

action plan



The Problem of Turkey's Displaced Persons An Action Plan for Their Return and Compensation



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The aim of this project is the protection of the ethnic, linguistic and religious rights enshrined in European standards (and reflected in the Copenhagen Criteria) of minorities in Turkey. The project focuses on the problem of displacement, and developing proposals for its resolution.

This document was prepared in order to explain the phenomenon of displacement in Turkey and associated problems, especially those concerning property, to remind the state of its obligations under international human rights law and EU standards, and to make concrete proposals for solutions.

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Abbreviations

ECHR	European Convention on Human Rights	MEZODER	Cultural and Solidarity Association of Mesopotamia
ECtHR	European Court of Human Rights	MRG	Minority Rights Group International
EU	European Union	NGO	Non-governmental organization
GÖÇ-DER	Association for Migrants, Social Assistance and Culture	RPMDP:T	Research Project on Migration and the Displaced Population in Turkey
HRA	Human Rights Association	RVRP	Return to Village and Rehabilitation Project
HRW	Human Rights Watch	TESEV	Turkish Economic and Social Studies Foundation
ICCPR	International Covenant on Civil and Political Rights	TOHAV	Foundation for Society and Legal Studies
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination	UN	United Nations
IDP	Internally displaced person	UNDP	United Nations Development Programme
IOM	International Organization for Migration	UNHCR	United Nations High Commissioner for Refugees
KHRP	Kurdish Human Rights Project		
LD	Legal decree		
MAZLUM-DER	Organization of Human Rights and Solidarity for Oppressed People		

A. Introduction

Millions of people are estimated to have been affected by forced migration or displacement in Turkey in the east and southeast, during the period of armed conflict between the security forces and the PKK¹, especially in the 1990s. This persists as a complex problem with political, economic, social, psychological and educational dimensions². Despite the gravity of the situation over many years, the problems of the displaced have never been given sufficient emphasis within Turkey's national agenda. Only with the European Union (EU) candidacy process has the importance of the issue begun to be appreciated within Turkey.

The EU drew attention to the socio-economic situation of the internally displaced and the obstacles to their return in the political criteria section of its 2003 Regular Report on Turkey's Progress towards Accession³. Returning to the issue in its 2004 Regular Report, the EU stated that the situation of internally displaced persons (IDPs) remained grave, and that most were still living in difficult circum-

stances⁴. Non-governmental organizations (NGOs) and governmental bodies have also begun to make various initiatives in this field in recent years⁵.

In this work, we set out to define displacement and explain the causes of the problem in Turkey. We also describe the current difficulties of displaced persons and summarize the policies with which the government has responded. We then look at the rights of displaced persons under international human rights law and examine examples of displacement in Bosnia Herzegovina, as well as policy solutions developed in those countries. Finally, we present an action plan which sets out our recommendations of what can be done in the short and long term, principally by the government, but also by NGOs, local authorities, provincial administrations, provincial special administrations, municipalities, and intergovernmental institutions and organizations. We hope that this document will contribute to the efforts currently being made to achieve a solution of the problem.

1 The Kurdish Workers' Party.

2 The issue is referred to by NGOs variously as forced migration or internal displacement. In accordance with international literature, and to cover both internally displaced people and displaced people currently living outside of borders of Turkey, the problem will be referred to as 'displacement' in this work. Because the issue of return relates to refugees as well, the situation of refugees will also be discussed in some sections.

3 For the full text of the report, go to http://insanhaklarimerkezi.bilgi.edu.tr/data/ab_turkiye/2003_report.pdf.

4 For the full text of the report, go to http://insanhaklarimerkezi.bilgi.edu.tr/data/ab_turkiye/2004report.doc.

5 For the works and publications of the Turkish Economic and Social Studies Foundation (TESEV) on this subject, go to http://www.tesev.org.tr/etkinlik/yerinden_edilme.php.

B. Definition

i. Internally Displaced Persons

No official definition of an IDP has yet been formulated in Turkey. The Return to Village and Rehabilitation Project (RVRP) - the largest project in Turkey concerned with IDPs - refers to displaced people as 'people forced to abandon the region where they lived'.

However, the definition contained in the UN Guiding Principles on Internal Displacement was used for the first time in an official Turkish government statement in the 17 August 2005 framework document prepared by the Interior Ministry entitled 'Measures for the Return to Village and Rehabilitation Programme and the Problem of Displaced Persons'.^{6,7}

The framework document, which refers to the situation in Turkey, defines IDPs as 'persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border'.⁸

According to this definition, people whose villages were burned or who were forced to evacuate their villages but who remain within the borders of Turkey are IDPs and have the rights of IDPs

described in later sections of this document. Our action plan deals principally with people displaced by conflict and human rights violations, but people forced to leave their villages by economic collapse resulting from conflict and violations as well as people displaced by dam construction are also IDPs, and the situation of these people will also be touched on.

ii. Refugees and Persons Living Outside the Borders of Turkey

Refugees are also considered to be displaced people⁹. The Convention relating to the Status of Refugees, which was adopted by the UN in 1951, defines a refugee as a person who, 'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country'. However, the Convention does not provide a definition of displaced people, and provides no protection mechanism for them¹⁰.

Displaced people who live outside the borders of Turkey, including refugees, are also entitled to those rights summarized in later sections, such as the right to compensation for damages and the right to return.

6 For the text of the framework document, go to http://www.icisleri.gov.tr/_Icisleri/Web/Gozlem2.aspx?sayfaNo=722.

7 Aker, T., Çelik, A. B., Kurban, D., Ünalın, T., Yükeseker, D., *Zorunlu Göç İle Yüzleşmek: Türkiye'de Yerinden Edilme Sonrası Vatandaşlığın İnşası* [The Problem of Internal Displacement in Turkey: Findings and Recommendations for a Solution], TESEV Publications, June 2006, s. 80.

8 The Guiding Principles, Introduction, para. 2. For the full text, go to <http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/d2e008c61b70263ec125661e0036f36e?Opendocument>.

9 Since displaced people can sometimes acquire refugee status, it may be useful to give a definition of a refugee at this point: '[I]nternal displacement not only poses a national problem, but it is also an issue of international dimensions, because the internally displaced may seek political asylum in many instances where they cross state borders. In fact, during the armed conflict of the 1990s, an estimated 12,000 persons fled over the border into Iraq. Of these, as many as 9,000 have settled in the Makhmour Refugee Camp; from among this group, around 2,600 subsequently returned to Turkey. On the other hand, many individuals among the displaced group have migrated to European Union (EU) countries as asylum-seekers. Therefore, forced migration has contributed to the emergence of a Kurdish diaspora in Europe.' *The Problem of Internal Displacement in Turkey: Assessment and Policy Proposals*, TESEV, p. 5, www.tesev.org.tr.

10 For the full text of the Convention, go to <http://www.unhcr.org.tr/docs/sozlesme.pdf>. For further information, see Bülent Peker, Mithat Sancar, *Mülteciler ve İltica Hakkı* [Refugees and the Right of Asylum], Human Rights Association Publications.

C. Displacement In Turkey: The Background

Displacement in Turkey, which has predominantly affected the Kurdish population, is a process that goes back to the establishment of the Republic of Turkey at the end of the Ottoman Empire. A key document here was the 1935 Settlement Law. This law, and the practices deriving from it, were an attempt at systematic relocation,¹¹ and the migrations imposed under the law affected a substantial section of the population.

The military coup of 12 September 1980 ushered in renewed, large-scale forced migration. As a result of the intensifying clashes between the PKK and

state security forces in 1987, the Council of Ministers declared a State of Emergency, initially in five provinces, and subsequently in a total of nine provinces.¹² During the State of Emergency, settlements were cleared by the security forces on various pretexts.¹³ The clearances continued over nearly 20 years, but most were carried out in the 1990s when the conflict was at its peak. As a result of this policy, a population estimated to number more than a million were forced to abandon their homes in thousands of settlements.¹⁴

11 The Settlement Law, statute 2510, published in the *Official Gazette* of 21 June 1934, is still in force.

12 Article 11 of the decree of 25 October 1983, entitled 'Measures to be Taken against Violent Movements', contains detailed regulations and prohibitions that afford very broad powers to the administration, including explicit powers to evacuate settlements. Paragraph (k) of article 11 establishes powers to 'Forbid the entry into the region, to remove from the region or to forbid the entry or settlement in certain places within the region, of people or groups that are considered a threat to public order or public security'.

The legal decree founding the State of Emergency governorship also provided the State of Emergency governor with powers to carry out comprehensive administrative procedures.

13 The military causes of displacement listed in the 2002 Report of the Kurdish Human Rights Project (KHRP) include: forced migration as an instrument of a policy of assimilation; forced displacement as a strategy to defeat the PKK; forced displacement as a means of reprisal inflicted on those suspected of supporting the PKK; forced displacement as a method of clearing the border area; forced displacement as a form of reprisal against those refusing to join the village guard system; and forced displacement as a means of control. Kurdish Human Rights Project Report, *Internally Displaced Persons: the Kurds of Turkey*, June 2002. www.khrp.org.

14 In the 1997 report of the Turkish Grand National Assembly's Research Commission on the Issue of Cleared Villages in the South East and Migration the number of cleared villages and hamlets is given as 3,428 and the number of displaced persons 378,335. According to Ministry of the Interior data, 2,958 villages and hamlets were cleared and 355,803 persons displaced. A number of NGOs, including the Foundation for Social and Legal Studies (TOHAV), the Human Rights Foundation of Turkey (TIHV), the Human Rights Association (HRA) and the Migrants' Social Cooperation and Culture Association, estimate that the number of people forced to migrate as a result of village clearances exceeds three million. A statistical study is being carried out by Hacettepe University. The results of the Research Project on Migration and the Displaced Population in Turkey, launched with the aim of carrying out new and up-to-date supplementary research, are yet to be published.

D. The Causes of Displacement

i. The State of Emergency Law and its Implementation

The establishment of a State of Emergency governorship by a 1987 legal decree¹⁵ and the declaration of a State of Emergency in a number of provinces in the same year, both steps premised on the State of Emergency Law, opened the way to gross human rights violations in the period in which it was in effect. Many judgments reached at the European Court of Human Rights (ECtHR), including many concerning village burnings and clearances by the security forces, date from this period. In some of these cases it was established that security force members had directly burned the houses of applicants.¹⁶ In many cases involving the security forces, Turkey was found to have violated Convention articles concerning the right to life, the prohibition against torture, the right to private and family life, the right to property and the right to an effective remedy.¹⁷

By the time the State of Emergency, viewed by

some studies as one of the fundamental causes of displacement in Turkey, was lifted on 30 November 2002, a considerable proportion of the region's population had been displaced.¹⁸

ii. The Village Guard System¹⁹

The village guard system, under which male villagers are trained and armed by the Turkish security forces to fight the PKK in return for a monthly salary, was established on 26 March 1985 under a supplementary paragraph to article 74 of the Village Law (statute 442) to the effect that villagers 'should aid security forces on duty in the region under the State of Emergency and protect the villagers themselves'.²⁰ The village guard system was initially imposed in 22 provinces, but following the implementation of a 'voluntary village guard system' in 1993 in a further thirteen provinces, it is now in force in 35 provinces. In April 2006 there were 57,174 provisional village guards in Turkey, and as of December 2004²¹ there were 30,300 voluntary village guards.²²

15 Legal decree No. 285 establishing the State of Emergency governorship was passed on 10 July 1987, and remained in force until 30 November 2002.

16 For example, *Ayder v. Turkey* (No. 23656/94), 8 January 2004, para. 140; *Yöyler v. Turkey* (No. 26973/95), 24 July 2003, para. 64. <http://echr.coe.int>.

17 See, *inter alia*, *Akdivar v. Turkey* (99/1995/605/693); *Menteş v. Turkey* (23186/94); *Güven v. Turkey* (31847/96); *İşçi v. Turkey* (31849/96); and *Doğan v. Turkey* (8803/02).

18 The principal causes of migration listed by various researchers and evaluated according to their relative importance in displacement are: the actions of the security forces and state of emergency provisions; the imposition of village guard system; fear of threats to life; the evacuation of villages and hamlets; and the prohibition on access to high pastures. Barut, M., *Zorunlu Göçe Maruz Kalan Kürt Kökenli T.C Vatandaşlarının Göç Öncesi ve Göç Sonrası Sosyo Ekonomik, Sosyo Kültürel Durumları, Askeri Çatışma ve Gerginlik Politikaları Sonucu Meydana Gelen Göçün Ortaya Çıkardığı Sorunlar ve Göç Mağduru Ailelerin Geriye Dönüş Eğilimlerinin Araştırması ve Çözüm Önerileri* [Research on the Socio-Economic and Socio-Cultural Situation of Kurdish Citizens of the Republic of Turkey prior and subsequent to Migration, the Problems Arising from Migration Prompted by Military Conflict and Policies of Tension, and Recommendations for Solutions], GÖÇ-DER, 1999-2001. http://www.gocder.net/rprlr/goc_raporu.doc.

19 The village guard system was established under an amendment to article 74 of the Village Law, statute 442 of 26 March 1985, by which voluntary village guards can be appointed at the proposal of the village superintendent (*muhtar*) and approved by the local governor, while salaried provisional village guards are appointed on the proposal of the provincial governor and approved by the Interior Minister.

The number of voluntary and provisional village guards has at times exceeded 77,000. Village guards are subject to the authority of the *muhtar* for administrative purposes, while from an operational point of view they are under the command of the local gendarmerie company commander. See http://tr.wikipedia.org/wiki/Ge%C3%A7ici_K%C3%B6y_Korucusu.

20 Article 74: 'If looters or bandits should appear during harvest time, the head and the council of elders of the village may, in order to protect the people of the village from looting, designate as voluntary village guards as many of the villagers who possess weapons as may be necessary and should document who they are and bring this to the administrative head of the district. If the administrative head of the district consents, these voluntary village guards should, together with the regular village guards, protect the village and villagers against looters and bandits.'

21 Kurban, p. 72.

22 News from www.bianet.org, dated 16 December 2004.

Security forces have burned or forcibly evacuated villages that refused to accept the village guard system.²³ Some villagers who were forced to leave their villages said that they feared that if they accepted village guard system they would be subject to pressure from the PKK, but if they refused, they would be subject to pressure from the security forces, and that, denied any security at all in such a situation, they had no choice but to leave their village.

iii. The Prohibition on Accessing Pastures and Landmines

Bans on access to grazing and pasture land were also imposed during this period on the grounds that the land was required as part of the 'struggle against terror'. The aim of this practice was the same as that which lay behind the forced evacuations: to sever possible contact between armed militants and villagers in high pastures, and to prevent villagers from offering any form of support (voluntary or otherwise). Villagers who want to go up to high pasture in the spring or summer are refused permission on the grounds that military operations are or may be carried out in the region during those seasons.

This ban has a direct impact on those who make their living from rearing livestock. The prohibition was imposed either by order of the State of Emergency regional governor or by the provincial governor acting under the State of Emergency Law.

Though the prohibitions have been lifted in some areas, the heavy costs borne by many villagers who cannot access their pasture continue to this day.

There are as many as a million landmines on Turkish soil, sown along border areas for security reasons.²⁴ These landmines result in numerous deaths and injuries every year, and are a significant reason why populations are leaving their villages. For example, according to *Mayınsız Bir Türkiye Girişimi* [Initiative for a Landmine-Free Turkey], 68 people died and 152 people were injured in 63 landmine explosions in 2005. Of these incidents, 88% occurred in the provinces of Hakkari, Bingöl, Şırnak, Diyarbakır, Ağrı, Van, Siirt and Elazığ, where many displacements have occurred.²⁵

iv. Economic Reasons and Infrastructure Projects

Economic hardship resulting from the conflict as well as construction of dams as part of the Southeast Anatolian (GAP) Project, have resulted in displacement. Villagers whose property was situated within the flood zone of proposed dams were forced to migrate, and most were given neither alternative housing nor compensation at a level which indemnified their actual losses. Construction of the Ilisu Dam began recently, and is expected to leave a large area of the Hasankeyf district of Batman province and its environs under water, and displace some 78,000 people.

23 A number of assessments, observations and reports have been published. The Diyarbakır Bar Association, in its 1998 regional report, stated that after 1990 intensive efforts were made to impose village guard enrolment in order to prevent popular support for the PKK, and that villages which refused were evacuated. In order to prevent village populations returning to their homes, the villages were burned after the evacuation. www.gocder.net.

A 1999 report prepared by the Organization of Human Rights and Solidarity for Oppressed People (MAZLUMDER) described a number of village evacuations: '[I]t was reported that soldiers attached to Dicle Battalion Headquarters had raided three villages in the Dicle area. They told the villagers that they would be forced to join the village guards, and threatened the villages, saying that if they did not accept the village guard system, they would [have to] migrate ... it was reported that 37 out of the 200 households of the village of Hazmaz (Budak) near Lice were told that if they refused village guard service, they would have to evacuate the village, and soldiers have continued to apply this pressure for the past two months ...' June 1999.

24 According to official statements, anti-personnel mines were first used in 1956 'to prevent illegal border crossings'. Subsequently, landmines were used 'in the context of the fight against terror and only for security reasons'. On these grounds, a further 39,569 landmines were sown around security facilities in eastern and southeastern Turkey between 1989 and 1992'. *Landmine Monitor, May 2003 Report on Turkey*, Initiative for a Landmine-Free Turkey. www.mayinsizbirturkiye.org.

25 <http://www.savaskarsitlari.org/arsiv.asp?ArsivTipID=5&ArsivAnaID=35143>. According to Human Rights Association data, 838 people were killed and 937 people wounded in 512 landmine explosions between 1990 and 2002. Of the dead, 394 were civilians, 244 children, 334 security force members and three were PKK militants. Of the wounded, 642 were civilians, 214 children and 294 were security force members. www.mayinsizbirturkiye.org.

E. Problems Currently Experienced By Displaced Persons

i. Problems Experienced by IDPs Living in Cities

a. Housing and Basic Needs

The basic physical needs of IDPs have never been met, either at the time of their displacement or in the following years. The IDPs did not migrate in an organized and orderly manner, and were not provided with appropriate or adequate shelter. In order to meet the cost of renting accommodation, displaced people have had to endure extreme overcrowding. There have been frequent reports of large groups living in insanitary conditions in single rooms.²⁶

b. Economic, Social and Cultural Problems

Because IDPs were forced to use their own resources to migrate to towns and the suburbs of major cities, they began to experience serious problems in accessing healthcare, education, transport, employment and, above all, housing. This in turn triggered other problems, including the inability of the youth living in impoverished districts, most of whom were migrants, to access education, and subsequently criminality arising from unemployment experienced by the same group. The extremely harsh conditions in which IDPs have subsisted persists.²⁷

Local authorities and central government were also caught off-guard by this wave of migration and failed to provide IDPs with the assistance they needed. The only social assistance programmes were assistance funds intended for the poor, and the 'green card' system, which entitles the bearer to free medical care operated by the Social Solidarity and Assistance Foundation. IDPs certainly had poverty-related problems, but because the few programmes

available were not designed with them in mind, did not meet their needs. For example, during the displacement, home owners were forced to abandon their property owing to armed clashes, but because they remained property owners albeit of property they had no access to they were not eligible for a green card.²⁸ Under the existing assistance programmes, grants to people living in poverty can only be given once; they are not ongoing. For this reason such grants are not an appropriate solution to the economic problems of IDPs.²⁹

Meanwhile, burdened by economic difficulties, some families cannot afford to send their children to school and have to send them out to work. This in turn has resulted in a sharp increase in child labour.³⁰ Due to their dire economic circumstances, many families are finding it more or less impossible to participate in social and cultural life.

Many displaced people especially women do not speak Turkish well or do not speak it at all, because it is not their mother tongue. This was not a serious problem when they were living in their home villages, but the language problem becomes a serious disadvantage in their social relations, and in their relationship with the authorities, when they are attempting to establish a new life in the towns, and can give rise to discrimination. Sometimes, for example, IDPs who do not speak Turkish are unable to communicate their own or their children's needs when shopping or dealing with hospitals or other institutions. This can result in social exclusion or discrimination against IDPs in social life. It can even lead to them being labelled 'terrorists'.³¹

The problem also has psychological impacts since displaced people suffer a sense of alienation arising from the long-term obstacles to integration. The

26 For further information, see Kurban, pp. 223-4.

27 For further information, see Aker, pp. 224-32.

28 For further information, see Kurban, p. 221; for other statistical information, see *ibid.*, table 6-7.

29 For further information, see Kurban, pp. 177, 222, 285.

30 Aker, pp. 230-1.

31 For example, in the Bağyurdu district of Kemalpaşa, near Izmir, a group of Kurds, threatened with the burning of their homes and attack by extreme right-wing nationalists armed with stones and clubs, were forced to leave the town.
<http://www.bianet.org/2006/23/79470>.

mental and physical trauma which began with the migration becomes an endemic condition in the locations to which they have fled.³²

ii. Property Issues

a. Background

For the reasons indicated above, large numbers of people were forced to abandon their property. Houses, movable property, fields and fruit trees were demolished or burned by the security forces. To give a particularly well-documented example, a survey conducted *in situ* by European Human Rights Commission members established that gendarmes had deliberately burned the houses and property of the villagers of Çiftlibahçe, near Hazro in Diyarbakır province in an operation carried out on 8 November 1993.³³

Even where property was left undamaged at the time of evacuation, agricultural land suffered badly from neglect, and fruit and timber trees withered and died for lack of water, or in some instances were burned by the security forces. As a consequence of neglect, the majority of evacuated villages were reduced to a state of complete dereliction.

Most displaced people are still unable to return to their villages owing to the problems of security, economy and infrastructure, and are therefore unable to use their property and are deprived of any income from it.

In determining damages arising from displacement, legal definitions of property ownership assume key importance, since many of the settlements subject to displacement had no land registry records, while other villagers held only informal documents handed down from one generation to the next in place of land deeds. In many evacuated villages, the state had not carried out land registry surveys. Consequently, from an official point of view, villagers in some settlements have only outline title to their lands, and this presents problems in pursuing their rights to compensation.

The procedures and actions described above, which resulted in the displacement of a large population and damage to their property, were violations of property rights which are safeguarded by domestic legislation, including the Constitution,³⁴ as well as by the European Human Rights Convention³⁵ to which Turkey is a party. Consequently, in a number of cases heard at the ECtHR, the Court found that the destruction and burning of villagers' property and prevention of their access to their lands had been a violation of their property rights.³⁶ For example, in *Doğan and others v. Turkey*, the ECtHR concluded that the property rights of the applicants had been violated because they were unable to access their property and had been deprived of income from it for nine years.³⁷

b. Compensation

The state's obligation to offer compensation for damages arising from administrative procedures and actions is laid down in the Constitution³⁸ and in the Administrative Judicial Procedure Code. However, there appear to be no examples of decisions or judgments by either the administration or administrative courts holding security forces responsible for torts and requiring the administration to pay compensation. There are, moreover, substantial obstacles to any such legal actions in terms of limitations to prosecution and standards of proof. Consequently, administrative provisions currently in place have not resulted in effective outcomes in terms of compensation for the injustices inflicted on the displaced. Indeed, it is for this reason that the government recognized the need for a new and specific mechanism for compensation and passed a special law to meet that need.

Statute 5233

In the framework of the Accession Partnership adopted by the European Council on 4 December 2000, relevant departments of the Turkish government drew up a National Programme, which came

32 For information concerning the sociological impact of forced migrations, see Barut, *op. cit.*, *Zorunlu Göç'ün Halk Sağlığı ve Ruh Sağlığı Üzerindeki Etkileri ve Çözüm önerileri* [The Effects of Forced Migration on Public Health and Mental Health], A. Tamer Aker, 'Türkiye'de Yerinden Edilme, Ruh Sağlığı ve Halk Sağlığı: Yapılan Çalışmalar, Beklentiler, Engeller' [Displacement in Turkey, Mental Health and Public Health: Research, Expectations and Obstacles], in Kurban, pp. 132-7. See Ayşe Betül Çelik, 'Batman İli Alan Araştırması Değerlendirmesi: Ülke İçinde Yerinden Edilmenin Sosyo- Ekonomik Sonuçları ve Geri Dönüş Önünde Engeller' [Evaluation of Field Research in Batman Province: The Socio-Economic Results of Internal Displacement and Obstacles to Return], in Kurban *op. cit.*, pp. 173-91 for a contemporary field study into the socio-economic consequences of forced migration.

33 *Dulaş v. Turkey* (No. 25801/94), 30 January 2001, para. 16-19.

34 1982 Constitution, Article 35.

35 Additional Protocol No. 1 to the Convention, article 1.

36 On this issue, see, among others, *Akdivar v. Turkey* (No. 21893/93), 16 September 1996; *Selçuk and Asker v. Turkey* (No. 23184/94, 23185/94), 24 April 1998.

37 *Dogan and others v. Turkey* (No. 8803/02), 20 June 2004, para. 140-3.

38 Article 125.

into force on 24 March 2001. The National Programme promised provisions for compensating damages arising from combating terror and for redressing injustice. A 2002 resolution of the Parliamentary Assembly of the Council of Europe in 2002 included a call for compensation for material losses suffered by displaced persons.³⁹ Leading on from these developments, in August 2004 the Turkish Grand National Assembly (TGNA) passed the Law on Compensation for Damage Arising from Terror and Combating Terror (statute 5233), which included measures for compensating the losses suffered by the displaced. Law 5442, which amended some of the articles of the Compensation Law, was passed on 28 December 2005 and came into force on 3 January 2006. This law established Damage Assessment Commissions to be attached to special provincial administrations to which displaced people could apply for compensation.

Statute 5233 was unquestionably an important and positive step righting patterns of grave injustice, but NGOs nevertheless had some criticisms of it, which they raised while the law was in draft form.⁴⁰ After partial amendments in response to these criticisms, the law entered into force with serious defects in its text and subsequent implementation.⁴¹

Problems with the text of the law can be summarized as follows:

- ◆ Although the conflict began in 1984, the law only indemnifies damages which occurred after 1987. Consequently, damages inflicted between 1984 and 1987 are excluded.

- ◆ A provision that persons convicted of terrorist offences may not apply for compensation for acts in respect of which they were convicted threatens to result in unjust exclusions.
- ◆ The law does not cover persons who were forced to migrate for economic reasons arising from the ban on access to grazing and high pastures.⁴²
- ◆ The law makes no provision for non-pecuniary damages, contrary to precedent established at the ECtHR.
- ◆ The law includes a requirement that applicants present to the Damage Assessment Commissions documents that are in practice often impossible to obtain, such as Health Council reports and incident reports (for cases involving wounding and disability), incident reports showing how property was damaged, and documents proving ownership (for applications for damage to property and movable goods).⁴³
- ◆ The number of Damage Assessment Commission officials, and their qualifications for the task, are insufficient to provide an adequate and appropriate response to applications.⁴⁴

In addition to problems in the actual text of the law, current implementation is proving unsatisfactory in a number of respects:

- ◆ The level of compensation proposed by the Commissions in most cases does not corre-

39 Recommendation 1563 of the European Council Parliamentary Assembly, 'Humanitarian Situation of the Displaced Kurdish Population in Turkey', 18 September 2002.

<http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/Documents/AdoptedText/TA02/EREC1563.htm>.

40 TOHAV, GÖÇDER, HRA, Diyarbakır Bar Association and the Regional Bar Associations prepared evaluations of the draft and made them public.

41 The problems with implementation described here were gathered from reports of various NGOs and from the direct experiences of the project's partners in Turkey in the course of providing legal assistance.

42 The number of people forced to migrate for economic reasons, who are also included in the UN definition of an IDP, should not be underestimated.

43 In the climate of heavy repression experienced under the State of Emergency, it was not possible for villagers to insist that the authorities issue statements of damage to their property, and consequently many of them have no incident report or similar proof of what they experienced. The burden of proof on this issue should be shifted. There are ECtHR decisions indicating that it can be appropriate to change the burden of proof to meet the special circumstances involved in village clearances. See, for example, *Doğan and others v. Turkey* (No. 8803-8811/02, 8813/02 and 8815-8819/02), 29 June 2004.

On 22 August 2005, article 15 of the regulation in question was amended. Under the change, Commissions are now authorized to require the relevant authorities to produce the information and documents referred to above. The amendments also entitle applicants to submit all manner of proof and information not only official documents that might indicate how the damage was inflicted, and corroborate the extent of the damage. These amendments are positive from the point of view of the victim, and appropriate. Nevertheless, some Commissions, instead of obtaining the documents themselves, continue to demand that applicants, or their legal representatives, procure them from the authorities.

44 According to Interior Ministry data, 195,463 applicants had submitted claims nationally as of 3 May 2006, and of these 27,011 had been decided. See Kurban, p. 283. In a number of provinces, a limited number of personnel have been given the task of finalizing more than 10,000 files within a reasonable period. Many applications have not been concluded a year and a half after their submission, and others have not even begun to be processed.

spond to the damages actually suffered.⁴⁵ In some cases, there are wide discrepancies in levels of compensation ruled by different Commissions for comparable losses.⁴⁶

- ◆ Some Commissions are acting arbitrarily in their assessment of applications. This has become more pronounced since the *İçyer* judgment. On 12 January 2006 the Third Chamber of the ECtHR gave an inadmissibility judgment in the application of *Aydın İçyer v. Turkey*.⁴⁷ The Court took the view that the Damage Assessment Commissions established under statute 5233 provided a reasonable and effective domestic remedy in spite of problems with the law and its implementation and that the complaint could therefore be referred to the relevant Commission. It has been clearly noted that the *İçyer* judgment has had a negative effect on the operation of the Commissions.⁴⁸
- ◆ It has been frequently observed that while Damage Assessment Commissions go to great lengths to procure, from various sources, documents that challenge displaced people's claims, they do not show the same diligence in collecting evidence that supports such claims.
- ◆ Applicants are sometimes coerced into accepting compensation figures on the basis that if they do so, their application will be dealt with sooner.
- ◆ Displaced people represented by an attorney are sometimes encouraged by Commission officials to dismiss their legal counsel.
- ◆ The Commissions often operate in a partial manner. Conciliation proposals are prepared unilaterally by the Commissions, and neither displaced people nor their legal counsel are included in the preparatory stages.
- ◆ Lawyers are prevented from inspecting the files. Commissions do not respond to written statements and requests submitted applicants or their attorneys.
- ◆ Conciliation 'proposals' are presented to the applicant or their attorney as a *fait accompli* and amendments are not accepted. When counter-proposals are suggested, the Commission treats these as a *de facto* rejection and the file may then be subject to endless delays and postponements. Site surveys are usually carried out in an irregular manner, contrary to proper procedures.⁴⁹
- ◆ When conducting surveys, the Commissions frequently make no effort to establish the circumstances in which the damage took place. Lawyers are frequently not notified that surveys are to take place.
- ◆ Applicants are sometimes not notified of surveys, and it has been reported that in some cases Commission staff carrying out surveys ignore applicants' statements.
- ◆ Experts serving on Commissions are given unduly broad powers of discretion, and in some cases these powers have led to arbitrary practices.
- ◆ The issue of ownership and land registration has been a significant difficulty. In villages where the Land Registry Office has carried out a cadastral (i.e. land registry) survey after the date of application and before the Commission's site survey, lands which the villagers have used, cultivated and harvested, have reportedly been recorded as Treasury land or national forest. During site surveys Commission officials ignore the disputed status of the landholding and rely exclusively on the

45 The amounts of compensation do not reflect ECtHR precedents and are low. For example, proposed compensation for displaced who have been wounded or disabled vary from 100 YTL through 1,500 YTL up to 4,000 YTL. In examples such as Hoşgeldi village and its hamlets, near Varto in Muş province, villagers whose homes were burned or demolished, and who were prevented for years from access to their lands were offered absurdly low sums, such as 500 YTL or 900 YTL. 'Statute 5233 is Unjust', HRA, TOHAV, Diyarbakır Bar Association, Ağrı Bar Association, GÖÇDER Human Rights Watch, joint declaration following their meeting of 25 February 2006. http://www.tohav.org/zorunlugoc/5233_sayili_yasa_Adil_Degildir.pdf.

46 For examples, see HRW, HRA ve KHRP's joint letter to Deputy Prime Minister Abdullah Gül of 22 February 2005. <http://hrw.org/turkish/pdf/2006/turkey022206tur.pdf>.

47 *İçyer v. Turkey* (No. 18888/02), 12 January 2006.

48 For an evaluation of this negative effect, see Ayşe Betül Çelik, 'Batman İli Alan Araştırması Değerlendirmesi: Ülke İçinde Yerinden Edilmenin Sosyo- Ekonomik Sonuçları ve Geri Dönüş Önünde Engeller' [Evaluation of Field Research in Batman Province: The Socio-Economic Results of Internal Displacement and Obstacles to Return], in Kurban, pp. 206 7.

49 'Statute 5233 is Unjust', joint declaration.

cadastral map. Where land is marked as Treasury land or national forest on such maps, villagers' statements are flatly ignored and a substantial further loss of property is inflicted.⁵⁰ This practice is in breach of ECtHR precedents to the effect that land registry records cannot be regarded as the sole test in assessing ownership.⁵¹

In respect of cadastral surveys, mention should be made of the special difficulties experienced by the Assyrians. The overwhelming majority of Assyrians from southeast Turkey are currently living abroad, a fact which puts them at serious disadvantage. During cadastral surveys, some neighbouring landowners who were not Assyrian made statements contrary to the Assyrians' interest when the survey was establishing village boundaries. As a consequence, pastures and agricultural land belonging to the Assyrians were registered as belonging to others.⁵²

The lands of most Assyrians living abroad have not been cultivated for many years and are therefore overgrown. As a consequence, such areas have been registered as forest during cadastral surveys. Other lands which have long been left fallow were classed as arid/desert territory and registered as Treasury land. An example of this is Alagöz village near Midyat in Mardin province. Almost all the lands attached to this village, apart from the actual houses

of citizens still living there, have been identified as state forest, and under the Forest Law, any productive activity on forest land amounts to a criminal offence. As a consequence, the inhabitants of that village have been brought to the brink of forced migration.

Assyrians experience another problem in relation to registration. Most property owners from the Assyrian villages have settled in Europe, and most of these have been stripped of their Turkish citizenship. Cadastral surveys cannot register them as owners, because they are deemed to be foreign nationals. Consequently, this group of displaced persons are unable to register property that belongs to them or that they have inherited because they are no longer Turkish citizens.

- ◆ Villagers cannot appeal against the cadastral procedures, and cannot challenge them in court, because they were not present in the village at the time of the cadastral survey, and therefore missed the 30-day limit for lodging objections, or because they are ignorant of their legal rights.
- ◆ In several provinces the Damage Assessment Commission secretariat is staffed by former Anti-Terror Branch officers. For some displaced, this is intimidating and undermines their confidence in the process.⁵³

50 For example, villagers at Çırpılı village near Erüh in Siirt province who had applied under statute 5233 discovered that during the survey, unknown to them, lands they had farmed for more than 200 years were registered as Treasury lands. Interview with B. E. and others at the TOHAV office, Istanbul, 6 April 2006

51 In the ECtHR's *Doğan* case, the question of ownership was disputed. The Court concluded that in determining ownership, a land registry record could not be treated as the sole determining fact. *Doğan and others v. Turkey* (No. 8803-8811/02, 8813/02 ve 8815-8819/02), 29 June 2004.

52 Two examples of are Elbeğendi village near Midyat in Mardin province, and Haberli village near İdil, in Şırnak province.

53 Kurban et al., p.167.

F. Return

This section first looks briefly at projects developed by the state to support the return of IDPs, and then examines obstacles to their return.

i. Past Projects

a. The 'Village Town' Project

The Village Town Project aimed to raise the living standard of those living in rural areas by encouraging the populations there to settle in one 'attraction centre' and thereby facilitate a more productive rural community. This project, which proposed urban living for village populations, was implemented in an extremely eclectic manner, without a comprehensive evaluation of local needs, and apart from a few unsuccessful experiments, was not pursued.⁵⁴

b. The Return to Village and Rehabilitation Project (RVRP)

The RVRP was established in 1994 to settle families forced to abandon their homes but who wished to return voluntarily, either to their own villages or to suitable nearby locations. The project was intended to provide sustainable living standards for such settlements by establishing the necessary social and economic infrastructure. The General Directorate of Village Services initially implemented the project, but in 2000 the Special Provincial Administrations attached to the Ministry of the Interior assumed responsibility for the scheme. The project initially covered twelve provinces; subsequently two more provinces were added.⁵⁵

The RVRP has remained a mystery even to those who are supposed to be its client group. From 1994 until the present day, it has made no significant contribution to resolving the problem. The reasons for

this include: the RVRP's centralized structure; its uncertain funding; concern that the scheme might require people to return to a village other than their own; the project's failure to resolve infrastructure problems; and its assumption of the village as the basic unit for return. Most importantly, the project takes a strictly instrumental approach and lacks any broader vision of what a comprehensive resolution of the injustices inflicted on IDPs might look like.⁵⁶

But the RVRP has recorded some positive developments. On 17 August 2005 the Council of Ministers made a series of decisions in principle entitled 'Measures for the Return to Village and Rehabilitation Programme and the Problem of Displaced Persons'. The document contains a number of statements concerning aims and implementation that look positive. For example, it appears that a participative approach to resettlement is successfully beginning to be applied, as exemplified by Konalga, near Çatak, Özlüce near Gürpınar and Aydemir near Başkale in Van province, and the Yalım Erez District being developed in the Bostaniçi district of Van, with the participation of the Turkish Union of Chambers of Commerce.⁵⁷

Quite apart from the shortcomings in its planning and implementation methods, the effectiveness of the RVRP in achieving returns continues to be criticized by NGOs. At a meeting to introduce the 'Action Plan for Provision of Services for Internally Displaced Persons' in Van on 29 September 2006, information was given to the effect that up to that time 144,158 people had returned in 14 provinces.⁵⁸ But statistics supplied by the government on returns in the context of the RVRP have been met with scepticism by NGOs, who find them insufficiently detailed.⁵⁹

54 Diyarbakır-Bismil-Çeltikli, Van-Özalp, Bolu-Taşkesti. For an evaluation, see Olgu Çalışkan, 'The Village Town Experience in Turkey', http://www.aydinlanma1923adk.itu.edu.tr/index.php?option=com_content&task=view&id=25&Itemid=37.

55 The provinces covered are: Bingöl, Hakkari, Tunceli, Adıyaman, Ağrı, Diyarbakır, Batman, Siirt, Mardin, Van and Şırnak.

56 A report prepared by Human Rights Watch in 2002 found that there was insufficient information concerning the aims, methods, financial resources and plans of the RVRP, and suggested that this cast doubt on the seriousness of the government's intentions. Human Rights Watch report, *Displaced and Disregarded: Turkey's Failing Village Return Programme*, Vol. 14, No. 7(D), 2002, pp. 26-7. <http://www.hrw.org/reports/2002/turkey/>

57 For information about the Action Plan prepared by the Office of the Provincial Governor of Van with the technical support of the UNDP as part of developing international cooperation, see: <http://www.undp.org.tr/demGovDocs/idp/VanEylemPlanFinal-10.10.2006.doc>.

58 For information about the meeting, see: <http://www.van.gov.tr/index.php?sayfa=anasayfa&klasor=&sayfano=96>.

59 The view that the official statistics are misleading is expressed in the August 2003 report by the Board of the Tunceli Bar Association board entitled 'Tunceli'de Boş Köy ve Mezraların Durumu, Köye Geri Dönüşte Engeller ve Çözüm Önerileri' [The Situation of Abandoned Villages and Hamlets in Tunceli Province, Obstacles to the Return to Villages and Recommendations for a Solution], submitted at the Immigration Conference, in Professor Füsün Üstel, *Zorunlu İç Göç Sonrası Köye Dönüş*, www.tesev.org.tr.

c. Project for Support to the Development of an IDP Programme in Turkey

This project was prepared in collaboration with the United Nations Development Programme (UNDP) to assist the government in developing a well-defined programme for the return of IDPs. Various activities are envisaged to achieve the aims of the project. These include: 'supporting the development and implementation of an IDP survey, piloting a project to facilitate the government's efforts to support the return and/or integration in one of the provinces in southeast or east Turkey, disseminating the UN Guiding Principles on Internal Displacement, and supporting capacity-building and awareness-raising of these Principles and finally to have UNDP respond to the technical and other expertise needs of the Government and the UN Turkey Team'.⁶⁰

The pilot project envisaged in the plan was launched in Van on 29 September 2006. The Action Plan for the Provision of Service to Internally Displaced Persons in Van Province drawn up as part of this pilot project states that it will carry out measures necessary for the return of IDPs, speed up cadastral surveys and provide assistance for the repair of former housing and the re-establishment of economic life, and that for those who prefer to integrate in urban areas, model housing will be built and enterprise training will be provided.⁶¹

The fact that the Van project is the first of its kind and that it is being developed in partnership with UNDP is an important and welcome development. It is expected that the implementation of the Action Plan will provide the infrastructure and expe-

rience for the development of larger-scale projects.

In addition to this pilot project, a series of training seminars concerning displacement was given in partnership with UNDP to NGOs and Damage Assessment Commission officials.⁶²

ii. Problems Related to Return

Notwithstanding the projects described above, displaced persons still encounter a number of obstacles to their return. These can be divided into security problems, difficulty in accessing basic services and infrastructure problems.⁶³

a. Problems Related to Security

1. *The village guard system*

Village guards, ostensibly armed to help protect villagers' lives and property, actually pose a serious threat to their lives and property. Since the inception of the village guard system until the present day, 5000 village guards have been convicted of crimes ranging from theft to murder.⁶⁴ In some places village guards have reportedly occupied properties left by those who were forcibly displaced and are refusing to vacate these properties and villages.⁶⁵ The village guard system puts a heavy burden on the public purse, is a threat to public order and remains a serious obstacle to safe return.⁶⁶

2. *The prohibition on accessing pastures*

This prohibition is mainly implemented in rural areas where clashes have occurred. Such bans are a major obstacle for villagers and nomadic groups who make their livelihood from stockbreeding. The clashes themselves are also a disincentive to return, especially for those who work in animal husbandry.

60 Project for Support of the Programme for Internally Displaced People, p. 1. For summary information on this subject, see <http://www.undp.org.tr/Gozlem3.aspx?WebSayfaNo=259>.

61 For information about the pilot project initiated in Van, see: <http://www.undp.org.tr/Gozlem3.aspx?WebSayfaNo=646>.

62 For information about training given to NGOs, see: http://demo.undp.org.tr/undp/_Bulletin_Archive/2006/05/tr/idp.htm; http://demo.undp.org.tr/undp/_Bulletin_Archive/2006/07/tr/idp.htm.

63 Most of the obstacles listed in GÖÇDER's 2001 report persist today. See Barut, op. cit.

64 'From the time the village guard system was implemented in the east and southeast until now, 5000 temporary village guards have committed criminal acts. There are 57,757 village guards carrying out their duties in the 22 provinces in this region. According to figures announced by the Ministry of the Interior, as well as court records, 2,402 of these village guards were involved in crimes of terror in the period from 26 March 1985 when the village guard system was implemented until today. Court proceedings were brought against 936 village guards for crimes against property, against 1234 village guards for crimes against the person, and against 428 village guards for crimes connected to smuggling ...' 'Korucular Suc Makinası Gibi' [Village Guards Like a Crime Machine], *Radikal* daily newspaper, 27 July 2006.

65 For example, one such ongoing case concerns the killing by village guards of three villagers in the Nurettin district of Muş province. The defendants were found guilty of murder and the case is now pending at the Court of Appeal. Another example is the village of Sare, near Idil in Şırnak province. Village guards settled in this village which belongs to Assyrians. The Assyrians applied to the local governor, who accepted their objection. However, the village guards refused to leave until they were forcibly removed by gendarmes in September 2004.

66 On 16 September 2003, Minister of the Interior Abdülkadir Aksu announced that the number of village guards in 22 provinces as of April 2003 exceeded 58,000 and that the monthly cost to the state was 15 trillion lira. The monthly salary of a village guard was 253 million lira. 'Bölgenin Ve Devletin Sirtındaki Kambur Koruculuk' [The Village Guard Corps, a Burden on the State and on the Region], *Göç Der* News Bulletin, No. 26, p. 10.

3. Landmines

The landmine problem, briefly touched on above as a factor in displacement, is a deterrent to return because of the threat to life it presents. There have been some positive developments in recent years. In 1996 Turkey announced that it had ceased the production, sale and transfer of landmines, and in 2001 the Landmine Monitor (LM) removed Turkey from its list of countries that produce landmines. On 25 September 2003, Turkey signed the Convention on the Prohibition of Anti-Personnel Mines and on their Destruction⁶⁷ and in 2005 it cleared 17,886 of the landmines on its own territory. However, Turkey has never instigated or sponsored an educational campaign about landmine hazards, and landmine clearance remains inadequate. No national structure to implement the policy on landmines has yet been developed.⁶⁸

The PKK, also seen as a contributor to the landmine problem, recently signed, through the organization Geneva Call, a 'Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action', for which the government of the Canton of Geneva acts as guardian.⁶⁹

4. Clashes

After 2004, when the PKK called off its ceasefire, clashes between PKK militants and state security forces increased. But on 1 October 2006 the organization once again declared a unilateral ceasefire. The continuation of clashes not only contributes to the persistence of other security problems mentioned above, but also presents a direct threat to people's security. A sustainable return programme cannot be implemented while the clashes continue.

b. Access to Basic Services and Infrastructure

The displaced are returning to villages and hamlets reduced to rubble by years of neglect. Infrastructure systems, including roads and water supply, are inadequate. Basic facilities such as schools and hospitals are either substandard or nonexistent. Agricultural production and livestock rearing have ceased in the evacuated communities, and unless measures are taken, it seems unlikely that destitute displaced people will be able to return and re-establish economic life.

67 Article 5 of this Convention states: 'Each State Party undertakes to destroy or ensure the destruction of all anti-personnel mines in mined areas under its jurisdiction or control, as soon as possible but not later than ten years after the entry into force of this Convention for that State Party.'

68 http://www.bianet.org/2006/09/01_c/85834.htm.

69 Savas Karsitlari (War Resisters), <http://www.savaskarsitlari.org/arsiv.asp?ArsivTipID=5&ArsivAnaID=34067>.

G. Human Rights of Displaced Persons Under International Human Rights Law

i. General Protection

Turkey is party to a number of international human rights instruments which cover most civil-political, economic-social and cultural rights, including the International Covenant on Civil and Political Rights (ICCPR),⁷⁰ the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁷¹ the International Convention on the Elimination of Racial Discrimination (ICERD),⁷² the European Convention on Human Rights (ECHR)⁷³ and the European Social Charter.⁷⁴

Displaced people have the same entitlement as any other people to exercise all these rights, which are guaranteed under international human rights and domestic law.⁷⁵ Unlike people who have not suffered displacement, displaced people as a disadvantaged group may also be entitled to special measures to exercise their rights. For example, states are called upon to make special efforts to ensure that IDP women and children – and especially girl children – receive an education.⁷⁶

Certain of the human rights of displaced people are more often violated as a consequence of the circumstances which bring about their displacement. These rights are:

- ♦ The right to life: The state has a responsibility to safeguard the right to life of all, and not to deprive unlawfully any person of their life. Arising from the state's responsibility to protect the right to life, the state has a responsibility

to act to remove any close and present threat to the right to life, and to conduct effective investigations where deaths occur.⁷⁷

- ♦ The prohibition on torture, cruel and degrading treatment: The state has a responsibility to respect persons' right to freedom from physical and psychological torture and degrading treatment. In a number of cases concerning village burning, the ECtHR ruled that burning villagers' houses in front of their eyes amounted to inhuman treatment.⁷⁸
- ♦ The right to privacy and respect for family life: the state has a responsibility to protect people's private and family life. In a number of cases concerning village burning and evacuation, the ECtHR ruled that the state had violated this right by burning villagers' houses and disrupting their family life.⁷⁹
- ♦ The right to effective remedy: the state has a responsibility to establish domestic legal channels to which people whose human rights have been violated can apply. In a number of cases concerning village burning and evacuation, the ECtHR ruled that the state had violated this right by failing to provide an effective domestic remedy which the villagers could use.⁸⁰
- ♦ The right to property: The state has a responsibility to ensure that people can enjoy their property in peace, and to compensation where that property is damaged. In cases concerning

70 Adopted on 16 December 1966, came into force on 23 March 1976, and ratified by Turkey on 23 December 2003.

71 Adopted on 16 December 1966, came into force on 3 January 1976, and ratified by Turkey on 23 December 2003.

72 Adopted on 21 December 1965, came into force on 4 January 1969, and ratified by Turkey on 16 October 2002.

73 Convention for the Protection of Human Rights and Fundamental Freedoms, adopted on 4 November 1950, came into force on 3 September 1953, and ratified by Turkey on 18 May 1954.

74 Adopted on 18 October 1961, came into force on 26 February 1965, ratified by Turkey on 24 November 1989.

75 Guiding Principles on Internal Displacement, Section 1, Principle 1.

76 *Ibid.*, Principle 23.

77 For example, the ECtHR gave judgment in *İpek v. Turkey* (No. 25760/94), 17 February 2004, that there had been a violation of the right to life, since the disappearance of two villagers during a village security operation had not been effectively investigated.

78 *Yöyler v. Turkey* (No. 26973/95), 24 July 2003, para. 75 6.

79 *Yöyler v. Turkey* (No. 26973/95), 24 July 2003, para. 79 80; *Doğan and others v. Turkey* (No. 8803-8811/02, 8813/02 and 8815-881902), 29 June 2004; *Akdıvar v. Turkey* (No. 21893/93), 16 September 1996.

80 *Yöyler v. Turkey* (No. 26973/95), 24 July 2003, para. 79 80; *Doğan and others v. Turkey* (No. 8803-8811/02, 8813/02 and 8815-881902), 29 June 2004.

village burning and evacuation, the ECtHR has ruled that the state had violated this right when security forces damaged property⁸¹ and also when, thereafter, displaced people were unable to access or use their property for many years.⁸²

ii. Special Rights of Displaced Persons

Because displaced persons are disadvantaged and living in extreme circumstances, the rights and standards referred to above do not adequately meet their needs and therefore the international human rights system has defined a number of 'special rights' for them. The UN Guiding Principles on Internal Displacement (Guiding Principles), adopted in 1998, is the basic instrument concerning the needs and rights of IDPs.⁸³ Though not a legally binding instrument, it is widely referred to by governments, NGOs and scholars, and is the most important international document defining standards on this issue. It includes guiding principles for states and organizations, and requires states to guarantee certain rights in addition to those mentioned above.

Additionally, the 'Principles on Housing and Property Restitution for Refugees and Displaced Persons' (the Principles)⁸⁴ and the 'Resolution on the Right of Return of Refugees and Displaced Persons' (the Resolution),⁸⁵ approved by the UN Sub-Commission on the Promotion and Protection of Human Rights, describe in detail states' responsibilities regarding housing and property restitution. According to these documents, the responsibilities of states to displaced persons are as follows:

States' responsibilities to meet the basic and shelter needs of the displaced are:

- ◆ States must provide humanitarian aid and facilitate the use of aid sent from other sources.⁸⁶
- ◆ States must provide protection and assistance to those in special need, such as children and the elderly.⁸⁷

- ◆ States must safeguard the right to housing and shelter, meeting appropriate standards for safety, health and hygiene. They must also ensure an adequate standard of living which permits members of the same family to remain together and includes essential food and potable water, basic shelter, appropriate clothing, essential medical services and sanitation.⁸⁸
- ◆ States must take steps to safeguard the right to medical care, including psychiatric and social services, and pay special attention to the needs of women.⁸⁹

States' responsibilities concerning the right to effective remedy:

- ◆ States must ensure that any decision which results in displacement is subject to judicial review,⁹⁰ and *must ensure an effective right to a judicial remedy*, including the right to submit a claim for restitution and/or compensation to an independent and impartial body.⁹¹
- ◆ States must, in discharging their responsibility to provide effective remedies, ensure that all application procedures are just, timely, accessible and free of charge and that they are age- and gender-sensitive.
- ◆ The claims process must be accessible for refugees and other displaced persons regardless of where they are living during the period of displacement, including in countries of origin, countries of asylum or countries to which they have fled. Displaced persons must be able to submit their claims by post or by proxy, as well as in person. Legal aid should be provided if application free of charge is not available.
- ◆ States should develop claims mechanisms that are simple, comprehensible and offered in the languages of the groups affected; assistance should be available to persons making applications to such mechanisms.⁹²

81 See, *inter alia*, *Yöyler v. Turkey* (No. 26973/95), 24 July 2003, para. 80; *Akdivar v. Turkey* (No. 21893/93), 16 September 1996; *Selçuk and Asker v. Turkey* (No. 23184/94;23185/94), 24 April 1998; *Menteş and others v. Turkey* (No. 23186/94), 24 July 1998; *İpek v. Turkey* (No. 25760/94), 17 February 2004.

82 *Doğan and others v. Turkey* (No. 8803-8811/02, 8813/02 and 8815-8819/02), 29 June 2004.

83 E/CN.4/1998/7537Add.2, 11 February 1998.

84 E/CN.4/Sub.2/2005/17.

85 Sub-Commission on Human Rights, 2002/30.

86 *Supra*, no. 6, Principle 3 and section 4.

87 *Ibid.*, Principle 4/2.

88 Principle 18-7/2, article 11 of ICESCR; Resolution, para. 3; Principles, section II/8.

89 Guiding Principle 19, article 12/d of ICESCR, article 11 of the European Social Charter.

90 *Ibid.*, Principle 7/3/f.

91 Principles, section 5/13.1.

92 Principles, section 5/13.

States' responsibilities concerning property rights and compensation for damages:

- ◆ States must safeguard the right to property, including protection of property from being used to launch or facilitate military operations, being made the object of reprisal, being destroyed or appropriated as a form of collective punishment,⁹³ and by prohibiting direct or discriminatory attacks or other acts of violence.
- ◆ States must guarantee the right to compensation, which includes assisting resettled IDPs to obtain compensation for their property and possessions which they left behind or were dispossessed of at the time of their displacement. When recovery and restitution to its former state are not possible, authorities should provide adequate compensation or some other form of just reparation.⁹⁴
- ◆ States should *disseminate information* about the procedures for compensation and relocation claims.⁹⁵ States should establish a sufficiently extended and well-defined period within which compensation claims must be filed.⁹⁶

States' responsibilities concerning the right to return:

- ◆ States must safeguard *the right to return* by providing the conditions and the means that will allow IDPs to return voluntarily, in safety and with dignity, to their homes or places of habitual residence or to resettle voluntarily in another part of the country, and ensure the integration of returnees.⁹⁷

- ◆ States are particularly urged to take measures to ensure the physical safety of returnees⁹⁸ and to restore infrastructure, including water, sanitation, electricity, fuel supplies, roads and land, where these have been damaged or destroyed.⁹⁹ Where properties have been occupied by others as a result of criminal action, states are urged to enforce their laws and ensure that displaced persons can return in safety.¹⁰⁰

States' responsibility to include displaced persons in planning and management:

- ◆ States should safeguard *the right of displaced people to participate fully in the planning and management* of their return, resettlement and reintegration.¹⁰¹

States' responsibility to cooperate with other states and international organizations:

- ◆ States should cooperate with and ask help from other states and international organizations in providing financial and technical assistance to facilitate mechanisms for effective return and compensation.¹⁰²

States' responsibility to promote sensitivity and raise capacity:

- ◆ States should issue *guidelines* and *provide training* to their own staff regarding investigation and complaints procedures, and mechanisms for verification of property ownership, decision-making, enforcement and appeals.¹⁰³

93 Guiding Principle 21.

94 Guiding Principle 29/2; Resolution, para. 3; Principles, section II/2, V/21.

95 Guiding Principle 7/3/b.

96 Principles, section 5/13.9.

97 Guiding Principle 28; Resolution, para. 2.

98 Resolution, para. 7.

99 Resolution, para. 8.

100 Resolution, para. 14.

101 Guiding Principle 28, Resolution, para. 6; Principles, section 5/14.

102 Principles, section V/10.4, 12.5; Resolution, para. 15.

103 Principles, section 5/12.4.

H. Example: Return Restitution Compensation Process: Bosnia And Herzegovina

i. The Right to Return

During the 1992-95 war in Bosnia and Herzegovina (BiH) thousands were killed and a systematic policy of 'ethnic cleansing', with the purpose of creating ethnically homogeneous areas, resulted in the forcible displacement of more than half the population.¹⁰⁴ Hence, the right to return became a fundamental objective of the Dayton Peace Agreements (DPA).¹⁰⁵ Annex 7 of the DPA, the 'Agreement on Refugees and Displaced Persons', grants refugees and IDPs 'the right freely to return to their homes of origin', 'to have restored to them property of which they were deprived in the course of the hostilities' and 'to be compensated for any property that cannot be restored to them'. It also imposes obligations on the authorities to create suitable conditions for their safe return.¹⁰⁶

The international community (IC) played a critical role in the return process and coordinated the return activities through the Refugee Return Task Force (RRTF).¹⁰⁷ The RRTF was established in 1997 and co-chaired by the Office of the High Representative (OHR) and the United Nations High Commissioner for Refugees (UNHR). It also comprises the European Commission, the European Commission's Humanitarian Office (ECHO), the governments of Germany, the United States and the Netherlands, the World Bank, the European Union Police Mission (EUPM), the Organization for Security and Co-operation in Europe (OSCE), the

United Nations Development Programme (UNDP), the International Management Group (IMG), the International Organization for Migration (IOM), the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) and SFOR. However, ad hoc projects introduced during the first years after the entry into force of the DPA, focusing on reconstruction, failed to achieve significant levels of (minority) return,¹⁰⁸ due to wrong decisions about the locations and the beneficiaries of the projects.¹⁰⁹ In addition, 'nationalistic' local authorities were granting occupancy rights to members of their own ethnic group in order to entrench the status quo and reinforcing ethnic cleansing by making the return of (minority) pre-war occupants impossible.¹¹⁰

ii. A Rights-based Approach to Property Restitution

In response, the IC repealed all discriminatory wartime and immediate post-war legislation applicable in both entities of BiH, replacing them with streamlined, administrative restitution procedures, with the purpose of creating 'a consistent legal framework and equal rights and remedies for all refugees and IDPs across BiH',¹¹¹ allowing pre-war occupants to reclaim their homes. The Commission for Real Property Claims (CRPC)¹¹² was set up in 1996 to settle property claims. It was mandated 'to receive and decide any claims for restitution or compensation of lost real property that had not been vol-

104 An estimated 2.2 million people are believed to have been displaced during the war.

105 The official name of the agreement is 'The General Framework Agreement for Peace in Bosnia and Herzegovina' which puts an end to the three and a half year-long war in Bosnia and Herzegovina. Annex 4 Art I (3) postulates that 'Bosnia and Herzegovina shall consist of the two Entities, the Federation of Bosnia and Herzegovina and the Republika Srpska (hereinafter "the Entities")'.

106 DPA, Article II. For the full text of Annex 7, see http://www.ohr.int/dpa/default.asp?content_id=375.

107 For more information on the RRTF and its structure, see <http://www.ohr.int/ohr-dept/rtrf/more.asp>.

108 By the end of 1999 only 45,523 minority returns had taken place, Charbord, A., p. 252.

109 Interview with Simone Ginzburg. October 2006.

110 Ibid. An example of this is the considerable amount spent on the repair of houses and infrastructure for those who were at the same time rebuilding their lives in the places of displacement.

111 Norwegian Refugee Council/Global IDP Project, *Profile of Internal Displacement: Bosnia and Herzegovina*, Geneva (2005), p. 142.

112 The CRPC was established by Chapter 2 of Annex 7 of the DPA and consists of three international and six national members. For an in-depth discussion of the CRPC, see Charbord A., pp. 291-3; Davies A., *Restitution of Land and Property Rights*, 2004, <http://www.fmreview.org/text/FMR/21/04.htm>; Williams R., 'Post-conflict Property Restitution and Refugee Return in Bosnia and Herzegovina: Implications for International Standard-Setting and Practice', *New York University Journal of International Law and Politics*, Vol. 37, No. 3, Spring 2005, pp. 489, 507-8.

untary sold or otherwise transferred since 1992'.¹¹³ CRPC decisions consisted in confirming the rights to real property and occupancy of the claimants, by issuing certificates confirming the identity of legitimate property owners. Both the implementation of the property laws and the enforcement responsibility for CRPC decisions lay with the local administrative authorities. However, problems persisted with arbitrary implementations by local authorities, impeding law enforcement in a uniform and transparent manner and hindering the effectiveness of the Commission.¹¹⁴

The enforcement policy commenced in 1999, when the IC adopted the Property Law Implementation Plan (PLIP). The purpose of the PLIP was to support and monitor the progress of local authorities in the implementation of the property laws.¹¹⁵ This common policy framework was based on the prevalence of the rule of law and the standardization of the property restitution process through the creation of domestic legal-administrative structures. Through its Focal Points operating in the field, the PLIP cell monitored the progress of local authorities and compiled statistics on implementation. In order to strengthen local structures, the PLIP oversaw several capacity-building activities and financial support. The High Representative, who was granted increased powers,¹¹⁶ imposed a series of legal measures to clarify and strengthen the existing property laws.¹¹⁷ Local authorities thus adopted 'parallel' procedures to confirm property rights that did

not involve any CRPC decision-making. This, on the one hand, led to considerable duplication of work, but, on the other, enabled the enforcement of CRPC decisions.¹¹⁸

iii. Completion of Property Law Implementation

After a full year of property law implementation, progress slowly increased throughout 2000, albeit with significant discrepancies across the country.¹¹⁹ It is notable that when domestic institutions began to function efficiently, the rate of property restitution increased.¹²⁰ Following the adoption of the PLIP and the measures taken by the High Representative the property law implementation had reached 92.5 % of the claims received by December 2003.¹²¹

When the CRPC completed its work in 2003 with nearly all of its claims decided, the unresolved cases (about 3000) were to be decided by the competent local authorities.

iv. Special Temporary Measures

Displaced people were officially identified and entitled to special socio-economic rights, such as exemption from paying some taxes, bills and fees while their claims for restitution and return were in process. Temporary accommodation and stipends were provided until return took place.¹²²

113 Annex 7, Art. XI of the DPA.

114 ECCR Roma Report, *The Non-constituents. Rights Deprivation of Roma in Post-Genocide Bosnia and Herzegovina*. European Roma Rights Centre, Country Report Series No. 14, February 2004.

115 The PLIP cell was part of the central RRTF Secretariat. The countrywide PLIP field network implements these goals at the local level. See OHR, <http://www.ohr.int/ohr-dept/rttf/more.asp>.

116 The High Commissioner is nominated as the leading civilian under Annex 10 of the DPA. In 1997, he was granted the 'Bonn Powers', i.e. authority to impose legislation and dismiss domestic officials and take 'interim measures' where state institutions fail to act in accordance with the Dayton Agreement the Peace Implementation Commission. Williams, R., pp. 497-8.

117 A complete overview of the laws can be found at <http://www.ohr.int/decisions/plipdec/archive.asp>.

118 Von Carlowitz, L., 'Resolution of Property Disputes in Bosnia and Kosovo. The Contribution to Peacebuilding', *International Peacekeeping*, Vol. 12, No. 4, December 2005, p. 550.

119 At the time the PLIP was created in 1999, 15% of property claims had been resolved; one year later, 21% of the claims had been implemented (of which 29% were in the Federation and 13% in RS). 'At this continued rate of implementation, it would take roughly six more years to fully implement the property laws'. Norwegian Refugee Council/Global IDP Project, p. 143.

120 'A greater success in terms of return rates compared to investments, and especially of minority returns, was achieved by the RRTF when it coordinated the process at local/regional level (1999-2002) through local offices which were in constant dialogue with would-be returnee groups that were showing commitment and firm intentions by performing both organized and individual "house-cleaning". By this term, which entered into the return agencies jargon, was understood the continued physical presence of potential returnees in their villages, the removal of vegetation, rubble and rubbish, which is in any case a technical precondition for reconstruction to take place. House-cleaning also allowed relations with former neighbours and with local authorities to be re-established, preparing the ground for their actual return. Local authorities in establishing priorities for local budgets (road repairs, seed distribution, ...) started hence to take into consideration returnees' communities.' Interview with Simone Ginzburg, October 2006.

121 Norwegian Refugee Council/Global IDP Project. p. 144.

122 Roundtable discussion with experts on 'Displaced Persons, Return and Property in Bosnia Herzegovina', Sarajevo, 22 June 2006

v. Compensation

Although the CRPC's work, together with the domestic restitution mechanisms, was successful in terms of restitution, compensation has not been paid.¹²³ For years the policy pursued by the IC was supporting return rather than local integration in the place of displacement.¹²⁴ International donors, for example, refused to offer compensation to those who did not wish to return, instead investing in the construction of houses for those who were committed to actual return.¹²⁵ It should be remembered that settlement and integration of displaced people in the locations to which they had migrated were discouraged since this might reinforce the 'ethnic cleansing' effect, i.e. the creation of homogeneous locations inhabited exclusively by Serbs or Bosnians, and therefore displaced people were rather encouraged to return.¹²⁶

vi. Exit Strategy

The RRTF was wound up at the end of 2003 and general responsibility for return issues handed over to domestic authorities by the adoption of the 'Strategy of Bosnia and Herzegovina for the Implementation of Annex 7'. The State Ministry for Human Rights and Refugees (MHRR), with continued assistance from the IC, has taken responsibility for the completion of Annex 7 implementation by 2006. Four institutional tiers are now dealing with return issues: state, entities, cantons and municipalities. To encourage dialogue between the entities, a State Commission for Refugees and Displaced (SCRD) persons was created in 2000. This is responsible for examining and approving return and reconstruction projects and for the Return Fund.¹²⁷ The strategy envisages structural reform to the institu-

tional framework dealing with return, the harmonization of entity laws with the state law on refugees and IDPs, as well as the harmonization of regulations in the fields of education, health, pensions and disability insurance, allocation of socially owned property and the application of the property laws.¹²⁸

vii. Conclusion

Over one million refugees and IDPs are recorded to have returned since the end of the war in 1995,¹²⁹ representing half of the total number of 2.2 million displaced. This positive outcome can largely be attributed to the IC's role in overcoming resistance to initial return by nationalist forces, 'drawing on an unprecedented deployment of legal, political, and financial resources'.¹³⁰ It is estimated that \$19 billion has been invested in the restitution and return process and that this 'resource intensiveness ... must be taken into account in assessing its value as a model for other post-conflict settings'. The main multilateral donors were the European Union (€1.3 billion), UN institutions (€30 million) and the World Bank (US\$60 million). Germany, Japan, the Netherlands, Saudi Arabia, Sweden and the United States were among the most important bilateral donors. In terms of planning and implementation of the programmes, UNHCR, UNDP and IOM, as well international NGOs, contributed with expertise and staffing. When the IC switched its approach from return-based to rights-based, coordinated its efforts with local authorities through the PLIP and modified the property laws, and when the High Commissioner used his power to impose their strict implementation, the number of returns (including minority returns) increased.

Nevertheless, there are still 310,000 internally displaced in BiH¹³¹ and serious obstacles to sustainable

123 Von Carlowitz L., p. 550.

124 Williams R., p. 454. Preference for return over local integration also pervaded international implementation of Annex 7 annex 7, ch. 1, art. I(1) (setting out the right to compensation for those whose property cannot be restored); and ch. 2, art. XI (allowing claims for compensation in lieu of repossession).

125 Ibid.

126 Ibid, 19.

127 The Return Fund was established in 2000. Its purpose is to ensure that both domestic and financial aid allocated to the return process is concentrated in a single institution. It became operational in 2004.

128 Mission Report of the Representative of the Secretary-General on the human rights of internally displaced persons to Bosnia and Herzegovina, 2005, E/CN.4/2006/71/Add.4 pp. 10 11. For more information on the return sector in BiH, see *Functional Review of the return sector in BiH*, Final Report. Sarajevo, April 2005.

129 UNHCR *The State of Annex VII*, <http://www.unhcr.ba/press/state%20of%20annex7.htm>, May 2006. The total number of recorded return as of April 2006 is 1,012,970. This includes 442,219 refugees who fled BiH and 570,571 IDPs.

130 Williams, R., p. 444.

131 Norwegian Refugee Council/Global IDP Project, p. 8.

return remain. In his assessment of the situation of displacement in BiH, the Representative of the Secretary-General on the human rights of IDPs¹³² found that physical insecurity, landmines, delays in return of property to the original owners and the reconstruction of housing and lack of infrastructure discouraged return and reintegration. Furthermore, he found that state institutions are still divided along ethnic lines, perpetuating a culture of widespread discrimination in virtually all areas of public life.¹³³ Vulnerable groups and ethnic minorities are especially subject to continuing discrimination. The Roma, for example, the majority of whom were displaced during the war, face extraordinary difficulties in returning to their pre-war homes and the repossession of property owned by the Roma is significantly lower than the average country-wide rate.¹³⁴ A legal framework is in place, but limited enforcement undermines its effectiveness and a climate of impunity still persists, as authorities fail to prosecute war criminals. Finally, as the IC is scaling down its involvement, international funds are increasingly directing elsewhere.

The success of the IC has also been questioned, since property restitution has not always led to actual return¹³⁵ and property compensation has not been paid.¹³⁶ Although general physical security has made return possible, the main challenge for the authorities in BiH remains creating the necessary conditions for sustainable return. These conditions include protecting returnees' socio-economic rights, such as employment, education without discrimination and pension entitlements and their right to participate in political life as well as strong state-level institutions, going beyond the interests of the ethnically-based entities.¹³⁷ A crucial issue remains minority return. The fact that the IC has failed to tackle minority issues early in the return process has led many to relocate in their majority area, rendering temporary displacement permanent.¹³⁸

viii. General Principles to be Deduced from the Bosnia Herzegovina Experience, in Relation to Displacement in Turkey

In the light of the successes and failures of the BiH experience, the important points to be borne in mind when developing recommendations concerning displacement in Turkey can be summarized as follows:

- ◆ Defining displacement and developing a central policy by enacting a comprehensive law and establishing a special body can help to ensure implementation at local levels.
- ◆ Financial assistance and expertise from the international community, and their involvement in both development and implementation of a national policy, are indispensable.
- ◆ The cooperation of local authorities, and transparency and monitoring of their activities, are essential for the realization of national policies.
- ◆ Safeguarding the personal security of the returnees, and especially the protection of returnee minorities, is vital for sustainable return.
- ◆ Development of infrastructure and implementation of economic-social measures in employment, education and health services in the original settlements are indispensable for sustainable return.
- ◆ Compensation must be one of the main elements of the national policy, along with return and restitution.
- ◆ Information campaigns should be conducted on the rights of displaced people, while the capacity-building of officials contributes to the exercise of these rights.

132 Mission Report to Bosnia and Herzegovina, p. 2.

133 Such as discriminatory practices in giving minority returnees access to work, segregated schools and separate health insurance and pension schemes.

134 For an in-depth discussion on the situation of the Roma in BiH, see the chapter on housing and property rights of Roma in *The Non-constituents. Rights Deprivation of Roma in Post-Genocide Bosnia and Herzegovina*. European Roma Rights Centre, February 2004, pp. 109-54.

135 Many returnees are reported to have sold their repossessed property and remained at their site of displacement rather than reintegrate into their original communities. Mission Report to Bosnia and Herzegovina, p. 2. See also Williams, R., pp. 445-6.

136 Charbord, A., p. 292.

137 Norwegian Refugee Council/Global IDP Project, p. 8.

138 Charbord, A., pp. 436-8.

I. Recommendations

Our action plan below sets out our recommendations for each of the problems raised in this document, in line with the requirements of international law and experience from other countries. Our recommendations include both long- and short-term measures. Short-term recommendations include the steps that we believe should be taken by the end of 2006/beginning of 2007. For example, the implementation period of statute 5233, which finishes at the end of 2006, should undoubtedly be extended before the beginning of 2007.

i. Recommendations to the Government:

a. Policy for the Displaced and the Definition of IDPs

Measures to be taken in the short to medium term

In countries like Bosnia Herzegovina, which have been comparatively successful in achieving returns and compensation of losses, the state, NGOs and experts on this issue have cooperated closely with international organizations, as recommended by international standards cited above, and even government policies on IDPs were developed and on an entirely collaborative basis.

In Turkey the institution dealing with the displaced is the Ministry of the Interior. Various departments within the Ministry are dealing with various aspects of the displacement problem. It would be useful, from the point of view of efficiency in planning and implementation, if a joint structure were developed to ensure coordination between the Interior Ministry and other ministries.

Building on the experiences of other countries, Turkey should develop a central ministry or unit comprising representatives of relevant state departments and NGOs working with displaced people, which representatives of international organizations, such as UNHCR and the UNDP, could assist in a consultative role.¹³⁹ Policies and action plans on all relevant issues such as displaced people's rights to compensation, restitution and reconstruction, return

and integration should be developed by this unit, which should have the authority to observe and monitor the implementation of these policies.

In the development of all relevant policies the issue should be explicitly identified as one of displacement. Solutions must be developed in accordance with the requirements of international law and relevant principles described above. The government should adopt the United Nations' Guiding Principles on Internal Displacement and the Principles on Housing and Property Restitution for Refugees and Displaced Persons as its guide in policy-making. It would be useful for these documents to be incorporated into domestic law.

The training seminars on the rights of displaced persons, currently being delivered to NGOs, Damage Assessment Commission officials and relevant ministry staff, should be carried out more widely as soon as possible. This would make a significant contribution to ensuring the recognition of the rights of the internally displaced. It would assist the implementation of the UN guiding principles, help the Damage Assessment Commissions in their duties, and contribute to the return process.

The views of displaced persons must be taken into account in developing policies and action plans, and information campaigns should be put in place preparing and distributing leaflets, for example to ensure that the internally displaced are aware of developments.

The identity and rights of displaced people should be defined in law. In order to facilitate displaced people to exercise their rights, the commissions already operating or local offices yet to be established should accord 'displaced' status to people meeting the definition contained in the United Nations' Guiding Principles on Internal Displacement, as was the practice in Bosnia Herzegovina. This could, where necessary, be certified by issuing a document. This measure may help in the implementation of the recommendations given below, and assist these people to enjoy the rights they possess by reason of their status.

¹³⁹ The Parliamentary Assembly of the Council of Europe has also, in its resolution on the issue, stressed that representatives of IDPs should participate in the preparation of programmes and procedures for return to villages.

b. Security

Measures to be taken in the short term

The village guard system, which presents a major obstacle to return, should be abolished immediately.

Maps showing where landmines have been sown should be provided to authorized persons and institutions, and hazard-awareness training should be given to all relevant groups.

The ban on access to high pastures should be lifted, and the safety of persons involved in stockkeeping/pastoralism should be protected.

In countries such as Bosnia Herzegovina and Kosovo it has been observed that sustainable and secure returns could only be achieved after the complete cessation of hostilities. If clashes between the PKK and the security forces continue, villagers' lives will be at risk, there will be a risk of further village clearances. Implementation of infrastructure projects will be out of the question. For this reason, an end to armed conflict in the region is indispensable if returns are to go ahead and the safety of the returnees is to be assured.

Measures to be taken in the medium term

Necessary economic and social measures must be implemented to enable the disbanding of the village guard system and the rehabilitation of village guards.

Landmines in inhabited areas and on agricultural land should be cleared. In particular, the project for clearing landmines threatening lives in border villages should be accelerated.

c. Return: Reconstruction

Measures to be taken in the short term

In order to implement a comprehensive plan for return in Turkey, it is essential to have legislation which lays down the principles to be applied to the process, identifies the implementing authorities and allocates a budget for the work.

An appropriate budget must be developed for return and reconstruction. As in Bosnia Herzegovina, the state, and institutions such as the EU, World Bank and UNDP, should contribute. The EU could allocate funds for which the state cannot make provision, such as large-scale development and landmine clearance.

The structure and operation of the Damage Assessment Commissions must be revised and the Commissions given an agenda that meets the demands of the displaced and their return. In order to achieve this, separate units staffed by representatives of NGOs and local government as well as independent experts, and equipped with mechanisms to

ensure the participation of displaced people, should be established under the umbrella of the Commissions to deal with return. The development of such units within the Commissions' existing structures would be a practical and economic solution.

Measures to be taken in the medium term

Information concerning the right to return and application procedures must be communicated to the public at large through a campaign. Posters and leaflets should be prepared and distributed via governors, municipalities, NGOs, bar associations and, most importantly, *muhtars* (local superintendents) in provinces where most displaced people are located.

In Bosnia Herzegovina, to achieve sustainable returns, restoration of properties to which displaced had expressed their wish to return, and more importantly to which they had already begun to return, and preparation of vital infrastructure, were prioritized. Contracts were put out to tender for projects to reconstruct public services and to repair properties belonging to people who had asked to return. The projects were carried out by cooperation between state bodies, municipalities and NGOs. Generally speaking, it was only in those cases where such projects had been completed that the permanent return of applicants was achieved. The failure in some areas to complete projects, and the consequent failure to achieve permanent returns in those areas, was one of the causes of criticism of the Bosnia Herzegovina experience.

In Turkey, the works to be carried out following identification of the location for return, evaluation of applications, identification of priorities and completion of feasibility studies, should be carried out on a project basis. Such projects, as in the example of Bosnia Herzegovina, must be developed on the basis of collaboration between civil society organizations and local authorities, and implemented by centrally held funds. The expertise of organizations such as UNHCR and UNDP should be incorporated in the planning and implementation stages. The necessary mechanisms must be developed to ensure that these organizations have an opportunity to observe, report and advise on the implementation of such projects. It would be advantageous if these organizations were to open offices in the region to enable them closely to monitor the implementation of the projects.

These projects must prioritize restoring uninhabitable property, and ensuring that infrastructure, including electricity, water, roads and telephone, as well as public services such as education and health-

care, are returned to working order. Development of infrastructure and similar services should be carried out by means of active cooperation between municipalities in the return areas, the provincial administration and the central government. Additional resources must be transferred to these local authorities to meet the exceptional needs of the region.

Furthermore, economic support projects in farming and livestock rearing should be implemented to enable the displaced to re-establish their livelihoods following return (for example, allocation of livestock or seed, agricultural vehicles for communal village use, provision of long-term, interest-free credit).

Those who, following displacement, fled abroad and were granted or applied for political asylum must be able to benefit from similar facilities. In order that they can apply for return, information should be made available at offices dealing with migrants, Turkish consulates and UNHCR offices in those countries where displaced people are concentrated. Necessary provisions should be made so that applications to return can be made at consulates, and that those in need receive assistance.

Any decision by IDPs not to return to their village should be respected. Measures must be taken to implement their rights to restitution, compensation and integration in city life.

Village guards in areas to which people are returning must be disarmed, and any criminal actions by village guards which threaten the property or lives of returnees must be effectively investigated.

d. Compensation

Measures to be taken in the short term

As a matter of priority, the implementation period of statute 5233 must be extended once again, and the law must be amended to include, and to provide compensation for, torts committed prior to 1987.

The law should be made known to the general public by means of an information campaign. Posters and brochures advising on the right to compensation and the application procedure should be prepared and distributed via governors, municipalities, NGOs, bar associations and most importantly by *muhtars* in provinces where most displaced people are concentrated. Also, to ensure that displaced people living abroad are aware of the law, the necessary information can be made available at the offices of organizations dealing with migrants, Turkish consulates and branches of organizations such as UNHCR and IOM in countries where the displaced are located.

Measures to be taken in the short to medium term

Steps must be taken immediately to ensure that statute 5233 is implemented in accordance with the standards set by the ECtHR, and in particular the principles concerning ownership established in *Doğan and others v. Turkey*. The measures we recommend can be summarized as follows:

- ◆ Measures must be implemented in order to ensure that Damage Assessment Commissions work more justly, efficiently and transparently, and that they maintain open communication with displaced and their legal counsel. In order to achieve this, a regulation should establish in detail the methods and principles to be applied by Commissions in carrying out their duties.
- ◆ The structure of the Damage Assessment Commissions should be revised to include more members of NGOs and people with expertise on the issue.
- ◆ The current number of Commissions is insufficient to process and settle applications in a timely manner. The number of Commissions should therefore be increased to a level sufficient to meet the need.
- ◆ Displaced people should not be required to produce evidence and documents which are impossible to procure under current conditions. All manner of documentation should be accepted as evidence, in line with the amendment to the relevant regulation. Also, institutions should produce documents in response to the Commissions' requests in a reasonable time. To this end, a circular should be distributed to relevant institutions.
- ◆ The broad powers of discretion granted to experts on site surveys, which have given rise to arbitrary practices, should be limited. Necessary arrangements should be made to ensure applicants or their legal counsel can participate, and that their declarations are taken into consideration.
- ◆ The method of calculating compensation should be amended to provide an equitable level of compensation. Working on the basis of the judgments given in village burning cases at the ECtHR, standard levels of compensation could be established and then adapted to individual circumstances.
- ◆ Applicants must be entitled to attach objections to conciliation statements so that they can accept satisfactory levels of compensation for

some elements of their claim, while objecting to other amounts of compensation which they do not consider to be equitable.

- ◆ A non-judicial mechanism should be established within the administrative structure to which applicants can appeal before taking the route of legal challenge to Damage Assessment Commission judgments. This will offset the risk of a wave of applications to administrative courts, will prevent long drawn-out litigation, and ensure prompt settlement of injustices. This mechanism should consist of an agricultural engineer, a construction engineer, a lawyer, an NGO representative and an administrative judge. Such committees, if established, could safeguard the right to appeal against unsatisfactory Damage Assessment Commission decisions for people who had missed their date for appealing to administrative courts against Commission decisions because they had not been informed of their right to appeal and the time limit for doing so. It would also be possible, under existing domestic law, to appeal to administrative courts against the decisions of such committees.
- ◆ It is essential that displaced people with limited resources who are challenging such decisions concerning their applications through the courts should be exempt from prepayment of court fees.
- ◆ If civil servants administering the process are culpable of abuse or negligence, existing legal sanctions, and sanctions provided for in the regulation concerning methods and principles for members of the committees proposed above, shall apply.
- ◆ These committees must be encouraged to receive visits from representatives of UNHCR and UNDP and other organizations collaborating with the state in these matters, and to permit them to gather information and make suggestions.
- ◆ Legal steps must be taken immediately to evict village guards from properties which do not belong to them.
- ◆ Land registry surveys should be accelerated to ensure that property and compensation are allo-

cated to rightful owners, and steps must be taken to ensure that properties wrongly registered to persons who are not the rightful owner, or to the Treasury, in survey operations undertaken since the implementation of statute 5233 are allocated to their rightful owners. In order to achieve this, a legal amendment must be made to afford an opportunity for objection to those people who missed the period allowed for objection to survey operations because they were not aware of the law or because they had not yet returned to the settlement in question, and were therefore unaware that a survey was being undertaken.

ii. Special Measures to be Taken for IDPs Living in Urban Areas

Short- and medium-term measures

- ◆ In the process of implementing a compensation and return process as summarized above, it will be necessary, in order to safeguard IDPs' rights, to implement a number of special measures in the socio-economic field in respect of persons recognized as having displaced status, as was the case in the Bosnia Herzegovina. The difficult circumstances of IDPs would be eased if, for example, the state met their housing needs (or at least provided rent subsidies), or if unemployed IDPs were exempted from electricity and water charges, charges for official procedures and some taxes.
- ◆ Appropriate measures must be taken in particular for the economic and social integration of IDPs who are waiting for completion of arrangements for return, and especially for those who have decided to settle in the city.¹⁴⁰ Measures that come readily to mind include: ensuring that child labourers attend school, and providing, where necessary, bursaries to assist children of IDPs to attend school, especially girls; provision of vocational courses to assist youth in areas where IDPs are concentrated to establish themselves in a career; and courses to support literacy among women, and ensure their participation in employment.

¹⁴⁰ The Parliamentary Assembly of the Council of Europe has also, in its resolution on the issue, stressed that representatives of IDPs should participate in the preparation of programmes and procedures for return to villages. Recommendation 1563 of the European Council Parliamentary Assembly 'Humanitarian Situation of the Displaced Kurdish Population in Turkey', 18 September 2002, <http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/Documents/AdoptedText/TA02/EREC1563.htm>.

- ◆ IDPs should be given free access to health and psychiatric rehabilitation services.
- ◆ Steps should be taken to improve the infrastructure services in the outlying neighbourhoods of towns where IDPs are concentrated. Additional funding should be given to local government in such areas to help meet the costs of this work.
- ◆ Effective measures must be taken against possible discrimination in social life and in the public arena. Necessary resources should be provided to ensure that citizens who do not speak Turkish can express their needs and access public services. Offices should be established to which people with such needs can apply and with which they can easily establish dialogue. The costs of such services should be met from a budget allocated by central government to which local government can contribute.
- ◆ The above measures can only be achieved through collaboration among central government, provincial administration, municipalities and relevant NGOs. Where necessary, NGOs that provide such services should be financed by the central or local administrations.

iii. Recommendations for Local Administration

In Bosnia Herzegovina, projects that were developed through collaboration between international organizations and central government were in the later stages implemented entirely by local administrations. In the final process international organizations simply provided funding and monitored the operations.

- ◆ Local administrations, particularly in regions where displacement was especially concentrated, should establish special units to work on this issue, and where necessary they should employ people who can offer appropriate expertise.
- ◆ The units should prepare comprehensive projects to resolve local problems.
- ◆ The units should be open to visit and scrutiny by organizations such as UNHCR and UNDP.
- ◆ Units should work in coordination with commissions working on compensation and return.

- ◆ Local administrations should prepare reports about any problems they encounter, and share them with relevant authorities and NGOs.
- ◆ Positive discrimination in the provision of services and manner of payment for people with displaced person status might be a constructive step – exemption from water charges, for example, or giving children of IDPs priority in obtaining local government bursaries or enrolment in vocational courses.

iv. Recommendations to International Mechanisms

Measures to be taken in the short term

As mentioned above, international governmental organizations such as UNHCR, the World Bank, the EU and UNDP have been integral to development and implementation of programmes in countries such as Bosnia Herzegovina that have been relatively successful in their policy for returns. These organizations have adopted leadership roles in such programmes by reason of their expertise and their financial contributions.

If a centralized mechanism as recommended above is established, international governmental organizations should act in partnership with the state and NGOs. For example, the Action Plan for Provision of Services for Internally Displaced Persons¹⁴¹ developed by UNDP and the government for Van province is exemplary. A number of NGOs participated in workshops which contributed to the preparation of the Action Plan. The dialogue and collaboration which UNDP established with government officials as well as NGOs should be recognized as a model approach. The training seminars which UNDP and the government developed collaboratively also deserve to be used as a template in order to be extended the activity more generally.

- ◆ It is essential that these intergovernmental organizations maintain their interest in displacement within Turkey, and share their expertise and experience in collaboration with the Turkish government.
- ◆ These organizations, including in particular the EU, should set aside funds for reconstruction and return. They should contribute financially, especially to large reconstruction projects and landmine clearance.

141 For detailed information about the project, see <http://www.undp.org.tr/Gozlem3.aspx?WebSayfaNo=259>.

- ◆ Relevant intergovernmental organizations should also monitor, by means of independent experts, the implementation of compensation and return programmes, and make recommendations where necessary.
- ◆ In order to ensure effective monitoring and a close relationship with NGOs, relevant intergovernmental organizations, and the EU in particular, should establish a presence in those provinces where IDPs are concentrated. Istanbul would be a priority in this respect.

Measures to be taken in the medium term

In light of Turkey's candidacy for EU membership, and ongoing accession negotiations, EU bodies should ensure that the problems of the internally displaced are kept high on the agenda. The EU should allocate space to the problem in the annual progress report on Turkey and make practical recommendations to the state.

As well as the above cooperation and monitoring efforts, steps should be taken to incorporate the guiding principles into domestic law, and to ensure that policy implementation reflects those principles. Successful experiences from other countries should be shared with the Turkish government so that it can adopt model practices.

v. Recommendations to NGOs

NGOs must keep the displacement problem on the public agenda, and must ensure that their lobbying and advocacy activities are effective. To this end:

- ◆ NGOs should prepare up-to-date reports on the issue and share these with relevant national and international mechanisms.
- ◆ NGOs should conduct theoretical investigations and field studies into the psychological, sociological, economic and other consequences of the problem, and come up with recommendations.
- ◆ If the sort of system recommended above is established, then NGOs should prepare and implement macro-projects for the displaced, within the limits of their resources.
- ◆ Relevant NGOs should prepare alternative and comprehensive projects and programmes for return of the displaced, and share these with the authorities and relevant stakeholders.
- ◆ In order to accomplish the goals described here, the government must be open to collaboration with institutions such as municipalities, UNDP and EU, and must accept support from international NGOs with experience in this problem.

J. Conclusion

Notwithstanding a modest number of initiatives for resolution of the displacement issue, the problem is continuing, deteriorating and increasing in complexity. The sheer scale of the problem demands the development of a comprehensive national response.

Without further delay, the state bodies, NGOs and relevant intergovernmental organizations must come together to draw up a realistic programme which addresses all dimensions of the problem, and then implement the plan through appropriate projects. Achieving social accord, an atmosphere of mutual trust and the participation of internally displaced people at the planning and implementation stages will be fundamental to the success of such projects.

A lasting and sustainable solution must appeal to society's sense of justice. The intense debate conducted by the public, the media and NGOs concerning

human rights violations committed during the State of Emergency clearly reflects a societal demand for justice. Only when the displaced have received the justice they deserve will they be able to make a genuinely fresh start.

Programmes and projects must be prepared and implemented in accordance with the international responsibilities of the state which have been described above.

Any effective programme of return and integration will be absolutely dependent on a permanent cessation of armed clashes.

It is our belief that if a genuine, professional, comprehensive and realistic programme is developed and implemented in a spirit of cooperation something that has been achieved in a number of other countries substantial progress can be made within a few years towards the resolution of this problem.

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