better each day that a society that cannot confront its past cannot move forward. Therefore, let’s request the state to share these very important data with us, citizens who have the right to this information, without any further delay, in order to ensure a democratic solution to forced migration and the Kurdish question.

* As of June 2007, YTL 1 (Yeni Türk Lirası - New Turkish Lira) equals USD 0.755.

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Coming to Terms with Forced Migration:

Post-Displacement Restitution of Citizenship Rights in Turkey

In Turkey, some one million men, women and children were forcibly uprooted from rural areas in the east and southeast as a result of the armed struggle from 1984 to 1999 between the Kurdistan Workers' Party (PKK) and the Turkish military. Large numbers fled to urban areas, where they have experienced poverty, poor housing, joblessness, loss of land and property, limited access to physical and mental health care services, and limited educational opportunities for their children. Those that have returned to their communities of origin also face major difficulties, including threats to their physical safety from landmines and village guards, and dire poverty due to insufficient job opportunities, public services, and compensation for lost property.

[This book] digs deeply into the causes of conflict and displacement in Turkey, seeking to go beyond official versions and to unearth what really occurred and how best to move forward to resolve the political, economic and social divisions.

The government would be well advised to study the findings and recommendations of this constructive volume. Acknowledging the plight of the displaced in both rural and urban areas and developing effective policies and programs to help them reintegrate is critical not only for the lives of the displaced but also for the coherence and stability of the country as a whole.

Roberta Cohen, Brookings Institution

The dominant perception of internal displacement in Turkey has been one interpreted through official state ideology - which has recently acknowledged the phenomenon but refused to accept its responsibility. This "acknowledgement without acceptance" portrays internal displacement as the inevitable outcome of the security forces' legitimate defense against terrorism.

The fact is that one million people lost their property, abandoned their cultural roots, and were forced to migrate to western provinces because their way of life was not embraced by the official, narrow definition of citizenship.

With this book, TESEV proposes to re-conceptualize internal displacement as an issue of societal responsibility. Turkish society, which has not condemned but for decades has overlooked this discriminatory approach, interpreting the armed conflict as a threat to its comfort rather than trying to understand the issue, bears a large responsibility for what has happened.

It is necessary to understand that internal displacement is not an unexpected natural disaster but a discrediting societal failure to which we, as civil society, have contributed. It is our responsibility to establish an environment of trust that will allow internally displaced persons to embark on a life that they desire in a place of their own choosing.

Etyen Mahçupyan, TESEV

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