

Internal Displacement in Turkey

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Summary

Turkey has a large population of internally displaced people, stemming largely from the conflict in the 1980s and 1990s between the Government and the PKK, which led to a campaign of village destruction, displacing millions from the rural south east into urban areas. Due to a lack of reliable statistics it is very difficult to give an accurate figure for the number of IDPs, but a number of sources suggest that the figure is as high as 3.5 million. Continued insecurity in the predominantly Kurdish region of the south east, combined with development projects such as the Ilisu Dam, mean that this figure is set to increase over the next few years. Despite the Government's various programs to address the situation of IDPs, very significant barriers to their full participation in society remain, even without consideration of the psychological effects of displacement and consequent losses. This paper presents the key issues facing IDP's in Turkey, what provision is being made for their compensation and return or resettlement, and the responsibility of the EU and international community in addressing the situation which is of critical importance.

Introduction

*Internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.*¹

The main difference between internally displaced persons (IDPs) and refugees is that the IDPs remain within the borders of their own country, although like refugees they often feel like strangers in their place of refuge, where the local population may be from a different ethnic and/or religious group and/or may speak another language. Moreover, unlike refugees, IDPs do not benefit from a specific international regime exclusively devoted to ensuring their protection and assistance. Instead, they are subject to the many actors involved in providing assistance, protection, and development aid in a conflict situation, including UN agencies, human rights organizations, and international and local NGOs. In fact, while IDPs are protected to a certain extent by general human rights instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Geneva Conventions, it is the UN Guiding Principles on Internal Displacement (1998) which represent the benchmark for national, international and non-state actors in their interactions with the internally displaced, providing guidelines in relation to each stage of the phenomenon of internal displacement, as well as a framework for the consideration of issues of responsibility.²

The extent of internal displacement in Turkey has never been fully documented and has been in continual dispute. The lack of reliable statistics and information has functioned to support Turkey's denial of the existence of an IDP problem throughout the 20th century. However, over the past decade several international actors have made reliable estimates as to the extent of internal displacement, thus exposing Turkey to international and domestic pressure to address the situation of IDPs and the Kurds more generally. The United Nations High Commissioner for Refugees (UNHCR) stated that as of 1995 there were 2 million IDPs in Turkey³ and 3 million according to the United States Helsinki Commission in 1996. Eventually, by 1999 it was generally acknowledged by NGOs and the international community that 3,500 villages had been evacuated and up to 3.5 million Kurds had been displaced, although a government commissioned survey in 2005 gave a radically more conservative estimate of around 1.4 million.⁴ Nonetheless, the survey was a big step forward for the government in acknowledging the problem. There has been very limited return, with government figures putting it at less than 100,000 people.

Displacement in Turkey from the 1920's-1980's

Since the establishment of the Republic of Turkey in 1923, the Turkish authorities have constantly pressed to assimilate minority populations into the Turkish State. Despite signing the Treaty of Lausanne, which accorded complete protection of all minorities in Turkey, ideologically the republic aimed to be a highly centralised, secular nation-state,

¹ UN Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.1, February 11. New York, NY: United Nations

² UN Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.1, February 11. New York, NY: United Nations

³ UNHCR, 'Significant Populations of Internally Displaced Persons - 1995', *Refugees*, No. 103, I - 1996, p. 9.

⁴ Survey made by the Institute of Demographic Studies at Hacettepe University's Institute of Population Studies.

whose territorial integrity depended on a homogenous national identity. The Kurds, as by far the largest minority in Turkey, with current numbers at around 15-20 million people (about 23% of the total population) and living predominantly in the south-east of the country, were and are viewed as threat to the integrity of the state. The denial of their existence in the 1924 constitution and the official reference to the Kurds as 'Mountain Turks' or 'Turks from the East' from 1938⁵ can in a sense be regarded as symptomatic of this.

Since the 1920s, Turkish authorities passed laws that led to the expropriation of large landholdings in the south-east and the removal of many Kurdish leaders to the west of the country, giving the expropriated land to Turkish or 'Turkified' settlers from elsewhere, instead of local landless Kurds. As a consequence of the Kurdish riots against such policies, systematic deportation and razing of villages, raping and killing of innocent civilians, martial law and special regimes in the Kurdish region became the commonplace experience of the Kurds. According to Kurdish sources, between 1925 and 1928, almost 10,000 Kurdish dwellings were razed, more than 15,000 Kurds were killed, and more than 500,000 deported, of whom 200,000 perished.⁶

In 1934 the Government enacted The Law on Resettlement, authorising forced evacuations by dividing Turkey into three zones. Firstly, the mountainous Kurdish regions, which were too difficult for the Government to effectively control, were evacuated and the villages were destroyed to prevent the return of their Kurdish inhabitants. The second zone consisted of districts of the country with a Turkish majority, to which Kurdish emigrants would be relocated. The third zone, the inhabitants of which were predominantly non-Turkish, was repopulated with Turks. The aim was to

disperse the Kurds so as to ensure that they could constitute no more than 5 % of the population in any given area.⁷ Despite the laborious impracticability of the plan, reports by refugees from several cities suggested that massacres, deportations and forced assimilation were enacted.⁸

Displacement from 1980's to Present Day

The policy of suppression of the Kurdish identity continued with different intensity over the course of the following decades. Throughout the 1980s and 1990s, the situation for the Kurdish population worsened in many respects. This was due to the armed conflict between the state and the Kurdish Workers' Party (PKK) who at the time were vying for an independent state.⁹ State security forces forcibly evacuated thousands of rural communities in the Kurdish region.¹⁰ In 1983, the notorious State of Emergency Law, commonly known by its Turkish acronym as 'OHAL' was enacted.¹¹ This allowed the State to take control of the areas in the south in which the PKK were based. A state of emergency was declared in 1987 in the majority of the Kurdish region. OHAL characterised by an oppressive military presence, regular checkpoints, curfews and lack of access to the courts. The legislation conferred widespread powers to suppress the Kurdish culture by limiting freedom of expression, confiscating the means of producing mass media and providing a

⁷ David McDowall, *A Modern History of the Kurds* (I.B. Tauris & Co Ltd, London, 1996), 105.

⁸ David McDowall, *A Modern History of the Kurds* (I.B. Tauris & Co Ltd, London, 1996), 207.

⁹ Since (check date 1999?) the group has changed its stated aim from independence to regional autonomy

¹⁰ For an official declaration of this policy by President Özal, see the Council of Europe List of the Declarations Made by Turkey Complete Chronology as of 22/7/2010

<<http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?PO=TUR&NT=&MA=3&CV=0&NA=&CN=999&VL=1&CM=5&CL=ENG>> (last accessed 22 July 2010).

¹¹ Law No 2935, 25 October 1983; Regulation No. 19204, 27 October 1983.

⁵ KHRP, *The Internally Displaced Kurds of Turkey* (KHRP, London, 2007), 19-21

⁶ KHRP, *The Internally Displaced Kurds of Turkey* (KHRP, London, 2007), 22

host of measures with which to punish the Kurdish population. In addition, a 1987 law apparently directed towards defeating the armed opposition's insurgency granted the Governor power to evacuate villages on a temporary or permanent basis. Village evacuations were accompanied by violent State security operations against Kurdish villages that were considered unsupportive of the Government agenda, thereby generating further displacement. In the process of evacuations, Kurds were subjected to a range of forms of maltreatment, including torture and sexual assault. In some cases, food embargos were imposed, forcing villagers out of their homes.¹² Security forces then destroyed the foundations of the community by burning houses, farmland and forests, slaughtering livestock and denying villagers the opportunity to collect their personal possessions.¹³ Some 3,500 towns and villages were destroyed and illegal detention, torture and extra-judicial execution by both State forces and non-state actors were common. Between 3 and 4 million villagers were forced from their homes throughout this period.¹⁴

The village evacuations and violence in the south-east did not begin to truly decline until 1999 with the arrest of the PKK's leader Abdullah Öcalan and the subsequent PKK ceasefire. The State of Emergency ended in 2002, at which point Turkey embarked on a programme of

reforms designed to align Turkish law with European standards in terms of democracy and human rights. However, the families and villages displaced in 1990s and the next generation, for the most continue to live as displaced persons.

The Threat of Further Displacement

In recent years, two developments in particular have caused further incidents of displacement and raise the threat of renewed waves of displacement in the not too distant future: the Ilisu hydroelectric dam project and renewed conflict in south-east Turkey.

The proposed Ilisu hydroelectric dam project in the Kurdish region of south-east Turkey – officially aimed to eliminate regional development disparities as part of the South Eastern Anatolia Project (known by its Turkish acronym GAP) – has drawn intensive international criticism since its inception in the 1980s. According to its critics, not only would the Ilisu dam cause the flooding of the ancient town of Hasankeyf together with hundreds of other unexplored archaeological sites and thus deal a heavy blow to Kurdish cultural damage, but also would it cause the displacement of some 50,000 to 78,000 mainly Kurdish inhabitants of the region. According to the Initiative to Keep Hasankeyf Alive, the figure could be as high as 100,000 if pastoral groups who use the reservoir area are taken into account.¹⁵

Even though the funding of the project was permanently suspended in July 2009 when European and US Export Credit Agencies together with a number of private commercial banks withdrew their support on the grounds of social, environmental and resettlement concerns, Turkey remains adamant that it will complete the project.¹⁶

¹² Human Rights Foundation of Turkey, *Monthly Report August 2001* (2001), 5

¹³ *The Internally Displaced Kurds of Turkey* (KHRP, London, 2007), 28

¹⁴ The Ministry of Interior counted fewer than 400,000 IDPs, but its figure includes only persons displaced as a result of village and hamlet evacuations in the southeast, and does not include people who fled violence stemming from the conflict between the government and the PKK, which included evacuations, spontaneous movement, displacement and related rural-to urban movement within the southeast itself. See, U.S. Committee for Refugees and Immigrants, *World Refugee Survey* (2005) <<http://www.refugees.org/countryreports.aspx?id=1336>> (last accessed 22 July 2010)

¹⁵ Interview with İpek Taslı of the Initiative to Keep Hasankeyf Alive, October 2009.

¹⁶ For more information, see KHRP Briefing Paper 'The Ilisu Dam: an Update available at:

Another critical issue threatening to cause further displacement is the renewed and intensified fighting between Turkish armed forces and the armed opposition in the Kurdish region of the country. Flaring up in the wake of what is widely regarded as the failure of the AKP's 'Democratic Initiative'¹⁷ coupled with the closure of the pro-Kurdish Democratic Society Party (Turkish: *Demokratik Toplum Partisi*, DTP) in December 2009, the clashes pose an immediate threat to life for both those living in the region as well those planning to return - thus intensifying the dilemma of displacement.

In August 2009, Prime Minister Erdogan launched what was initially called the 'Kurdish Initiative', subsequently changed to 'Democratic Initiative' and is today termed 'the Unity and Brotherhood Initiative', with its stated aim to find a comprehensive approach to ending Turkey's so called 'Kurdish problem.'

The sincerity of the government's commitment to the initiative was called into question when hundreds of local Kurdish politicians and human rights activists were arrested during raids throughout 2009 and early 2010.¹⁸ Clashes between the state and armed opposition have claimed high numbers of lives on both sides as well as civilian casualties and - despite a unilateral cease-fire announced by the PKK on August 13 2010, set to end on September 20 the same year - military incursions into the region

carry on and are continuing to raise the death toll.¹⁹

This insecurity means that the threat for new displacement remains high and without a permanent solution to the conflict, chances for an improvement in Turkey's IDP problem are remote.

Resettlement and Return

Although the ECtHR has recently accepted the Turkish claim that IDPs are now able to return to their villages unhindered, internal displaced Kurds continue to face a wide range of difficulties as a direct result of government inaction and discriminatory practices. Many obstacles remain to the real possibility of their return, including issues relating to security, access to resources, public services and infrastructure and economic underdevelopment. Women and children are further disadvantaged by their gender and linguistic minority status.

The strong presence of security forces in the south-east, though ostensibly there to protect national security, raises concerns as to the safety of the region, both for those currently living in the region and for those considering return as an option.²⁰ Other threats to villagers in the south-east and to those wishing to return are posed both by landmines, which still kill dozens of people every year,²¹ and by

http://www.khrp.org/khrp-news/human-rights-documents/briefing-papers/doc_details/240-briefing-paper-the-ilisudam-project-an-update.html

¹⁷ For a critical take on the Democratic Initiative and its political context see Alexander Christie-Miller, *The PKK and the Closure of Turkey's Kurdish Opening*, Middle East Report, 4 August 2010; <<http://www.merip.org/mero/mero080410.html>> (Last accessed 13 September 2010)

¹⁸ Those arrested were charged with being members of the outlawed KCK Party, the alleged urban wing of the PKK; Alexander Christie-Miller, *The PKK and the Closure of Turkey's Kurdish Opening*, Middle East Report, 4 August 2010; <<http://www.merip.org/mero/mero080410.html>> (Last accessed 13 September 2010)

¹⁹ World Bulletin, *Turkey says 9 PKK militants killed in Hakkari clash*, 7 September 2010, <http://www.worldbulletin.net/news_detail.php?id=63620> (last accessed 13 September 2010)

²⁰ For instance, throughout 2009, there were reports of civilians being fatally shot by security forces as a result of their failure to stop when instructed to do so. See, AI, *Amnesty International 2009 Report* <<http://report2009.amnesty.org/en/regions/europe-central-asia/turkey>> (last accessed 27 July 2010).

²¹ Landmine Monitor reports 250 killed and 581 injured in Turkey between 1999 and 2008; see, Landmine Monitor, *Landmine Monitor Record 2009*, <<http://www.the->

the Village Guards – a paramilitary force established by Turkey in the mid-1980s that became notorious throughout the 1980s and 1990s as a result of accusations of theft, beatings and rape.²²

Further, besides a real risk of injury or death for anyone entering into or living in the region, the movement of people as a result of village evacuations and destructions has resulted in serious difficulties in the provision of basic resources, public services and infrastructure to IDPs.²³

Problems faced by IDPs

Decades of conflict in south-east Turkey have already led to millions of people being displaced. The campaign of village destruction in the 1980s and 1990s drove many to cities such as Diyarbakır and Hakkari, which were ill-equipped to receive such numbers. Slums began to spread and the population exploded. For an idea of the scale of growth, between 1991 and 1996, the city of Diyarbakır nearly quadrupled, from 350,000 to 1.5 million.²⁴ Urban areas were unprepared for an influx of IDPs whereas rural areas were and continue to be largely neglected. The cities are now swamped, the infrastructure, such as it was, has collapsed and the displaced families, already suffering from the deep trauma of forced evacuation, further face social

monitor.org/index.php/publications/display?act=submit&pqs_year=2009&pqs_type=lm&pqs_report=turkey (last accessed 26 July 2010).

²² For instance, in May 2009 44 people died after a shooting in the village of Bilge/Zangirt. The majority of the alleged perpetrators were village guards. See, AI, *Amnesty International 2010 Report*, 328

http://thereport.amnesty.org/sites/default/files/AIR2010_AZ_EN.pdf (last accessed 23 July 2010).

²³ TOHAV, *The Problem of Turkey's Displaced Persons: An Action Plan for Their Return and Compensation* (Istanbul: TOHAV, 2006), 10, <http://www.minorityrights.org/?lid=1080> (last accessed 26 July 2010).

²⁴ See 'The Internally Displaced Kurds of Turkey', Mark Muller and Sharon Linzey, KHRP, London, 2007, p. 97.

exclusion, increased poverty, unemployment²⁵ and intolerable pressure on already under-resourced public facilities.

Probably the most apparent problems among IDPs are poverty and massive unemployment - above all resulting from the mainly uncontrolled influx of overwhelmingly high numbers of IDPs into host-cities like Diyarbakır and Hakkari, which rank among the cities with the highest unemployment of the whole of Turkey.²⁶ In many cases, with the local economy subsequently being dragged into halt and with social assistance programs proving largely inefficient, an improvement of the economic situation of many IDP families in the near future is not in sight. And yet it is cities like Diyarbakır, Hakkari and Batman that are most likely to receive the majority of those being displaced in the future.

In the same context education among IDPs is another major issue. A 2009 report found that more than 30 per cent of the children of Kurdish IDPs living in Diyarbakır and Istanbul, and 77.8 per cent of those living in Batman do not attend school, mainly due to the consequences of poverty.²⁷ As a direct consequence, the lack of access to education feeds into the

²⁵ Hatice Deniz Yüksek, 'Severed from their Homeland and Livelihoods: the Internal Displacement of Kurds in Turkey as a Process of Social Exclusion', Paper presented at the annual meeting of the American Sociological Association (Montreal, Quebec, Canada, August 10 2006), http://www.allacademic.com/meta/p105389_index.html (last accessed 26 July 2010).

²⁶ TurkStat, *Household Labour Force Statistics 2009*, p. 175,

http://www.turkstat.gov.tr/Kitap.do?KT_ID=8&metod=AnaKategori (last accessed 10 September 2010).

²⁷ see, Minority Rights Group International (MRG), 'Forgotten or Assimilated? Minorities in the Education System of Turkey' (London: MRG, 2009), 12,

<http://www.minorityrights.org/7732/reports/forgotten-or-assimilated-minorities-in-the-education-system-of-turkey.html> (last accessed 26 July 2010).

already high levels of unemployment and social exclusion among IDPs. This has been exacerbated by the language barrier faced by those who are unable to speak Turkish.

Furthermore, alienation arising from the long process of integration, combined with the reality and threat of violence as well as severe social dislocation, altogether result in mental and physical trauma, which sometimes becomes an endemic condition in the locations to which IDPs have fled.²⁸ Since they are at an economic disadvantage and lack the social support networks necessary to survive in times of crisis, these problems create a complex situation in which many cumulative difficulties have an impact at an individual, family and community level. Moreover, Kurds outside parts of Turkey with a Kurdish majority also experience discrimination and are regularly treated with suspicion.

In particular the situation of IDP women is of concern. Women undertake most of the unpaid work involved in holding a community together, such as bearing and raising children, caring for the sick and elderly, fetching water, growing and preparing food and caring for livestock. All of these are adversely affected by displacement, as the woman becomes isolated and is vulnerable to violence. The relative safety of the western cities to which many IDP women were displaced was not sufficient to overcome the difficulties facing them. Rather, migration to these cities represents another stage of displacement during which additional problems arise from the urban environment. In the urban context the situation of IDPs is complicated as a result of changes in family and community structures, domestic and state violence, and bias against women, which is compounded for IDP women as a result of

²⁸ TOHAV The Problem of Turkey's Displaced Persons p 8-9.

their ethnicity and their educational and economic standing in Turkish society.²⁹

Turkey's International Obligations towards IDPs

Even if the Universal Declaration of Human Rights (UDHR)³⁰ contains a number of provisions that are relevant to international displacement (arts. 2, 7, 8), it is not a binding convention able to push the States to comply with it.

The International Covenant on Civil and Political Rights (ICCPR)³¹ provides several guarantees against the violations of human rights to human beings, which are to some extent related to displacement (arts. 6, 7, 9, 10, 17, 26, 27). It was signed by Turkey on 15 August 2000 and ratified on 23 September 2003³², although it was opened for signature more than 30 years before. Moreover, Turkey made a reservation on art. 27, which grants minorities the right 'to enjoy their own culture, to profess and practice their own religion, or to use their own language', stating:

*The Republic of Turkey reserves the right to interpret and apply the provisions of Article 27 of the International Covenant on Civil and Political Rights in accordance with the related provisions and rulers of the Constitution of the Republic of Turkey and the Treaty of Lausanne of July 1923 and its Appendixes.*³³

²⁹ 'The Internally Displaced Kurds of Turkey,' Mark Muller and Sharon Linzey, KHRP London 2007, pg. 97.

³⁰ Universal Declaration of Human Rights G.A. Res. 217A, UN GAOR, 3rd sess pt I, Resolutions, at 71, UN Doc. A/810 (1948) <<http://www.un.org/Overview/rights.html>> (last accessed 22 July 2010). ('UDHR').

³¹ International Covenant on Civil and Political Rights GA Res 2200A (XXI) 1966 <<http://www2.ohchr.org/english/law/ccpr.htm>> (last accessed 22 July 2010). ('ICCPR').

³² ICCPR, Turkey Ratification, 23 September 2003 <untreaty.un.org/English/CNs/2003/1201_1300/1208E.doc> (last accessed 22 July 2010).

³³ ICCPR, Turkey Ratification, 23 September 2003 <untreaty.un.org/English/CNs/2003/1201_1300/1208E.doc> (last accessed 22 July 2010).

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

Turkey is party to the Geneva Conventions and is bound by its provisions. Article 3 – common to all four of the 1949 Geneva Conventions – applies to 'armed conflict not of an international character'³⁴ and requires that all persons

³⁴ In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the following provisions: 1). Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) Taking of hostages; (c) Outrages upon personal dignity, in particular, humiliating and degrading treatment; (d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. 2) The wounded and sick shall be collected and cared for. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

taking no active part in hostilities be treated humanely.

Nevertheless, the Turkish Government disputes the application of Article 3 to the conflict in south-east Turkey. Moreover, Turkey has not ratified Protocol II to the Geneva Conventions of 1977. Article 17 of Protocol contains important provisions about displacement:

1. *The displacement of civilian population shall not be ordered for reasons related to the conflict unless the security of civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.*
2. *Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.*³⁵

The article would apply to the situation in south-east Turkey due to the mass destruction of homes and villages, and the forcible evacuation of people to other parts of Turkey.

In 1998, the UN Commission on Human Rights approved the Guiding Principles on Internal Displacement.³⁶ These are directed towards both governmental authorities, international and non-governmental organizations, which would include the PKK. The document represents the benchmark for States and others regarding internal displacement, addressing each stage of the phenomenon of displacement, as well as outlining the responsibility of States and others in that process. Although not legally binding on Governments, the fact that they reflect and are consistent with international human rights law and international

³⁵ Art. 17, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

³⁶ UN Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.I, February 11. New York, NY: United Nations.

humanitarian law, means that the standards they contain should arguably influence Turkey's approach to dealing with the issue of internally displaced Kurdish civilians in the south-east of the country.³⁷

Turkey and the European Court of Human Rights

In 1950 the Council of Europe established the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)³⁸, ratified by Turkey in 1954. The right for individual applications from Turkish citizens to the European Commission of Human Rights was recognised in 1987 and the compulsory jurisdiction of the European Court of Human Rights (ECtHR) was recognised in 1989.³⁹ However, by May 1990 Turkey had filed declarations of its intention to derogate from a range of rights in response to 'threats to its national security in south-east Anatolia.'⁴⁰

³⁷ Roberta Cohen, 'Introduction to the Guiding Principles on Internal Displacement', speech delivered at the *International Conference on Kurdish Refugees and Internally Displaced Kurds* (Washington D.C., 23 September 2001) <http://www.brookings.edu/views/speeches/CohenR/20010923_kurds_gps.htm> (last accessed 22 July 2010).

³⁸ European Convention for the Protection of Human Rights and Fundamental Freedoms, Opened for signature 4 November 1950, 213 U.N.T.S. 222, Entered into force 3 September 1953 <<http://www.echr.coe.int/echr/>> (last accessed 22 July 2010). ('ECHR').

³⁹ Protocol No. 11 to the ECHR, which came into force on 1 November 1998, mainstreamed the existing twinned Strasbourg mechanisms (European Court of Human Rights and the European Commission on Human Rights) with a single body, the European Court of Human Rights.

⁴⁰ Council of Europe List of the Declarations Made by Turkey Complete Chronology as of 22/7/2010 <<http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?PO=TUR&NT=&MA=3&CV=0&NA=&CN=999&VL=1&CM=5&CL=ENG>> (last accessed 22 July 2010).

KHRP has submitted, and continues to submit, many cases to the ECtHR on behalf of Applicants whose homes and villages were destroyed in south-east Turkey during the 1990s. The main rights invoked in these cases have been the right to life (Article 2 of the ECHR); freedom from torture or inhuman or degrading treatment or punishment (Article 3); the right to home, privacy and family life (Article 8); the right to an effective remedy before a national authority (Article 13); and the right to peaceful enjoyment of possessions.⁴¹ More recent cases relate to the lack of effective remedy or compensation given by the Government, and with complaints about the handling of the issue by the Turkish authorities.

Although restitution and compensation are established remedies under international law, the ECtHR has never, in the case of the Kurds of south-east Turkey, ordered the Applicants' property to be returned. When comparing this practice to other cases not involving Turkey it is apparent that the Court has indeed ordered the return of property to the Applicants, or failing that, the payment of compensation.⁴² In the case of the Kurds in Turkey it has only awarded compensation instead. In its 1996 decision on the *Akdivar and Others v Turkey* case, the Court held that the State should 'make reparations for [the consequences of its breach] in such a way as to restore as far as possible the situation existing before the breach', also known as the principle of *restitutio in integrum*.⁴³ However, the Court

⁴¹ Protocol I to the European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, Entered into force 20 March 1952, Art 1

<<http://conventions.coe.int/treaty/en/Treaties/Html/005.htm>> (last accessed 22 July 2010).

⁴² ECtHR, Appl. No. 14556/89,

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

⁴³ KHRP Case, ECtHR, Appl. No. 21893/93, *Akdivar and Others v Turkey*, judgment of 1 April 1998, para 47.

stated that if *restitutio in integrum* is practically impossible the respondent States are free to choose the means whereby they will comply with the judgement under the supervision of the Committee of Ministers, and the Court will not make consequential orders or declaratory statements in these regards.⁴⁴ This decision should be seen as a very important one, as it will be taken as a model for further decisions.⁴⁵ It has been argued that the security situation in the south-east influenced the Court's decision to order the payment of compensation instead of ordering Turkey to allow the Applicants to return.⁴⁶ But since the lifting of the state of emergency in the region in 2002, Applicants before the ECtHR were hopeful that they might be afforded the opportunity to return to their villages and start rebuilding their lives. However, considerable obstacles still remain.

The Council of Europe's Committee of Ministers is vested with the responsibility to ensure that the Applicants are able to return their properties, pursuant to the Court's decree. However, the Committee of Ministers has not been successful in ensuring the Applicants' remedy or persuading the Turkish Government to implement an effective general return policy. In fact, Turkey often fails to implement adverse ECtHR judgements when they are given. In its 2002 Regular Report the EU pointed out that 'Turkey's failure to execute judgments of the ECtHR

remains a serious problem.'⁴⁷ It cited 90 cases in which Turkey failed to ensure just satisfaction of the Court's orders.⁴⁸ Although Turkey has made increased efforts since 2002, such cases seem to indicate that it is not willing yet to fully comply with the ECtHR decisions. It is incumbent upon the Committee of Ministers also to ensure better implementation of the European Convention on Human Rights, by methods such as improving domestic remedies or establishing effective ones where none exist; ensuring translation and dissemination of the Court's case law and the screening of legislation for compliance with the Convention, and involving of both national Parliaments and human rights institutions in this endeavour and enhancing resources and methods related to the Committee of Ministers supervision of implementation of judgments.

Turkish Government's approach to its IDPs

Since the early 1990s the Turkish Government has developed numerous concepts, plans and programmes in its attempts to facilitate the resettlement or return of IDPs to their villages.⁴⁹ However, these various attempts have failed to address either the immediate problems faced by IDPs in Turkey or the underlying causes of their displacement. All its programs were ill-conceived and under-funded,⁵⁰ suggesting that they

⁴⁴ KHRP Case, ECtHR, Appl. No. 21893/93, *Adkivar and Others v Turkey*, judgement of 1 April 1998, para 47.

⁴⁵ KHRP Case, ECtHR, Appl. Nos. 23186/94, *Mentes and Others v Turkey*, judgement of 28 November 1997; KHRP Cases, ECtHR, Appl. Nos. 23184/94 and 23185/94, *Selcuk and Asker v Turkey*, judgement of 24 April 1998; KHRP; Case, ECtHR, Appl. Nos. 25656/94, *Orhan v Turkey*, judgement of 18 June 2002.

⁴⁶ Mark Muller, 'Strategy and Discussion Meeting on the Situation of Internally Displaced Persons and the Law on Compensation for Damage Arising from Terror and Combating Terror (Law 5233)', speech delivered at *conference between KHRP, BHRC and DBA* (Diyarbakir, Turkey, 11 June 2005).

⁴⁷ Commission of the European Communities, *Regular Report on Turkey's Progress Towards Accession* (European Commission, 2002), 26 <[http://www.europarl.europa.eu/meetdocs/committees/afet/20021021/sec\(02\)1412_EN.pdf](http://www.europarl.europa.eu/meetdocs/committees/afet/20021021/sec(02)1412_EN.pdf)> (last accessed 23 July 2010) ('2002 Regular Report').

⁴⁸ Commission of the European Communities 2002 Regular Report, 26.

⁴⁹ Centralised Village Project (1994), Return Village Project of the South-east Restoration Project (1995), Return to Village and Rehabilitation Project (1999), East and South-east Anatolia Action Plan (2000).

⁵⁰ For a detailed description of these programs and the obstacles they face, see KHRP, *The*

lacked any serious political backing and were arguably intended mainly to deflect criticism rather than to meet the needs of the internally displaced. Only a small number of IDPs have benefited, compared to the many people who desperately need assistance.

In May 2003, the EU's Accession Partnership with Turkey required that the return of internally displaced persons to their original settlements should be supported and speeded up.⁵¹ As a result, Turkey established a further mechanism which attempts to compensate the displaced Kurds, and to appease the EU at the same time: the Compensation Law. It purports to offer villagers from south-east Turkey full compensation for material losses, including land, homes and possessions in the context of displacement which happened between 19 July 1987 and 27 July 2004.

The Compensation Law faces many criticisms. Firstly, many applicants are excluded from receiving compensation either because they have already received some minimal compensation, because they are 'voluntary evacuees' or because they have been convicted under the Anti-Terror Law.⁵² Moreover, the compensation commissions are demanding a documentary trail for their assessments with which it is often practically impossible for the applicants to comply. For instance, sometimes it is impossible to prove the ownership of the applicants' lands, as many of them were not registered, or lost their documents when fleeing the destruction of villages. This situation is obviously made worse by

the complete lack of legal aid provided to applicants.⁵³ In addition, in many of the internal displacement cases the State security force, under the authority of the Interior Ministry, inflicted the damage. However, the very same Ministry is responsible for the payment of damage under the Compensation Law. The conflict of interest inherent in this structure raises serious questions as to the fairness and efficacy of the compensation commissions.⁵⁴ What is more, the fact that this law is being presented as a complete solution to the problems faced by IDPs, makes the correlated absence of any provision for their physical return to their villages a critical concern. The Compensation Law does not mention restoring IDPs to their former lands, farms, orchards and homes. It merely offers them awards of pecuniary compensation for the material losses that they can prove. Other important issues that have frequently been subjected to criticism in relation to the practical and legal application of the Compensation Law include the exclusion of non-pecuniary damages such as psychological trauma, the heavy delays in processing claims, and the lack of adequate mechanisms for appeal in domestic and international fora.

In short, the Compensation Law deals with just one aspect of the IDP situation – that is compensation for material losses. The Compensation Law fails to provide reparation for non-pecuniary losses such as trauma; it does not contemplate return as a form of compensation; and it fails to address the significant social, economic, cultural and psychological consequences of displacement.⁵⁵

Internally Displaced Kurds of Turkey (KHRP, London, 2007), 49-61.

⁵¹ Commission of the European Communities, *Communication from the Commission to the Council and the European Parliament: Recommendation of the European Commission on Turkey's Progress Towards Accession* (2004) <http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!cilexplus!prod!CELEXnumdoc&lg=en&numdoc=504DC0656> (last accessed 26 July 2010).

⁵² For details, see KHRP, *The Internally Displaced Kurds of Turkey* (KHRP, London, 2007), 66-70.

⁵³ For details, see KHRP, *The Internally Displaced Kurds of Turkey* (KHRP, London, 2007), 70-4.

⁵⁴ For details, see KHRP, *The Internally Displaced Kurds of Turkey* (KHRP, London, 2007), 74-6.

⁵⁵ For a brief treatment of the process of social exclusion as a consequence of displacement, see Hatice Deniz Yüksek, 'Severed from their Homeland and Livelihoods: the Internal Displacement of Kurds in Turkey as a Process of Social Exclusion', Paper presented at the *annual meeting of the American Sociological Association*

Recommendations

In sum, there is much work to be done in Turkey to adequately address the large number of IDPs. In looking at Turkey's obligation under the accession framework, and indeed the EU's obligations, the following recommendations should be carefully considered:

For the Turkish Government:

- To comply with its international obligations by ensuring that IDPs are afforded an adequate remedy and developing its policies, legislation and practices such that they reflect the Guiding Principles;
- To ensure that IDPs are able to participate fully in all planning activities relating to causes and consequences of their displacement;
- To dedicate sufficient resources to addressing the entirety of the situation of IDPs and to seek the support of the international community for further funding;
- To consult local NGOs, human rights organisations and civil society groups, and invite their input into the reforms;
- To adequately investigate and punish the perpetrators of the violence towards IDPs, both in the past and on an ongoing basis;
- To remove unnecessary practical difficulties in obtaining compensation and ensure that those who have legitimate claims are not prevented from seeking redress;

- To abolish the village guard system and initiate an anti-landmine campaign, to include the safe removal and disposal of landmines and an educational programme about their dangers for the local community;
- To create viable conditions for IDPs to return to their villages and rehabilitate themselves.

For local NGOs, human rights organisations and civil society groups:

- To request that the Turkish Government engage with civil society organisations and lawyers to improve the situation of IDPs, including in the context of legislative reform;
- To place pressure on the Turkish Government to comply with the above recommendations;
- To continue to provide information to the national and international community regarding the experiences of IDPs in Turkey.

For the European Commission:

- Given that the return and resettlement of Turkey's vast number of IDPs may be too large a logistical and financial burden for the Turkish Government to bear alone, we urge the EU to enter into dialogue with the Turkish Government regarding its potential to address the situation of IDPs, and further to encourage Turkey to engage in this respect;
- To make Turkey's EU accession conditional upon the Turkish Government's acceptance of the involvement of EU and other international actors in the return and resettlement of Turkey's IDPs, through the provision of

(Montreal, Quebec, Canada, August 10 2006), <http://www.allacademic.com/meta/p105389_index.html> (last accessed 26 July 2010).

reconstructive, logistical and financial assistance rebuild their villages and livelihoods.

For the international community:

- To monitor the operation and working methods of Turkey's IDP programmes including the current Compensation Law and Return to Village and Rehabilitation Project;
- To produce regular reports on the ongoing situation and to continue to place pressure on the Turkish Government to introduce the necessary reforms;
- To maintain dialogue with the Turkish Government regarding the potential for cooperation in developing comprehensive and holistic measures to address the situation of IDPs and encouraging Turkey to engage with the international community in this respect.