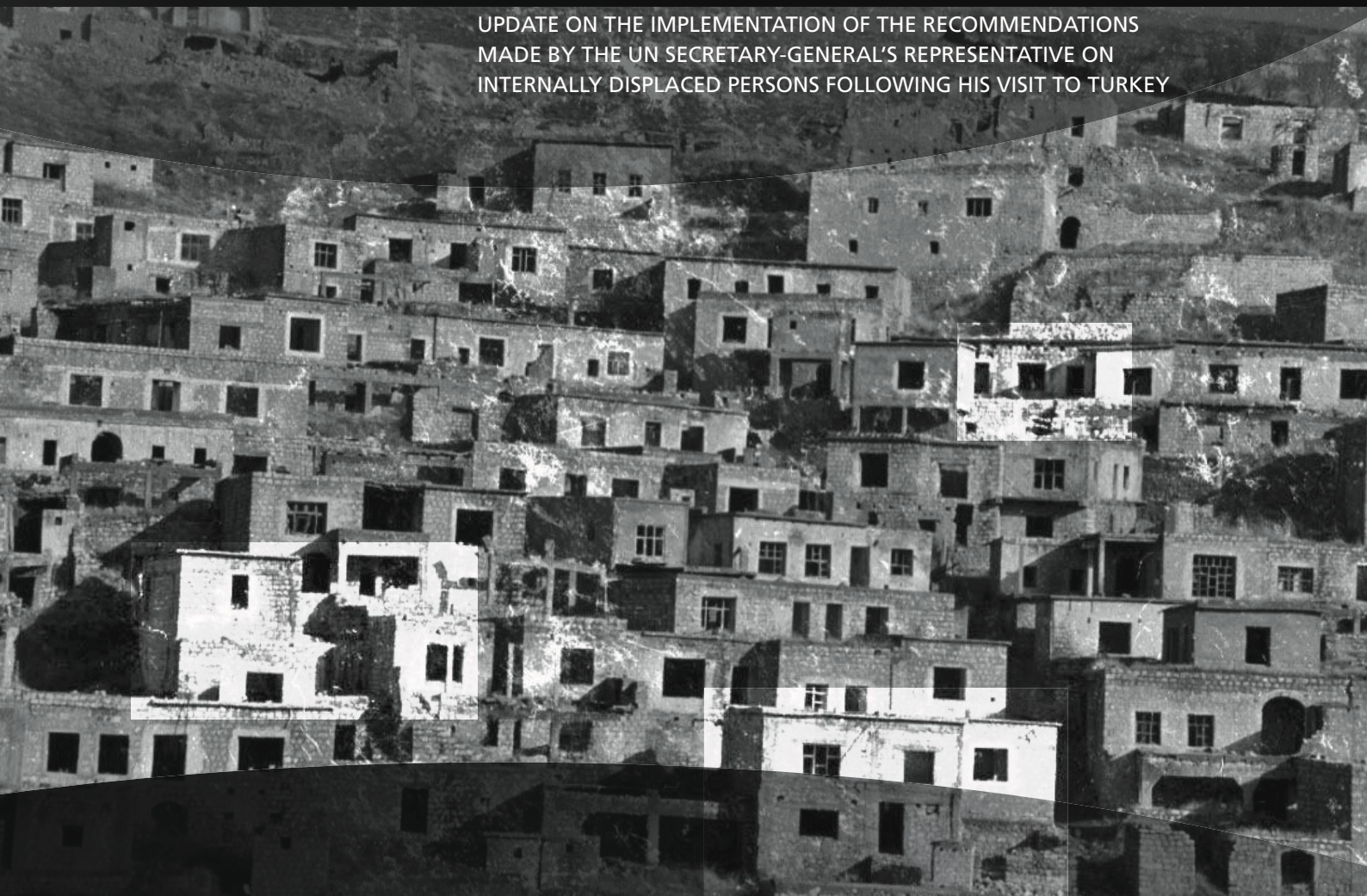


“OVERCOMING A LEGACY OF MISTRUST: TOWARDS RECONCILIATION BETWEEN THE STATE AND THE DISPLACED”

UPDATE ON THE IMPLEMENTATION OF THE RECOMMENDATIONS
MADE BY THE UN SECRETARY-GENERAL'S REPRESENTATIVE ON
INTERNALLY DISPLACED PERSONS FOLLOWING HIS VISIT TO TURKEY



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MAY 2006



Preface

The recommendations issued by the UN Secretary-General's Representative on the Human Rights of Internally Displaced Persons following his country visits provide useful guidance for governments and other relevant actors with regard to improving their responses to situations of internal displacement. The recommendations, which form part of his mission reports submitted to the UN Human Rights Council, address outstanding issues and outline ways to strengthen the protection of the human rights of IDPs in line with the Guiding Principles on Internal Displacement.

In order to support the process of implementing the recommendations, the Norwegian Refugee Council's Internal Displacement Monitoring Centre initiated a series of reports on progress made with regard to putting the recommendations into practice. Each report has been prepared in partnership with, and based on field research by, prominent national civil society organisations dealing with issues of internal displacement in their respective countries. This not only ensures that the wealth of information gathered by national non-governmental actors is reflected in the reports. It also strengthens the involvement of civil society in the process of implementation of the recommendations. In the case of Turkey, the implementation report was prepared in conjunction with the Turkish Economic and Social Studies Foundation (TESEV).

By publishing this series of reports, the Internal Displacement Monitoring Centre aims to raise awareness of the Representative's recommendations, take stock of progress made with regard to their implementation, and point to gaps where more action is needed. It is our hope that the reports will serve as a useful tool for governments, as well as for international organisations and national civil society groups, to follow up on the Representative's recommendations and develop effective responses to internal displacement that are fully in accordance with the Guiding Principles.

Elisabeth K. Rasmussen



NRC Resident Representative in Geneva
Head of Internal Displacement Monitoring Centre

Foreword

As Representative of the United Nations Secretary-General on the Human Rights of Internally Displaced Persons, I welcome this series of reports issued by the Norwegian Refugee Council's Internal Displacement Monitoring Centre following up on missions that my predecessor and I have undertaken to countries facing serious issues of internal displacement. As this initiative recognizes, my official reports to the United Nations, along with recommendations made to Governments, parties to conflict, international actors and civil society, are not intended to conclude analysis and examination of a country; much more, the reports and their accompanying recommendations should be viewed as starting a process of reflection leading to concrete improvements in the lives of the internally displaced.

As such, I am very pleased that the Internal Displacement Monitoring Centre, along with other civil society actors, has built upon a series of mission reports of former Representative Deng and myself with current field research assessing the progress made in the intervening months and years. My hope is that reviews such as this will encourage all relevant actors to take a careful inventory of the progress made and, where necessary, recalibrate and refocus future efforts. These reports will also be a useful reference for my continuing engagement with individual situations and dialogue with Governments and civil society. I therefore encourage the Norwegian Refugee Council and other partners in civil society to continue this valuable and positive work.

Prof. Walter Kälin

A handwritten signature in black ink, appearing to read 'W. Kälin', written over a light grey rectangular background.

Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons

Authors' Foreword

There was inevitably a time lag between the drafting of this report and its publication. Most of the information was updated in early spring 2006, at a time when the Turkish government had confirmed its intention to address the internal displacement problem in line with the Guiding Principles, and international cooperation towards this end was taking off the ground. However, soon afterwards, armed assaults by the PKK and military operations by the Turkish security forces as well as urban protests pertaining to the Kurdish conflict erupted in the eastern and south-eastern provinces of Turkey where original displacement had taken place and where returns have started in the past few years.

The authors of this report are concerned that, if this situation persists in the months to come, it could endanger sustainable returns in the region and even trigger new displacement. This assessment does not contradict the report's findings, some of which provide an optimistic view of the government's declared intention to tackle the problem and the evolving international cooperation. To the contrary, the present situation makes one of the report's key conclusions all the more pertinent: a durable and sustainable solution to the internal displacement problem in Turkey cannot be achieved without a peaceful end to the Kurdish conflict and a process of reconciliation, which would require – among other things – addressing issues of justice, and the disarmament and social rehabilitation of PKK members and government-employed village guards alike.

Dilek Kurban | Ayşe Betül Çelik | Deniz Yüksek
Members, TESEV Working and Monitoring Group on Internal Displacement in Turkey

LIST OF ABBREVIATIONS

CHR	Commission on Human Rights
ECtHR	European Court of Human Rights
EC	European Commission
EU	European Union
GAP	South-eastern Anatolian Project (Güneydoğu Anadolu Projesi)
Göç-Der	Migrants’ Association for Social Solidarity and Culture (Göç Edenler Sosyal Yardımlaşma ve Kültür Derneği)
HIPS	Hacettepe University Institute of Population Studies
HRA	Human Rights Association (Insan Hakları Derneği)
HRW	Human Rights Watch
ICBL	International Campaign to Ban Landmines
IDMC	Internal Displacement Monitoring Centre
IDP	Internally Displaced Person
ILO	International Labour Organisation
IOM	International Organisation for Migration
Mazlum-Der	The Association for Human Rights and Solidarity with the Oppressed (Insan Hakları ve Mazlumlar için Dayanışma Derneği)
MFA	Ministry of Foreign Affairs
MOI	Ministry of Interior
MP	Member of Parliament
NGO	Non-governmental organisation
NRC	Norwegian Refugee Council
PKK	Kurdistan Workers Party (Partiya Karkerên Kurdistan)
RVRP	Return to Village and Rehabilitation Project
RSG	Representative of the United Nations Secretary-General on Internally Displaced Persons
SIS	State Institute of Statistics
SPO	State Planning Organisation
TESEV	Turkish Economic and Social Studies Foundation (Türkiye Ekonomik ve Sosyal Etüdler Vakfı)
TGNA	Turkish Grand National Assembly
THRF	Turkish Human Rights Foundation
TOHAV	Foundation for Society and Legal Studies (Toplum ve Hukuk Araştırmaları Vakfı)
UN	United Nations
UNICEF	United Nations Children’s Fund
UNCT	United Nations Country Team
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
USCR	US Committee for Refugees
UXO	Unexploded Ordinance

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Executive Summary

Background to the Report

At the invitation of the government of Turkey, the Representative of the Secretary-General on Internally Displaced Persons (RSG), Francis Deng, undertook a mission to Turkey from 27 to 31 May 2002 “to gain first-hand knowledge of the situation of internal displacement in the country and to hold a dialogue with the government, international agencies, representatives of donor countries and non-governmental organisations (NGOs) with a view to ensuring that the conditions of the internally displaced in Turkey are responded to effectively”.¹ As a result of his visit, the RSG presented findings and recommendations to the Commission on Human Rights (hereafter CHR) in November 2002.

The Turkish Economic and Social Studies Foundation (TESEV) has prepared this report in an effort to comprehensively assess the implementation of the RSG’s recommendations, as well as to present findings which reflect a balanced picture of the state of affairs in Turkey. It draws on TESEV’s report written by the Working and Monitoring Group on Internal Displacement in Turkey (hereafter “TESEV Working Group”),² the fieldwork conducted in 2005 in several provinces by several members of this research group³ and the follow-up research done in February and March 2006.⁴ In addition, this report also draws upon assessments conducted by human rights groups, civil society organisations and other sources.⁵

Acknowledgements

This report is based on field research conducted in Istanbul and in Diyarbakır, Batman and Hakkâri provinces of south-eastern Turkey in 2005 with follow-up research conducted in February and March 2006. It was written by Dilek Kurban (TESEV), Ayşe Betül Çelik (Sabancı University) and Deniz Yüksek (Koç University) and builds on an earlier report issued by TESEV in October 2005 titled “The Problem of Internal Displacement in Turkey: Assessment and Policy Proposals”, which was authored by A. Tamer Aker (Kocaeli University), Ayşe Betül Çelik, Dilek Kurban, Turgay Ünal (Hacettepe University) and Deniz Yüksek. This report was commissioned and sponsored by the Internal Displacement Monitoring Centre (IDMC) of the Norwegian Refugee Council (NRC). The IDMC, in particular Dina Abou Samra, Country Analyst, also provided valuable research comments.

Summary of Main Findings and Recommendations

More than a decade has passed since internal displacement took place in eastern and south-eastern Turkey in the course of the conflict between the Turkish armed forces and the Kurdistan Workers Party (PKK). Yet it was not until the RSG’s mission to Turkey in 2002 that the government officially acknowledged the existence of the problem. Internally Displaced Persons (IDPs) had virtually no access to government aid until about 1999, and aid for the displaced since then has also been meagre. The RSG’s visit was a turning point in that it drew the attention of the public to the plight of the IDPs.

¹ “Specific Groups and Individuals Mass Exoduses and Displaced Persons”, Report of the Representative of the Secretary-General on internally displaced persons, Francis Deng, visit to Turkey, submitted pursuant to Commission on Human Rights resolution 2002/56, E/CN.4/2003/86/Add.2, 27 November 2002, Executive Summary, page 2, para.1.

² A. T. Aker, A. B. Çelik, D. Kurban, T. Ünal and H. D. Yüksek, “The Problem of Internal Displacement in Turkey: Assessment and Policy Proposals”, Istanbul, 28 October 2005, Turkish Economic and Social Studies Foundation (Türkiye Ekonomik ve Sosyal Etüdler Vakfı-TESEV), available from http://www.tesev.org.tr/eng/events/TESEV_IDP%20ReportEditedTranslation-Final22Dec05.doc (hereafter, “TESEV Report”).

³ A. Tamer Aker, Ayşe Betül Çelik, Dilek Kurban and Deniz Yüksek conducted week-long field studies in Batman, Diyarbakır, Hakkâri and Istanbul in 2005 during which they interviewed internally displaced people, public authorities, municipality officials, civil society representatives, lawyers, healthcare officials and social service workers.

⁴ Ayşe Betül Çelik, Dilek Kurban and Deniz Yüksek conducted follow-up research through in-person, phone and written communications in Istanbul and Ankara.

⁵ The authors are grateful to various institutions, organisations and persons for providing them with information and documents that were used in the preparation of this report. In particular, they would like to thank the Ministry of Interior (MOI), the Ministry of Foreign Affairs (MFA); the United Nations Development Programme (UNDP); the European Commission in Ankara; Diyarbakır, Batman and Hakkâri Governorships; Diyarbakır, Batman and Hakkâri Municipalities; Batman Çağdaş Newspaper; Migrants’ Association for Social Solidarity and Culture (Göç Edenler Sosyal Yardımlaşma ve Kültür Derneği-Göç-Der); Human Rights Association (HRA); The Association for Human Rights and Solidarity with the Oppressed (İnsan Hakları ve Mazlumlar için Dayanışma Derneği-Mazlum-Der); Initiative for a Mine-Free Turkey; Diyarbakır and Batman Bar Associations; and lawyers in Diyarbakır, Batman and Hakkâri. The authors would also like to acknowledge careful research assistance by Derya Demirler, Harun Ercan, Mert Kayhan and Şefika Kumral. They are also grateful to the many displaced persons who shared their stories with them.

Since the publication of the RSG's report in 2002, the Turkish government has taken some concrete steps to address the IDP issue, most notable of which are the enactment of the "Law on Compensation for Losses Resulting from Terrorism and the Fight against Terrorism" (hereafter "Compensation Law") in July 2004, the initiation of the Hacettepe University survey titled "Study on Migration and the Displaced Population in Turkey" (hereafter "Hacettepe Survey") in December 2004, and the formulation of a framework document for government policy titled "Measures on the Issue of IDPs and the Return to Village and Rehabilitation Project in Turkey" (hereafter the "Framework Document") in August 2005. The United Nations (UN) has actively provided consultation and guidance to the government during this period, culminating in the recent signing of an agreement between the government and the United Nations Development Programme (UNDP) titled "Support to the Development of an IDP Programme in Turkey".

While these are positive developments, research findings that will be elaborated in this report show that serious problems exist regarding the substance and implementation of the Compensation Law, the dissemination of the results of the Hacettepe Survey, and the scope and implementation of the Framework Document. Overall, these policies have been designed by public officials under Turkey's obligations based on its National Programme for Adoption of the European Union (EU) *Acquis Communautaire* and in consultation with the UN, but without sufficient participation by civil society. Like other aspects of the reforms undertaken within the framework of Turkey's EU accession process, the top-down planning of policies on internal displacement suffers from a democratic deficit. In addition to this, the government has not yet developed concrete programmes to ensure sustainable returns to places where original displacement took place and to reintegrate urban IDPs who do not wish to return.

In addition to these problem areas, the lingering on of the armed conflict in the eastern and south-eastern regions of the country albeit at a low level is a significant cause of concern. Continuing hostilities in the region pose a threat for returnees and discourage others contemplating return. The restoration of "peace" and the disarmament and reintegration of militants are among demands frequently raised by IDPs and NGOs.

The armed conflict in the region has left a legacy of mistrust towards the state, which leads IDPs and civil society organisations to doubt the sincerity and longevity of the positive steps taken by the government. Furthermore, there is a demand from IDPs, civil society and the public for the government to address the massive human rights violations which occurred during this period, including the eviction of villagers from their homes. For this reason it is a matter of concern that there is no mention of issues such as rebuilding trust, restoring justice and achieving reconciliation in the government's existing IDP policy and in the evolving cooperation between the UN and the government. In that respect, the solution to the displacement problem in Turkey also continues to be dependent on a peaceful and comprehensive solution to the Kurdish issue.

In light of the above observations, this report makes the following recommendations, thematically organised on the basis of the RSG's report, with the addition of a new recommendation under the heading of "reconciliation."

Clarifying and Disseminating the National Policy

The government's acknowledgment of the internal displacement problem, its expression of political will to address the issue in accordance with the Guiding Principles on Internal Displacement ("Guiding Principles") and its commitment to develop a strategy based on the Framework Document constitute significant progress. However, they are also belated steps, which follow a period of inaction of more than ten years. The lack of transparency and NGO participation are also grounds for concern. In order to facilitate the meaningful

participation of civil society and to raise awareness among the affected IDP communities about government policy, the Framework Document should be immediately and widely distributed. The government should systematically consult NGOs on putting together and implementing a strategy based on the Framework Document. As regards establishing a structure for the implementation of its policy, the government should create a focal point of responsibility within the interior ministry, which would coordinate cooperation with government institutions, civil society organisations and the international community, and set aside a transparent and accountable budget with sufficient funds.

Data Collection

The commissioning of Hacettepe University to conduct a comprehensive study on IDPs is a very significant step towards understanding the causes of internal displacement, and identifying the current conditions and needs of the displaced. The initiation of the survey has raised expectations that the findings would facilitate the development of government policy, international cooperation and possible future NGO projects. However, Hacettepe University has not yet shared the findings of the study, the quantitative component of which was completed in November 2005. The findings of both the qualitative and quantitative components of the Hacettepe Survey should be disclosed completely and without further delay. The authorities and the Hacettepe University should take steps to ensure that the academic freedom of scholars studying internal displacement is respected.

Protection

The “village guard” system poses a risk in terms of the protection of human rights and an obstacle to IDP returns in the region. Both provisional and voluntary village guards should be disarmed and the system should be disbanded. As part of their rehabilitation, village guards should be provided with social security coverage and employment opportunities in peaceful sectors. In order to facilitate peace and security, PKK militants need to be reintegrated into society through complete disarmament. The government and NGOs should cooperate in developing policies about the social reintegration of all parties to the conflict. The landmines issue is of great concern due to the lack of comprehensive statistics on their locations and numbers. Landmines and unexploded ordinance also pose a significant threat to returning IDPs. The government and the armed forces should cooperate with local NGOs and international institutions to effectively and expeditiously tackle this problem. As a first step, the government needs to ensure that all mined and potentially mined areas are fenced off and marked with clear signs. The government should also launch a centrally-coordinated mine risk education programme in Turkish and Kurdish, in cooperation with civil society, local administrations and international institutions.

Current Conditions of the Displaced

The majority of the IDP population in Turkey has been living in urban centres for nearly ten years. Since there are no programmes specifically addressing the current conditions of the displaced, they have had to face enormous problems such as endemic unemployment, abuse of child labour, lack of access to education and health care services, and almost no psychosocial care for women and children. The government, UNDP and civil society organisations urgently need to cooperate in order to develop projects that would specifically target the problems of urban IDPs. These projects should address children’s education, adult literacy and skills training as well as employment creation and preferential loans for small business start-ups. The numbers of community, women’s and children’s centres should be increased and they should be given capacity building training to serve the particular needs of the displaced.

Return

Security forces no longer hinder returns on the grounds of lack of safety in most areas where original displacement took place with the notable exception of Hakkâri. However, given that PKK assaults and military operations have increased in the past two years, fear for personal safety as well as perceptions of lack of security continue to prevent many IDPs from considering return to their original homes. The government should take further measures to provide security for returnees. Local NGOs and public authorities in the region should cooperate in building trust between IDPs and the state in order to remove perceptions of lack of safety in places where this is not the case. Other obstacles to return are the paucity of aid under the government's Return to Village and Rehabilitation Project (RVRP), lack of infrastructure and public services in the rural areas from which original displacement took place and resistance against centralised settlements. The government should clarify its implementation of the RVRP in line with the Framework Document, and in consultation with NGOs. Concrete steps should be taken to rebuild the rural economy and public infrastructure so that returns may become sustainable.

Property

The shortcomings in the Compensation Law and the problems in its implementation undermine its significance. The time-scale and scope of the law should be extended so as to cover all IDPs who were forcibly evicted or were obliged to flee due to the armed conflict. The law should be amended to provide non-pecuniary damages in accordance with European Court of Human Rights (ECtHR) case law, in order to compensate the pain and suffering of IDPs whose rights to life, liberty and security, and property have been violated. The government should initiate a public information campaign on the law in Turkish and Kurdish, in collaboration with NGOs and local administrations. The Turkish Bar Association and local bar associations should advise their members on codes of professional conduct and monitor their implementation of the law. The commissions should be allowed to determine all types of damages on a case-by-case basis, taking into account the subjective circumstances of each case. The two-year period for evaluating petitions should be extended to a more realistic timeframe. To ensure unity in implementation, the government should develop a clear position on the law; send the commissions binding implementing guidelines and instruct them not to abide by strict formal evidentiary rules in processing claims; and cooperate with civil society to provide training not just to the governors and their deputies, but to all members of the commissions. As a first step, the government should publicly express its political support for the effective and just implementation of the law. The Commissions should not attribute evidentiary weight to the information provided by the *jandarma* (security forces). An administrative appeal body should be set up to evaluate the decisions of the commissions within a time limit of two-three months. To ensure their access to courts, IDPs should be exempted from legal fees in administrative courts and be provided with legal aid upon need. The structure of the commissions should be changed in favour of a balanced representation of civil society and the public sector. The commissions should be professionalised, their numbers should be increased, and their working conditions should be improved.

Cooperation with International Partners

Since RSG Deng's visit in 2002, an active cooperation has developed between the government and the UN on the IDP issue, culminating in the signing of an agreement in 2005 between the UNDP and the government to support the development of an IDP programme. There is also a need for more systematic cooperation between the UN and NGOs. The UN and the government should encourage NGOs to participate in the implementation of policies targeting IDPs on the issues of return and reintegration. The European Commission has played a significant role in encouraging Turkey to take steps to address its IDP problem

since the Helsinki Summit in 1999 when Turkey became a candidate for EU accession. The Commission should be more proactive in providing consultation and guidance to the government on its evolving IDP policy. The government may involve the EU into the policy implementation process through socioeconomic and other projects related to IDPs' return and reintegration.

Reconciliation

IDPs, NGOs and the government express the need for rebuilding “trust towards the state” and “social peace”, goals identified in the Compensation Law. Establishing social rehabilitation in the wake of a traumatic period of conflict and ensuing displacement cannot be limited to issues concerning the payment of reparations, return and reintegration, but should also include reconciliation. Although achieving reconciliation may take a long time, the government should take steps to initiate that process. The state's public acknowledgement of responsibility for village evictions, introducing compensation for pain and suffering, and declaration of a will to identify and prosecute – where possible – those who committed human rights violations during displacement and return may be among such measures. However, it is also important to bear in mind that reconciliation would require the PKK to demonstrate a similar will to assume its responsibility for the human rights violations it has committed. A dialogue should be initiated between the civil society and the government to set up a structure for reconciliation, bearing in mind the examples of truth and reconciliation commissions elsewhere in the world.

Background to the IDP situation in Turkey

During the armed conflict between the Turkish security forces and the PKK between 1984 and 1999, massive internal displacement took place in the eastern and south-eastern regions of Turkey. Although much time has passed, the social, economic, political and legal problems caused by the internal displacement of Turkish citizens of predominantly Kurdish ethnicity have not yet been resolved.

Internal displacement, or forced migration,⁶ was concentrated during the period in which the eastern and south-eastern region was ruled under a State of Emergency (*Olağanüstü Hâl*).⁷ The eviction and evacuation⁸ of several hundred thousand people from their rural homes resulted in the violation of their constitutional and human rights, and created serious political and socio-economic problems.

According to the 1998 report of the Turkish Parliament's Investigation Commission,⁹ the causes of forced migration were the following: (a) people leaving their villages because of the collapse of animal husbandry and agriculture as a result of the ban on the use of pastures and as a result of PKK pressure, intensifying military operations and armed clashes; (b) the PKK's eviction of people from certain villages and hamlets who agreed to become “village guards”, locally-recruited civilians armed and paid by the state to oppose the PKK; (c) the security forces' eviction of villagers who refused to become village guards or who were thought to aid the PKK, and evacuation of villages where security could not be provided.¹⁰ These causes of forced migration roughly correspond to the definition of IDPs given in the Guiding Principles on Internal Displacement (hereafter “Guiding Principles”) as “persons or groups of persons who have been forced [causes (b) and (c) above] or obliged [cause (a) above] to flee or to leave their homes or places of habitual residence” as a result of armed conflict, generalised violence and violations of human rights.¹¹

The interior ministry says that 358,335 people were displaced from 945 villages and 2,021 hamlets during the above-mentioned period and that 137,636 of them have returned to their homes since 1998, when the RVRP was initiated through a Prime Ministerial Circular.¹² International organisations and domestic and

⁶ In this report, the terms “internal displacement” and “forced migration” are used interchangeably. Although internal displacement is the internationally recognised term, this phenomenon has been known as forced migration (*zorunlu göç*) by the Turkish public.

⁷ A state of emergency was first declared in a number of provinces in 1987, and then it was progressively expanded to cover 12 provinces. After 1999, it was gradually phased out and it completely came to an end in 2002.

⁸ In this report, the terms “eviction” and “evacuation” are used interchangeably. This is because a majority of the IDPs were forcibly evicted from their homes, while others were evacuated for security reasons.

⁹ The original title of the report is “Report of the Parliamentary Investigation Commission Established with the Aim of Investigating the Problems of our Citizens who Migrated due to the Eviction of Settlements in East and South-east Anatolia and to Assess the Measures that Need to be Taken”. Hereafter, we refer to it as the “Parliamentary Report”.

¹⁰ Since 1985, provisional village guards (*geçici köy korucusu*) have been recruited from among the civilian rural population in the south-eastern and eastern regions to “guard” their villages against the Kurdistan Workers Party (PKK), in return for which they receive arms and a salary from the government (see “Protection” below).

¹¹ Guiding Principles, Introduction, Article 2.

¹² Bekir Sıtkı Dağ, Department of Strategy Development, MOI, Presentation at the “Support to the Development of an IDP Programme in Turkey Project” Workshop, 23 February 2006, Ankara (hereafter, “UNDP Workshop”).

foreign NGOs put the figure of IDPs in Turkey at between one and four million.¹³ These estimates are not supported by hard data; rather, they give an indication of the extent of the population affected by armed clashes and security problems in the region during the last 20 years. The ministry figures on the other hand only pertain to those who were “forced to flee or leave their homes”, that is, causes (b) and (c) indicated in the Parliamentary Report. Therefore, the actual number of IDPs must be higher than the official figure; however, NGO estimates are also unrealistically high if the total extent of population movements within Turkey is considered in the relevant period.¹⁴

Methodology

In his report to the UN Human Rights Commission, the RSG made 11 recommendations to two stakeholders: 1) the government of Turkey, and 2) United Nations and other humanitarian organisations. The recommendations are grouped below under the following headings: Clarifying and Disseminating the National Policy, Data Collection, Protection, Current Conditions of the Displaced, Return, Property and Cooperation with International Agencies. Based on the need for addressing IDPs’ expectations for justice and peace, the TESEV Working Group added a new heading titled “Reconciliation”. This report assesses the progress in those areas, identifies points where problems still exist and makes some recommendations to address outstanding issues.

The report’s findings are based on fieldwork conducted by the authors in Istanbul, and the provinces of Batman, Diyarbakır and Hakkâri for the writing of the TESEV Report as well as further interviews and phone interviews conducted expressly for this report (see “Acknowledgments”). All in all, the fieldwork consisted of around 150 in-depth interviews based on open-ended questions with government officials, EU and UN representatives, province- and district-level public officials, municipal officials, lawyers, representatives of bar associations, NGO representatives, social service workers, and displaced persons. Some of the interviews with IDPs were conducted in a group format. The qualitative methodology of the fieldwork allowed the collection of rich and in-depth data about various processes; however its findings do not lend themselves to making generalisations about the entire IDP population or about the conditions of the entire region.

1. CLARIFYING AND DISSEMINATING THE NATIONAL POLICY

1.1 Relevant Recommendations from the Representative

To the government of Turkey:

Clarification and dissemination of government policy on internal displacement: in order to reconcile the disparity between the prevailing negative perceptions of government policy and the positive attitude which the Representative witnessed during his mission, there is an urgent need for the government to clarify its policy on internal displacement, including return, resettlement and reintegration, to make that policy widely known, to create focal points of responsibility for the displaced at various levels of the government structures, and to facilitate coordination and cooperation among government institutions and with NGOs, civil society and the international community.

¹³ For instance, the US Committee for Refugees (USCR) has estimated the number of IDPs to be between 380,000 and 1 million. Human Rights Watch (HRW) has cited a figure of 2 million. Turkish Human Rights Foundation (THRF), Human Rights Association (HRA) and Göç-Der have used estimates of between 3 and 4 million in their reports and declarations. See, USCR, “The Wall of Denial – Internal Displacement in Turkey” (Washington D.C.: Committee for Refugees, 1999); HRW, “Displaced and Disregarded: Turkey’s Failing Village Return Program”, 2002, available from <http://hrw.org/reports/2002/turkey/Turkey1002.pdf>; and Joint Press Release by HRA, THRF, Göç-Der and other non-governmental organisations, 31 May 2001, available from <http://www.tihv.org.tr/basin/bas20010531.html>.

¹⁴ For an analysis of population movements between the 1990 and 2000 General Population Censuses, see Turgay Ünalın, “Yerinden Olmuş Kişiler: Kavramlar ve Dünyada Durum”, presentation at Hacettepe University Workshop on the “Study on Migration and the Displaced Population in Turkey”, 4 March 2005, available from http://www.hips.hacettepe.edu.tr/tygona/idp_turkce/SayisalBoyut.zip.

1.2 The Government Policy on Internal Displacement

Certain steps have been taken by the government in cooperation with the UN since 2003, including the initiation of the “Hacettepe Survey” (see “Data Collection” below) and the enactment and implementation of the “Compensation Law” (see “Property” below), culminating in the formulation of the “Framework Document” (see “Framework Document” below).

The first public indication that the government was drafting a new policy was made during a working visit by the new RSG Walter Kälin to Ankara between 4 and 6 May 2005. Kälin publicly welcomed the Turkish government’s plan to develop a new strategy on internal displacement that would address all obstacles to return, including the role of village guards and the problem of landmines, in a comprehensive manner, and to provide the necessary means to make implementation a success.¹⁵

The government formed a commission in December 2004 in order to formulate a strategy document outlining its policy on IDPs. The commission was composed of representatives from the interior ministry, the foreign ministry, the State Planning Organisation (SPO), the South-Eastern Anatolia Project (GAP) and the State Institute of Statistics (SIS). The commission also gathered information from and consulted with the provincial governors in Eastern and South-Eastern Anatolia, as well as the UN and the Delegation of the European Commission to Turkey.

1.3 The Framework Document

The framework for the government strategy entitled “Measures on the Issue of Internally Displaced Persons and the Return to Village and Rehabilitation Project in Turkey” (hereafter The “Framework Document”) was issued by the Council of Ministers as a special “Decision of Principle” (*Prensip Kararı*) on 17 August 2005. The four-page paper is not a strategy document, but a framework that lays down the principles that will shape the final strategy to be adopted.¹⁶ As such, it has failed to meet expectations especially among NGOs for a detailed action plan by the government.

The framework document, rather than specifying policies and their implementation, provides an indication of how the internal displacement issue will be handled by the government. Since it was a Decision of Principle, the Framework Document was not published in the Official Gazette.¹⁷ It reached the foreign ministry on 4 October 2005 and was distributed to the UN and the Delegation of the European Commission to Turkey on 10 October 2005. It was handed to deputy governors in a briefing held by the interior ministry in December 2005, where the deputy governors were informed that all decisions pertaining to the RVRP and the Compensation Law would from then on be made on the basis of this document.¹⁸ The Framework Document was sent to all relevant government offices.

A key concern related to the development and presentation of the Framework Document is that NGOs were not sufficiently informed about the policy in order to meaningfully comment on its content. It was not directly distributed to NGOs, but the interior ministry claims that it is available to NGOs upon request.¹⁹ The ministry provided the Framework Document to the TESEV Working Group on request in early February 2006. However, other NGOs claimed they faced difficulties in obtaining the document. For example, Migrants’ Association for Social Solidarity and Culture (Göç-Der), an NGO working on internal displacement, said that the ministry did not provide them with the document although they asked for all IDP-related documents.²⁰

¹⁵ Press Release of Walter Kälin, “Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons Sees New Hope for the Internally Displaced Persons in Turkey”, 05 May 2005, available from http://www.undp.org.tr/PressRelease_9may05.asp.

¹⁶ An interior ministry official said that the government would design the strategy paper based on feedback from NGOs and other relevant parties. He said that a “strategy paper” should have an “action plan”, and since an action plan cannot be finalised without feedback and participation from NGOs, the existing document should be understood as a framework paper that declares the government’s intention to solve the IDP problem. Phone interview, 27 February 2006.

¹⁷ The interior ministry intended to have the Decision of Principle published in the Official Gazette, but was informed that this was against common practice. Phone interview with interior ministry official, 27 February 2006.

¹⁸ Phone interview with a deputy governor in the region, 16 February 2006.

¹⁹ An official at the ministry said that he would e-mail this document to any NGO which requests it from his office. However, he said, according to existing government practices in Turkey, the government is not “responsible” for distributing Council of Ministers decisions to NGOs. Phone interview, 27 February 2006.

²⁰ Göç-Der said that an official from the South-eastern Anatolian Project (GAP) informally brought to their attention in Summer 2005 that a document on internal displacement would soon be adopted. Following the amendment of the Compensation Law in December 2005, Göç-Der formally requested the interior ministry to share with them all the documents related to internal displacement, but received a written response that they should request this information from relevant governorships. Phone interview with Şefika Gürbüz, National Director of Göç-Der, 16 February 2006.

Moreover, NGOs and bar associations in Istanbul and the south-eastern region said that they were not aware of the Framework Document until it was brought to their attention by the TESEV Working Group in mid-February 2006. The first public mention of this document was made on 23 February 2006 by a ministry official at the "Support to the Development of an IDP Programme in Turkey Project" Workshop organised by the UNDP and the interior ministry (hereafter "UNDP Workshop"), to which most NGOs were invited. However, NGOs were not able to comment meaningfully on the content of the Framework Document, which was not distributed to them before or even during that meeting. After some delay, the interior ministry put the Framework Document on its home page on 15 March 2006.²¹

On the whole, the Framework Document is in line with the Guiding Principles, as recognised by the RSG at the UNDP Workshop. Most importantly, with this Framework Document, the government for the first time officially recognises the definition of internal displacement as laid down in the Guiding Principles.²² Also in accordance with the Guiding Principles, the Framework Document lists the government's objectives which include ensuring voluntary returns in safety;²³ facilitating the necessary conditions for return and supporting development projects;²⁴ seeking ways to provide assistance to facilitate IDPs' integration in their new places of settlement;²⁵ and reviewing legislation on return and integration.²⁶ On another positive note, the document declares the government's commitment to the *effective* implementation of the Compensation Law.²⁷

Under "Implementation Principles", the Framework Document emphasises that returns will be voluntary and will not be dependent on any permission from authorities,²⁸ but states that IDPs should notify the highest administrative authority in the area where they are returning.²⁹ Complaints about village guards hindering returning IDPs will be handled swiftly,³⁰ and obstacles to return arising from landmines will also be addressed.³¹ The document also promises sufficient consultation, cooperation and information exchange with NGOs in the implementation, monitoring and assessment process, and offers possible support for NGO projects on education, health, agriculture and employment.³² It also promises transparency in policy implementation.³³ The Ministry of Interior (MOI) is designated the chief coordinator³⁴ for the implementation, monitoring and evaluation of policies on internal displacement.³⁵ On another positive note, the document promises to ensure the identification of responsibilities and the limitation of discretionary authority of government agencies, and to ensure uniformity in that regard.³⁶

As regards the content of the Framework Document, there is concern that displaced persons who were "obliged to flee or leave their homes" as a result of the effects of armed conflict and generalised violence in the south-east may be excluded from its scope since these individuals are not included as populations of concern in either the RVRP or the Compensation Law (see "Property" below). Another problematic point is that the document supports the formation of "central villages".³⁷ The creation of central villages has not been met with much success in the past because IDPs have not been willing to resettle in places other than their original villages or hamlets.³⁸ The document also notes that aid under the RVRP will be given to

²¹ http://www.icisleri.gov.tr/_Icisleri/Web/Gozlem2.aspx?sayfaNo=722.

²² Framework Document, page 1, para. 2.

²³ *Ibid.* Objective 1.

²⁴ *Ibid.* Objective 2.

²⁵ *Ibid.* Objective 6.

²⁶ *Ibid.* Objective 8.

²⁷ *Ibid.* Objective 7.

²⁸ *Ibid.* Implementation Principle 1.

²⁹ *Ibid.* Implementation Principle 2. An interior ministry official emphasised that notification in this context does not mean a need to get permission from security/state officers. Presentation at the UNDP Workshop.

³⁰ *Ibid.* Implementation Principle 5. The wording of this principle is rather vague; however, an interior ministry official explained that this principle pertained to complaints about village guards' intimidation of returning IDPs or their illegal occupation and/or use of IDP property. Presentation at the UNDP Workshop.

³¹ *Ibid.* Implementation Principle 6.

³² *Ibid.* Implementation Principle 10.

³³ *Ibid.* Implementation Principle 11.

³⁴ *Ibid.* Implementation Principle 9.

³⁵ Currently, there are several different departments within the interior ministry that deal with the Return to Village and Rehabilitation Project (RVRP), village guards, and the implementation of the Compensation Law, a situation which may have the effect of slowing down the implementation of internal displacement policy. It may be argued that the coordination of all internal displacement-related activities by a single office would be beneficial for more efficient implementation.

³⁶ Framework Document, Implementation Principle 13.

³⁷ Framework Document, Objective 5.

³⁸ For instance, a member of the parliament (MP) and several villagers were reported as expressing the "involuntary" nature of IDP settlements in the central village of Konalga in the Çatak township of Van province. See HRW, "Displaced and Disregarded: Turkey's Failing Village Return Program", 2002, pages 31-32, available from <http://hrw.org/reports/2002/turkey/Turkey1002.pdf>. An IDP from a hamlet of the Konalga village told the TESEV Working Group that his family refused to live in this central village and therefore lost the opportunity to receive any other aid from the RVRP. Interview in Istanbul, July 2005. Another IDP from Tunceli said that his family in recent years turned down an offer of a house in a planned central village in Hozat township because they wanted to return to their own village. Interview in Istanbul, July 2005.

returnees if the population of their village is above 150 persons (or above 30 households).³⁹ Considering the fact that the document also supports investments in “central villages” and “centres of attraction”⁴⁰ for the purpose of concentrating public services, an underlying effect of this implementation principle may be to encourage more concentrated settlements and discourage the resettlement of hamlets.

Overall, the developments since Deng’s visit can be seen as positive steps towards improving the government’s internal displacement policy. In particular, cooperation with the UNDP on this matter has already borne positive results. Even though progress has been slow, the intention to cooperate with the UN has facilitated policy changes. A recent agreement between the UNDP and the foreign ministry foresees not only more UN consultation with the government on data collection but also UN support for NGOs, including capacity-building on the Guiding Principles and policy guidance to the government (see “Cooperation with International Agencies” below). Within this collaboration, the government recently finalised the translation of the Guiding Principles and its Annotations into Turkish in cooperation with the Brookings-Bern Project on Internal Displacement and UNDP. Guiding Principles booklets have been distributed to the vice-governors of the 14 provinces that have been affected by internal displacement. They were also made available to NGOs at the UNDP Workshop in Ankara.

It has taken two years for the government to issue a framework document; however, there is now the opportunity for the government, with the support and involvement of the international community and civil society, to issue an appropriate strategy and plan of action in a shorter time period.

Outstanding issues/further recommendations:

The government’s acknowledgment of the internal displacement problem, its expression of political will to address the issue in accordance with the Guiding Principles and its commitment to develop an IDP strategy based on the Framework Document constitute significant progress. However, these are also belated steps in the aftermath of a period of inaction, with the exception of the RVRP. The lack of transparency and NGO participation are also grounds for concern. In order to facilitate meaningful participation of civil society and to raise awareness among the affected IDP communities about government policy, the Framework Document should be immediately and widely distributed. The government should systematically consult with NGOs in putting together and implementing a strategy based on the Framework Document. With regard to establishing a structure for the implementation of its policy, the government should create a focal point of responsibility within the interior ministry, which would coordinate cooperation with government institutions, civil society organisations and the international community, and set aside a transparent and accountable budget with sufficient funds.

³⁹ Framework Document, Implementation Principle 3. According to the interior ministry, this implementation principle means that aid in the form of *infrastructure investments* (building of schools, etc) would be dispensed if the village population is above 150 persons, which is a stipulation of the Village Law (Law no. 442) that is implemented in the same way everywhere in the country. In the meantime, sub-provincial governors and governors will continue to give individual returnee households aid in the form of materials for reconstructing their homes, etc. UNDP Workshop.

⁴⁰ *Ibid*, Implementation Principle 4. The policy of building “central villages” (*merkez köy*), “centres of attraction” (*cazibe merkezi*) and “village townships” (*köy-kent*) for purposes of centralising rural settlements and/or public services in rural areas with declining populations have existed in Turkey for some time.

2. DATA COLLECTION

2.1 Relevant Recommendations from the Representative

To the government of Turkey:

Collection of data on the nature and scale of the problem: in order to gain a more accurate picture of the immediate needs of the displaced vis-à-vis the larger population, and in view of the government's current efforts to facilitate return and resettlement, there is a need for more comprehensive and reliable data on the number of persons displaced as a result of the actions of both the PKK and the security forces, on their current whereabouts, conditions and specific needs, and on their intentions with respect to return or resettlement. It is recommended that the government, in cooperation with local NGOs and civil society organisations which are in daily contact with displaced communities in the south-east and throughout the country, undertake a comprehensive survey of the displaced population to better inform ongoing efforts to meet their needs and to facilitate return and resettlement.

2.2 Hacettepe Survey

One of the fruits of the increased dialogue between international organisations and the government has been the commissioning of Hacettepe University's Institute of Population Studies (HIPS) to conduct a comprehensive survey on IDPs in Turkey. HIPS conducted the survey in coordination with the SPO.⁴¹ The survey's stated approach is to work in a participative and transparent cooperation with national and international institutions and in accordance with academic freedom.⁴²

2.2.1 Objectives and Methodology of the Survey

The objectives of the Hacettepe Survey are to produce qualitative and quantitative findings which can be used to develop a model on the sustainability and rehabilitation of the settlements suitable for return; design social and political measures for making IDPs productive again; and to identify the demographic and socio-economic characteristics, causes and processes of displacement as well as the current problems of IDPs.⁴³ The final report will contain policy proposals on facilitating the return, resettlement and reintegration of IDPs, and on the sustainability of regional development plans and guidelines to diminish regional development gaps.⁴⁴

The survey consists of two components: (i) a qualitative component made up of in-depth interviews aimed at identifying IDPs' experiences and problems, and at looking ahead to their future choices. These were interviews with government offices and NGOs, and 70 individual interviews with IDPs in Diyarbakır, Batman, Istanbul, Van, Adana and Mersin; and (ii) a quantitative component conducted in 14 provinces of origin (for a list of these, see "Return" below), ten receiving provinces (Istanbul, Ankara, İzmir, Adana, Mersin, Bursa, Antalya, Malatya, Manisa and Kocaeli), and eight randomly selected provinces (Tekirdağ, Muğla, Burdur, Bolu, Aksaray, Kars, Giresun and Çankırı) among the remaining 57 provinces.⁴⁵ The survey questionnaire was prepared in accordance with the Guiding Principles and was completed by 7,316 individuals.⁴⁶

⁴¹ The State Planning Organisation (SPO) is the leading government agency that coordinates economic and social policy in various fields and provides guidelines for the allocation of resources in business and social sectors through its five-year development plans and annual programmes.

⁴² Sabahat Tezcan, Director, Hacettepe University's Institute of Population Studies (HIPS). Presentation at the UNDP Workshop.

⁴³ Information on the Hacettepe Survey on HIPS website, available at http://www.hips.hacettepe.edu.tr/tyyona/tyyona_eng.htm.

⁴⁴ *Ibid.*

⁴⁵ Sinan Türkyılmaz, Field Director, "Update on Status of Migration and IDP Survey" presented at the UNDP Workshop.

⁴⁶ Sabahat Tezcan, Director, HIPS. Presentation at the UNDP Workshop.

The survey was officially started in December 2004. Following the analysis of existing information and conducting preliminary studies up to April 2005, the fieldwork was initiated in the eastern and south-eastern provinces in September 2005, then moved to the western and southern part of the country, and completed in November 2005. As of May 2006, the survey was at the stage of data analysis and report preparation.⁴⁷ The report will be submitted to the Steering Committee through the SPO and discussed at a broad-based meeting with participation from public institutions, NGOs and the international community to be held in 2006.⁴⁸

It should be noted here that the Hacettepe Survey is supposed to provide statistically more relevant data than a study carried out by the Turkish Social Sciences Association in 2001 on behalf of the GAP and whose findings were disclosed in 2002. That study's outputs were “sub-regional development plans”⁴⁹ for selected rural areas in 12 provinces where displacement had taken place.⁵⁰

2.2.2 Cooperation with NGOs and Transparency

HIPS briefed NGOs and international organisations about the Hacettepe Survey through two workshops held on 16 July 2004 and 4 March 2005, and cooperated with some of them in the field. A third meeting with representatives of international organisations was held in Ankara during Walter Kälin's working visit on 4 May 2005.

NGOs agree that they were informed and consulted by HIPS at the beginning of the survey, and some NGOs even assisted the HIPS team in reaching IDP communities.⁵¹ For example, Şefika Gürbüz, the National Director of Göç-Der, commended HIPS for this consultation; however, she said that HIPS did not keep its promise to cooperate with NGOs in determining the urban neighbourhoods where the survey would take place in IDP-receiving cities.⁵² Likewise, a lawyer in Diyarbakır working with IDPs as well as the Director of the Diyarbakır Branch of Göç-Der said that although HIPS requested their cooperation at the beginning of the survey, the researchers did not maintain this cooperation throughout the surveying process.⁵³ Another criticism came from Human Rights Watch (HRW) on the ground that HIPS had not kept its assurances at the start of the survey that it would differentiate between village guard and non-village guard settlements.⁵⁴ Thus, while HIPS has consulted NGOs from time to time and held workshops on its research design, it has not shared the survey questionnaire or established an ongoing cooperation with NGOs during the implementation phase.⁵⁵

HIPS has not been forthcoming with the findings of the survey. Their presentation at the UNDP Workshop on 23 February 2006 fell short of expectations in that it provided detailed information about the objectives and methodology of the survey but did not touch upon its findings. That HIPS was unable to share the preliminary findings of the survey nearly four months after the completion of the fieldwork goes against their stated approach about being transparent. Likewise, HIPS limited its presentation to the survey (the *quantitative* component) and did not give any information about when the findings of the *qualitative* component would be announced or what its preliminary findings were.⁵⁶

Further development of government policy, international cooperation and possible future projects are pending on the results of the Hacettepe Survey, so the completion and dissemination of the results are crucial.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ The “sub-regional plans” proposed models for the delivery of public services and the patterning of rural settlements in 12 rural areas based on the results of focus group interviews with IDPs in south-eastern provinces. See, for instance, Türk Sosyal Bilimler Derneği, “Bingöl İli Genç İlçesi Yağızca Köyü ve Çevresi Alt Bölge Gelişme Planı” in *Doğu ve Güneydoğu Bölgesi Köye Dönüş ve Rehabilitasyon Projesi Alt Bölge Gelişme Planları*, 2002, Ankara: GAP (all twelve plans are available in a document CD at the GAP Office in Ankara).

⁵⁰ UNDP and European Commission (EC) officials working with the government team on the IDP issue acknowledge the findings of that research, but they say they have concluded that it did not provide a statistically-grounded estimate of the numbers and needs of displaced people.

⁵¹ For instance, Akdeniz Göç-Der helped the HIPS team in reaching IDPs in Mersin. Phone interview with Ahmet Kalpak, Director of Göç-Der's Diyarbakır Branch, 27 February 2006; and written communication with Şefika Gürbüz, 22 February 2006.

⁵² Written communication with Şefika Gürbüz, 22 February 2006.

⁵³ Phone interviews with Mahsunî Karaman, Migration Coordinator in Diyarbakır Bar Association, 25 February 2006, and with Ahmet Kalpak, Director of Göç-Der's Diyarbakır Branch, 27 February 2006.

⁵⁴ Written communication with Jonathan Sugden of HRW, 9 March 2006. Sugden said that this exchange between HRW and HIPS took place during the workshop of 4 March 2005.

⁵⁵ Apparently, the UNDP saw, and provided HIPS with feedback on, a draft of the questionnaire, but the questionnaire has not been made public otherwise. Interview with UNDP official, 14 February 2006, Ankara.

⁵⁶ The original time plan for the Hacettepe Survey mentions a report on the findings of the qualitative research. Presentation at the HIPS Workshop on 4 March 2005, available from <http://www.hips.hacettepe.edu.tr/tgyona/sunum.htm>.

2.2.3 The Ability of Academics and NGOs to Conduct Research on Displacement in Turkey

Following the presentation of the TESEV Report to the interior Minister in early October 2005 and its public launch on 28 October 2005, Turgay Ünalán, a member of the TESEV Working Group and Technical Director of the Hacettepe Survey, was informed by the President's Office of Hacettepe University that he would be investigated on the basis of a letter the SPO had sent to the university. In November 2005, Ünalán received written notice that he was removed from his duties in the Hacettepe Survey due to the ongoing investigation. The grounds for the investigation were that he took part in another project without authorisation from the university and that he violated the confidentiality of the Hacettepe Survey. As of 31 May 2006, the investigation continues.

Both TESEV and Turgay Ünalán's colleagues at the TESEV Working Group, including the authors of this report, consider this investigation to be an infringement of academic freedom in general and Ünalán's academic freedom in particular. It is a generally accepted practice at university faculties in Turkey to work in more than one research project on a given topic. When TESEV invited Ünalán to become a member of the Working Group, it asked HIPS to give authorisation for his participation in the group's activities. It is the TESEV Working Group's understanding that HIPS then gave the requisite permission. Both TESEV and the TESEV Working Group are concerned that the investigation against Ünalán could potentially discourage academics from working on internal displacement and other issues which are still considered to be "politically sensitive" in Turkey.

In addition, it is of concern that other researchers investigating human rights abuses have recently been confronted with restrictions. Jonathan Sugden, a HRW researcher who was conducting research on abuses allegedly involving the gendarmerie and village guards in the south-east, was detained and subsequently deported on the ground that he lacked valid authorisation to carry out research.⁵⁷

Outstanding issues/further recommendations:

The commissioning of Hacettepe University to conduct a comprehensive study on IDPs is a significant step towards understanding the causes of internal displacement, and identifying the current conditions and needs of the displaced. The initiation of the survey has raised expectations that the findings of the study will facilitate the development of government policy, international cooperation and possible future NGO projects. However, Hacettepe University has so far not shared the findings of the study, the quantitative component of which was completed in November 2005. The findings of both the qualitative and quantitative components of the Hacettepe Survey should be disclosed completely and without further delay. The SPO and the Hacettepe University should take steps to ensure that the academic freedom of scholars studying internal displacement is respected.

⁵⁷ HRW, "Turkey: Human Rights Watch Researcher Detained in Kurdish Area", 12 April 2006, available from <http://www.hrw.org/english/docs/2006/04/12/turkey13171.htm>. In a statement, HRW said that "Sugden was present in the country on a tourist visa, which Turkish authorities had confirmed provides a legitimate basis for him to carry out research in the country, as it is and has been for any human rights lawyer or delegation carrying out similar work."

3. PROTECTION

3.1 Relevant Recommendations from the Representative

To the government of Turkey:

- (i) Clarifying the role of the security forces in the return process: the government should ensure that the role of the security forces, or jandarma, in the return process is primarily one of consultation on security matters, as the government told the RSG was the case. Displaced persons who have been granted permission by the authorities to return to their villages – the decision being based on the advice of the jandarma – should be allowed to do so without unjustified or unlawful interference by the jandarma;
- (ii) Disarmament and abolition of the village guards system: the government should take steps to abolish the village guard system and find alternative employment opportunities for existing guards. Until such time as the system is abolished, the process of disarming village guards should be expedited;
- (iii) Mine clearance: given the government’s commitment to accede to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction and its expertise and role in demining activities overseas, and in view of the serious obstacle which landmines pose to the safe return of displaced persons, the government is strongly urged to undertake mine clearance activities in the relevant areas of the south-east to which displaced persons are returning, so as to facilitate that process.

3.2 The Role of the Security Forces in the Return Process

The RSG called on the government to clarify the role of the security forces in the return process. In particular, he asked the government to ensure that the role of the security forces, or jandarma (gendarmerie),⁵⁸ in the return process is primarily one of consultation on security matters, and also underlined that displaced persons should be allowed to return without unjustified or unlawful interference by the jandarma. As stated above under “Clarifying and Disseminating the National Policy”, the Framework Document states that IDPs do not require “any permission” to return to their homes and “the issues related to the security conditions of the places subject to returns will be coordinated by the governorships with the relevant authorities”.⁵⁹ Overall, there have been no reports of unlawful interference by security forces against returning IDPs in recent years.

3.3 Disarmament and Abolition of the Village Guards

The position of provisional village guards (*geçici köy korucusu*) was created on 26 March 1985 through a clause added by Law no. 3175 to the 1924 Village Law (Law no. 442).⁶⁰ They were hired pursuant to the decision of the cabinet of ministers, at the request of the interior ministry. Currently, this practice is in effect in 22 provinces. Not much is publicly known about the principles on which provisional village guards are hired and fired and what their duties precisely entail, since the Implementing Regulation (*Yönetmelik*) on Law no. 3175 is classified on the grounds that it pertains to “national security”.⁶¹ According to the interior ministry, as of 7 April 2006 there were 57,174 provisional village guards in the region.⁶² In addition, there are also voluntary village guards (*gönüllü köy korucusu*), or civilians who volunteer to become village

⁵⁸ The Gendarmerie Command (Jandarma Komutanlığı) is one of the four commands in the Turkish Armed Forces. The jandarma is in charge of security in rural areas of the country. Although the Gendarmerie Command is nominally under the administrative structure of the interior ministry, in practice, it falls under the authority of the Chief of General Staff. As such, the jandarma has been in the forefront of the Turkish army’s fight against the PKK in the eastern and south-eastern regions.

⁵⁹ Framework Document, Implementation Principle 2.

⁶⁰ Köy Kanunu’nun 74üncü Maddesine İki Fıkra Eklenmesine Dair Kanun [Law on the Addition of two Provisions to Article 74 of the Village Law], no. 3175, 26 March 1985. This information is based on the publication in the Official Gazette of a decision rejecting a request for the annulment of Law no. 3175. Resmi Gazete, no. 18995, 21 January 1986.

⁶¹ Minister of Justice Cemil Çiçek’s written answer to a question by MP Mesut Değer, 2 June 2005, available from <http://www2.tbmm.gov.tr/d22/77-5667c.pdf>.

⁶² Information provided upon request by the Public Relations Department of the interior ministry, 24 April 2006 (on file with the TESEV Working Group).

guards with the stated purpose of protecting themselves and their families against the PKK. While they are provided with arms by the local authorities, they do not receive a salary and are not authorised to take part in military operations.⁶³ The legal basis of this position is also Law no. 442. Voluntary village guards are hired by sub-provincial governors. According to Abdülkadir Aksu, there were 12,279 voluntary village guards in the region as of 30 November 2003.⁶⁴

In principle, the hiring of both provisional and voluntary village guards was discontinued in accordance with a government decree in 2000.⁶⁵ However, a recent local news account reported that 650 voluntary village guards had been hired in the Sason district of Batman.⁶⁶ In response to the TESEV Working Group's query, an interior ministry official said that "these people had volunteered to protect their villages themselves", that the sub-provincial governor's office had merely registered their names, and that they were not provided with firearms. He reiterated that it had not been legal to recruit village guards in the region since 2000.⁶⁷

According to the interior ministry, 5,139 provisional village guards "committed crimes" between 1985 and April 2006, and 868 of them were arrested. Among the crimes committed, 2,391 were "terror related", 964 were crimes directed against property, 1,341 were against individuals and 443 were related to smuggling.⁶⁸ As of December 2003, 264 voluntary village guards were convicted for crimes such as murder and attempted murder, violation of the firearms law, firing of arms in public places, forestry products smuggling, and arms smuggling. Seventy-eight voluntary guards were convicted of aiding and abetting the PKK.⁶⁹ The national media have carried various stories in recent years about village guards' criminal activities such as the abduction of women, aggravated assault and forming armed gangs.

Despite all the evidence about criminal incidents involving the village guards, there is no indication that the government is planning to disarm the village guards and abolish the village guard system, as called for by the RSG Deng. In fact, far from disarmament, an interior ministry Regulation (*İçişleri Bakanlığı Yönetmeliği*) in 2003 permitted village guards who resigned from the system as well as the legal heirs of deceased village guards to continue to legally possess arms previously provided by the authorities.⁷⁰

The main initiative to address the issue is a draft law on the village guards currently being finalised by the interior ministry; however, the law apparently does not include measures for the abolition of the system. The TESEV Working Group was told that the purpose of the draft law was to improve the social and economic conditions of provisional guards.⁷¹ The Minister of Interior has said that work was under way to provide social security benefits to provisional village guards⁷² in order to "meet their demands and solve problems pertaining to the provisional village guard system".⁷³ But there is no indication that a government effort exists to develop a centralised programme to provide alternative employment to provisional village guards, though some news reports about local efforts to employ them in other sectors have appeared in the past few years.⁷⁴

As mentioned in "Clarifying and Disseminating the National Policy" above, the Framework Document indicates that "complaints concerning provisional village guards will be given priority within the framework

⁶³ Interview with a public official in the region. Summer 2005.

⁶⁴ Minister of Interior Abdülkadir Aksu's written answer to a question by MP Mesut Değer, 12 December 2003, available from <http://www2.tbmm.gov.tr/d22/7/7-1471c.pdf>.

⁶⁵ MOI presentation at the UNDP Workshop.

⁶⁶ See, "Sason'da 2 bin 259 Korucu", *Batman Gazetesi*, 16 June 2005, available from <http://www.bianet.org/2005/06/16/62517.htm>.

⁶⁷ Phone interview with an interior ministry official, 27 February 2006.

⁶⁸ Information provided upon request by the Public Relations Department of the interior ministry, 24 April 2006 (on file with the TESEV Working Group), and Minister of Interior Abdülkadir Aksu's written answer to a question by MP Türkân Miçoğulları, 14 June 2005, available from <http://www2.tbmm.gov.tr/d22/7/7-6226c.pdf>.

⁶⁹ See Minister of Interior, footnote 64.

⁷⁰ Geçici ve Gönüllü Köy Korucularının Elllerinde Bulundukları Ruhsatsız Silahların Teslimi ve Ruhsata Bağlanması Hakkında Yönetmelikte Değişiklik Yapılmasına Dair Yönetmelik [Implementing Regulation on the Submission and Licensing of Unlicensed Guns Possessed by Provisional and Voluntary Village Guards], Resmi Gazete, no. 25110, 16 May 2003, available from <http://rega.basbakanlik.gov.tr/Eskiler/2003/05/20030516.htm#4>.

⁷¹ The interior ministry refused to share the draft law with the TESEV Working Group on the grounds that this could cause speculations over a text that had not yet been finalised.

⁷² At the beginning of 2006, an amendment to the Village Law was put into effect allowing currently employed provisional village guards and those who have served at least 10 years in the past as well as all their legal dependents to be provided with the "green card", the free healthcare programme for the poor (See "Current Conditions" below). Köy Kanununda Değişiklik Yapılmasına Dair Kanun [Law on the Amendment of the Village Law], no. 5443, Resmi Gazete, no. 26042, 3 January 2006, available from <http://rega.basbakanlik.gov.tr/Eskiler/2006/01/20060103-3.htm>.

⁷³ See Minister of Interior, footnote 68.

⁷⁴ For instance, in 2000 and 2003, the governor of Şırnak province reportedly sought to employ provisional village guards as janitors in schools, but this attempt appears to have met with resistance by some guards who considered such work to be inferior. See, for example, <http://www.savaskarsitlari.org/arsiv.asp?ArsivTipID=5&ArsivAnaID=11772> and <http://www.evrensel.net/03/01/17/kose.html#2>.

of returns”.⁷⁵ While it is positive that problems related to the village guards are addressed for the first time in the government policy, it is of concern that no mention is made of abolishing the system or of disarming the village guards, as recommended by the RSG. Overall, the interior ministry’s position is that the village guard system is necessary to guarantee the security of returning IDPs; ministry officials justify this argument by saying that the safety of returns is also emphasised in the Guiding Principles.⁷⁶ This is in contrast to the position of many civil society organisations which identify the village guards as a security concern for IDPs and returnees because of the numerous human rights abuses committed by provisional village guards in the past.

3.4 Human Rights Abuses Against Returnees

In the last couple of years, reports of human rights abuses in the region have gone down considerably.⁷⁷ In line with this, reports of harassment of IDPs by village guards on the grounds that the guards hindered them from returning have also declined;⁷⁸ and in the few cases that have been reported, the perpetrators have been taken to court.

There were two reported cases a few years ago in which village guards illegally occupied agricultural property belonging to returning IDP families. In one case, village guards shot at eight returning families in the Bismil district of Diyarbakır in September 2002, killing three people and injuring several others. After the incident appeared in the national media, public authorities took measures to provide security for the returnees and arrested the village guards.⁷⁹ In another incident, three IDPs who visited their village to harvest plants in summer 2002 were killed by village guards who had occupied their farms in the Nurettin village of the Malazgirt district of Muş province.⁸⁰ In autumn 2004, village guards who had occupied the homes of Assyrian families in villages of the Idil and Midyat districts of Şırnak and Mardin provinces were removed by the jandarma so that the families could return to their homes.⁸¹

Assaults on IDPs are not frequent and public authorities handle such cases once they are reported. However, TESEV Working Group interviews with IDPs living in the provincial centres of Diyarbakır, Hakkâri and Batman indicate that there continue to be incidents in which village guards illegally cut trees, harvest produce from or graze their animals in displaced families’ property and pose a perceived threat for returnees as well as a hindrance to the return of other IDPs who are contemplating return.⁸²

The village guards are more numerous in some provinces and districts than others; therefore, this threat is not uniform in all return areas.⁸³ IDPs usually report violations carried out by village guards to NGOs such as Human Rights Association (HRA) and Foundation for Society and Legal Studies (TOHAV), and to bar associations which then bring the cases to courts and the attention of the media.

3.5 Mine Clearance

Turkey acceded to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (the “Ottawa Convention”) on 25 September 2003. The government recently also committed itself in the Framework Document to address “problems caused by landmines laid by the terrorist organisations in the context of returns”.⁸⁴ These two initiatives are positive developments towards fulfilling the RSG’s recommendation related to mine clearance.

The Ottawa Convention entered into force in Turkey on 1 March 2004. On 1 October 2004, Turkey submitted its first Article 7 report covering the period between 1 March and 28 August 2004 (hereafter, “Turkey’s first

⁷⁵ Framework Document, Implementation Principle 5.

⁷⁶ Interior ministry official speaking at the UNDP Workshop.

⁷⁷ HRA’s Annual Report for 2005, available from <http://www.ihd.org.tr>. Hereafter, HRA Report- 2005.

⁷⁸ *Ibid.* For instance, HRA said in its annual report that there were 14 cases of torture and ill treatment by provisional village guards in 2005. It did not specify where these incidents occurred.

⁷⁹ For instance, see Şeyhmuz Çakan and Ahmet Şık, “Korucular Yakalandı”, *Radikal*, 29 September 2002, available from <http://www.radikal.com.tr/haber.php?haberno=51620&tarih=29/09/2002>.

⁸⁰ For instance, see Celal Başlangıç, “Kanatan Yara Koruculuk”, *Radikal*, 22 July 2002, available from http://www.radikal.com.tr/veriler/2002/07/22/haber_44153.php.

⁸¹ Faruk Balıkçı and Muzaffer Duru, “Sarı Köyü Asıl Sahiplerine Teslim Edildi”, and Nazif İflazoğlu, “Süryanilerin Derdi Güvenlik”, both in *Radikal*, 25 September 2004, page 5.

⁸² For instance, interviews with three IDPs in Diyarbakır, February 2005, and one IDP from Van in Istanbul, July 2005.

⁸³ For the distribution of village guards in different provinces, see Minister of Interior, footnote 68.

⁸⁴ Framework Document, Implementation Principle 6.

Article 7 Report”).⁸⁵ It submitted an annual update on 10 May 2005 for the period between 1 January and 31 December 2004 (hereafter, “Turkey’s second Article 7 Report”).⁸⁶ The third report covering the calendar year 2005 is due in the upcoming months.

The exact numbers and locations of landmines in Turkey are unknown. The only official information on this issue can be found in the Article 7 reports the Turkish government has submitted to the UN Secretary-General on the implementation of its treaty obligations and the presentations it has made at various UN standing committee meetings. In its first Article 7 report, Turkey declared a stockpile of just under three million anti-personnel mines,⁸⁷ 920,000 already laid in 15 areas⁸⁸ and 687 suspected to be placed in seven provinces.⁸⁹ Turkey had already ceased its production of anti-personnel mines and suspended their sale and transfer in 1996.⁹⁰ Furthermore, the Turkish Armed Forces are banned from using mines pursuant to a directive from the Chief of General Staff on 26 January 1998.⁹¹

While the government’s commitment in the Framework Document to address the landmine issue is positive, it is problematic that the document does not address landmines laid by the Turkish Armed Forces. Similarly, Turkey’s Article 7 reports do not specify who had laid landmines, nor the date and location of their placement. According to NGO reports, there are landmines around security compounds, along the border with all neighbouring countries in the east and south-east, and in some inhabited areas away from the borders as well as around the villages “evacuated for security reasons”.⁹² NGOs state that these landmines have been placed by both the government and the PKK.⁹³

The Framework Document does not express a commitment to undertake mine clearance activities, as recommended by the RSG. Upon a query by the TESEV Working Group, an interior ministry official said the state guarantees the clearance of the mines, but he did not elaborate on how or when this will be done.⁹⁴ Turkey’s annual Article 7 reports do not provide information on the destruction of stockpiled anti-personnel mines, and merely state that such activities are ongoing. In an official statement to the UN, the government said stockpiled mines will be destroyed following the completion of the Mine and Ordinance Disposal Facility in 2006.⁹⁵ As for the clearing of deployed landmines, Turkey reported in its Article 7 report that it has destroyed 1,225 of them, but did not specify where the clearance activities took place.⁹⁶ In a separate statement, the government reported it had initiated these activities in 1998 in Diyarbakır, Batman, Mardin, Bitlis, Bingöl, Tunceli and Gölle.⁹⁷ However, NGO reports contest that statement with respect to Diyarbakır and Mardin, based on the fieldwork conducted in these provinces.⁹⁸ NGOs also criticise the government for concentrating its mine clearance activities along the border areas and neglecting residential areas within the country.⁹⁹ Turkey has also reported that it intends to retain 16,000 antipersonnel mines for the training and development of the Turkish Armed Forces,¹⁰⁰ the second highest number of retained mines among States Parties to the Ottawa Convention.¹⁰¹ However, the government also noted that this figure may be reassessed in line with the downsizing of the armed forces.¹⁰²

⁸⁵ While the report does not indicate a date of submission, the official date listed by the UN is 1 October 2004. International Campaign to Ban Landmines (ICBL), *Landmine Monitor Report 2005-Turkey*, 2005, footnote 4, available at www.icbl.org (hereafter “Landmine Monitor Report”).

⁸⁶ The report cites a submission date of 30 April 2004, but it actually means 30 April 2005. Phone interview with an official at the Organisation for Security and Co-operation in Europe Arms Control and Disarmament Affairs of the MFA, 07 March 2006. The date of submission listed by the UN is 10 May 2005. *Landmine Monitor Report*, footnote 5.

⁸⁷ First Article 7 Report, Form B.

⁸⁸ *Ibid.*, Form C. These areas are: Ardahan, Batman, Diyarbakır, Doğubeyazıt, Gaziantep, Hakkâri, İskenderun, Kağızman, Kars, Mardin, Siirt, Şanlıurfa, Şırnak, Tunceli and Van.

⁸⁹ *Ibid.* Provinces suspected to contain mines are: Batman, Bingöl, Bitlis, Mardin, Tunceli, Şırnak, Siirt.

⁹⁰ *Landmine Monitor Report*, page 2.

⁹¹ *Ibid.*, page 4.

⁹² Initiative for a Mine-Free Turkey, *Information on Landmines in Turkey*, <http://www.mayinsizbirturkiye.org/>.

⁹³ *Ibid.* See also *Landmine Monitor Report*, page 5.

⁹⁴ Bekir Sıtkı Dağ, UNDP Workshop.

⁹⁵ *Landmine Monitor Report*, page 3, citing “Statement Made by Turkey on 13 June 2005 at the Ottawa Treaty Intercessional Meeting”, Standing Committee on Mine Action, Mine Risk Education and Mine Action Technologies, Geneva, 13 June 2005.

⁹⁶ Second Article 7 Report, Form G.

⁹⁷ *Landmine Monitor Report*, page 7, citing “Presentation by Turkey, Standing Committee on Mine Clearance, Mine Risk Education and Mine Action Technologies”, Geneva, 11 February 2004.

⁹⁸ *Ibid.*, citing the Initiative for a Mine-Free Turkey, “Report on visits to Diyarbakır and Mardin”, 13-17 June and 20 July 2004; and the confirmation of this information by HRA Diyarbakır.

⁹⁹ For a critique by the HRA, see Tolga Korkut, “İHD Mayına Karşı Eğitim Kampanyası Başlatıyor”, *Bianet*, 25 April 2006, available from <http://www.bianet.org/2006/04/25/78172.htm>. The coordinator of the mine project of the Diyarbakır Bar Association expressed a similar view. Tolga Korkut, “Türkiye’nin Hâlâ Mayın Politikası Yok”, *Bianet*, 05 April 2004. <http://www.bianet.org/2006/04/05/77224.htm>.

¹⁰⁰ Second Article 7 Report, Form D.

¹⁰¹ *Landmine Monitor Report*, page 3.

¹⁰² *Ibid.*, page 4, citing “Statement by Turkey on 13 June 2005 at the Ottawa Treaty Intercessional Meeting”, Standing Committee on Mine Action, Mine Risk Education and Mine Action Technologies, Geneva, 13 June 2005.

¹⁰³ Second Article 7 Report, Form I.

¹⁰⁴ *Landmine Monitor Report*, page 7.

Turkey reports that all mined areas are fenced and marked with permanent hazard signs in accordance with international standards; that both fences and hazard signs are checked periodically; that all land mines are monitored by guards 24 hours a day and that the residents are notified by local authorities about the existence of minefields.¹⁰³ However, NGOs report that local people say that the fences around marked minefields are broken, and that “mines and UXO (unexploded ordinance) can be found in unmarked and unfenced locations in inhabited areas where, in the past, both government and opposition forces used them”.¹⁰⁴ At the time of writing this report, the Turkish government has not yet conducted any mine risk education. While there are local initiatives to raise awareness¹⁰⁵ and to provide legal aid to mine victims,¹⁰⁶ the absence of a centrally-coordinated mine risk education and awareness programme is a cause of great concern.

Landmines and UXO pose a significant threat to the lives of civilians as well as the military personnel in the south-east region. In its first Article 7 report, Turkey reported that a total of 400 armed forces personnel had been killed and 1,126 disabled due to landmine explosion between 1984 and 2004, but did not indicate the figures for civilian casualties.¹⁰⁷ The casualties indicated in the second report were also limited to the death (25) and injury (123) of the military personnel for the period between 1 March 2004 and 1 March 2005.¹⁰⁸ However, the government provided official numbers for civilian casualties in a separate document: 140 civilian mine/UXO related casualties (29 deaths and 111 injuries) in 2004 and 2005, including three killed and two injured children.¹⁰⁹ NGO figures differ. According to the Human Rights Association (HRA), a total of 69 deaths and 161 injuries were caused by landmines and UXOs in 2005 alone.¹¹⁰ However, the HRA does not identify the location of these incidents nor specify whether, and if so how many, of these casualties may have been displaced people. The Initiative for a Mine-Free Turkey gives the following figures for 2004: at least 168 casualties, including 57 killed (35 of whom were civilians) and 111 injured (72 of whom were civilians).¹¹¹ Whatever the actual figures may be, the high number of casualties among civilians calls into question the adequacy of the protection and warning mechanisms the government claims are in place.

Mines and unexploded shells are of particular concern in Hakkâri, a province which neighbours both Iran and Iraq and thus has been heavily mined along the border, and where there have been massive population movements both within the province and across international borders. The Hakkâri Anti-Landmine Awareness Campaign, a local NGO that has been conducting a field study to identify dangerous areas, keeps statistics on casualties and plans to launch a public awareness campaign aimed at educating civilians. The information to be released by this local NGO will be an important resource in this regard. According to a news release issued by this group, at least 50 people, mostly women and children, died in Hakkâri in 2004 alone.¹¹²

Landmines represent a significant obstacle to return and a source of great security concern for returnees. While there are no figures on mine and UXO-related casualties among returnees, local NGO reports and media coverage as well as the TESEV Working Group’s missions in the region suggest that returnees constitute a vulnerable group because they return to rural areas where landmines and unexploded shells are concentrated. For example, during a visit to a village in Batman where IDPs have recently returned, villagers showed a local journalist accompanying the TESEV Working Group a large unexploded shell they had found in the vicinity of the village.¹¹³ Residents pointed out that this was not the first time they had found an unexploded shell near the village,¹¹⁴ that they were concerned for their security and “almost regretted that they had returned to their village”.¹¹⁵ Children may be especially at risk. In one village in

¹⁰⁵ A documentary film on landmines and unexploded ordinance (UXO) made by the Initiative for a Mine-Free Turkey and broadcast in the national media is the first visual material on this issue in Turkey. Landmine Monitor Report, page 8. Also, the Hakkâri Anti-Landmine Awareness Campaign is a notable local awareness-raising initiative. Similarly, the HRA has recently launched a mine risk education campaign. See Korkut, “IHD Mayına Karşı Eğitim Kampanyası Başlatıyor”, footnote 99.

¹⁰⁶ In the context of its Justice for All Project, the Diyarbakır Bar Association provides legal aid to mine victims. Landmine Monitor Report, page 8.

¹⁰⁷ First Article 7 Report, Form J.

¹⁰⁸ Second Article 7 Report, Form J.

¹⁰⁹ Landmine Monitor Report, page 9, citing Turkey’s Response to Landmine Monitor Questionnaire, Permanent Mission to the UN in Geneva, 31 August 2005.

¹¹⁰ HRA Annual Report- 2005.

¹¹¹ Landmine Monitor Report, page 9.

¹¹² Press Release by the Hakkâri Anti-Landmine Awareness Campaign, “New Group Launches Anti-Landmine Campaign in Kurdish Region of Turkey”, 1 November 2004.

¹¹³ The next day, this incident was covered in the local newspaper. “Dikkat Patlayabilir!”, *Batman Çağdaş*, 30 June 2005.

¹¹⁴ *Ibid.* In the earlier case, the jandarma destroyed the UXO.

¹¹⁵ *Ibid.* During TESEV Working Group’s fieldwork in this village, village guards who were assigned by the sub-provincial governor to accompany the team on the pretext of providing “security” told the team that the road might have been mined by the PKK. They then made the team members go along the road first. *Batman*, 29 June 2005.

the Diyarbakır province, the TESEV Working Group was told by returnees that they were concerned for the safety of children who, they were afraid, could try to play with unexploded shells that they had seen near their homes. A lawyer in Batman told the TESEV Working Group that two children were killed in a village of the Sason district as a result of mine explosion while they were playing out in the fields.¹¹⁶ The prospect of post-return mine-related casualties in Hakkâri is a cause for particular concern, since almost no meaningful return has taken place there and the villages in the province have almost entirely been evacuated. A local NGO warns that a sudden return process undertaken to please the international community not preceded by an extensive survey and mine clearance initiative "could have devastating consequences".¹¹⁷ HRA echoes this concern by stressing that the areas around villages from where people were evicted should be cleared of mines before returns take place to these areas.¹¹⁸

Outstanding issues/further recommendations:

The village guard system poses a risk in terms of the protection of human rights in the region as well as an obstacle to IDP returns in some regions. Both provisional and voluntary village guards should be disarmed and the system should be disbanded. As part of their rehabilitation, village guards should be provided with social security coverage and alternative employment unless they have criminal records. Village guards should be employed in sectors other than education and security. In order to facilitate peace and security, PKK militants need to be reintegrated into society through complete disarmament. The way should also be opened for their employment unless they have engaged in criminal activities. The government and NGOs should cooperate in developing policies about the social reintegration of all parties to the conflict, and create mechanisms to resolve longstanding conflicts between the village guards and the rural population.

The landmines issue is of great concern due to the lack of comprehensive statistics on their locations and numbers. Landmines and unexploded ordnance pose a significant threat to returning IDPs. The government and the armed forces should cooperate with local NGOs and international institutions to effectively and expeditiously tackle this problem. As a first step, the government needs to ensure that all mined and potentially mined areas are fenced and marked with clear signs. The government should also launch a centrally coordinated mine risk education campaign in Turkish and Kurdish, in cooperation with civil society, local administrations and international institutions.

4. CURRENT CONDITIONS OF THE DISPLACED

4.1 Relevant Recommendations from the Representative

To the government of Turkey:

Addressing the current conditions of the displaced: while the improved possibilities for return must be welcomed, it should be recognised that the return of the displaced to their original homes and lands may be a lengthy process and that there is a need for the government, in the meantime, to enhance its efforts to address their current conditions, which are reported to be poor, in cooperation with NGOs and United Nations agencies. It should be acknowledged that many of the social and economic problems affecting the displaced also confronted the host communities and that measures to address these are ongoing, including within the context of the GAP and in cooperation with local NGOs and United Nations agencies. However, attention should be paid to addressing those problems that are specific to the displaced, such as access to adequate housing, health care and psychosocial care for women and children.

¹¹⁶ Interview with Mustafa Yıldız, Batman, June 2005. Yıldız did not specify whether these children were returnees.

¹¹⁷ Press release by the Hakkâri Anti-Landmine Awareness Campaign. See footnote 112.

¹¹⁸ Korkut, "İHD Mayına Karşı Eğitim Kampanyası Başlatıyor", footnote 99.

4.2 Government Policy regarding the Current Conditions of the Displaced

The Turkish government's policy on internal displacement has so far neglected the *specific* problems of urban IDPs. Likewise, the European Commission, which monitors Turkey's progress on this issue in its annual Progress Reports, has focused mostly on returns and has not paid much attention to IDPs' current conditions.¹¹⁹ Therefore, the adoption of the Framework Document and the Hacettepe Survey are positive steps by the national authorities for the purpose of addressing the current conditions of the displaced. Although the Framework Document for the most part focuses on the implementation of the RVRP, it also notes that measures for providing support and assistance to IDPs to integrate into their new places of settlement will be explored, planned and implemented.¹²⁰ In addition, estimating the number of urban IDPs and gathering information about their problems are among the stated aims of the Hacettepe Survey. One expectation is that the survey will help provide a more accurate picture of the current conditions of the displaced population living in cities.

4.3 The Problems Faced by Urban IDPs

According to government figures, two thirds of the displaced population (approximately 240,000) have not returned to their original homes. The actual numbers of the displaced currently living in cities may in fact be much higher. Some of these urban IDPs no longer consider returning to their original homes; others are currently unable to return although they would eventually like to do so.

IDPs received almost no aid during the initial years of displacement from the authorities for resettlement in other areas in terms of assistance for housing, food, cash, access to education, health care, and employment opportunities.¹²¹ Therefore, the displaced have often joined the ranks of the urban poor in south-eastern cities (such as Diyarbakır, Batman, Hakkâri and Van) as well as western metropolises (such as Istanbul and Ankara).¹²²

Urban IDPs suffer from a host of interrelated problems, including poverty and joblessness; inadequate access to education for school-age children; use of child labour as a coping strategy; poor housing; and insufficient access to health and psychosocial care.¹²³ Coming from agricultural backgrounds and hence lacking skills for urban employment, the majority of displaced adult men and women are unemployed.¹²⁴ Household demands on their labour, inability to speak Turkish and cultural barriers often keep displaced women away from the labour market. The available types of work for both men (such as construction and street vending) and women¹²⁵ (for example childcare and piecework at home) are sporadic, informal and therefore lack social security benefits. Adult unemployment forces displaced families to send their children to work, either on the street as peddlers or in sweatshops (such as small, informal garment workshops in Istanbul). Having to contribute to household income keeps many children away from school, although some of them have been enrolled in the past few years, partly as a result of the conditional cash transfers mentioned below. Working on streets and in sweatshops also puts children's health and safety at risk and hampers their physical and psychological development.

¹¹⁹ See, EC, 2004 "Regular Report on Turkey's Progress towards Accession", (6 November 2004) and 2005 "Regular Report on Turkey's Progress towards Accession", (9 November 2005), both available from <http://europa.eu.int/comm/enlargement/turkey/docs.htm>.

¹²⁰ Framework Document, Objective 6 and Implementation Principle 7.

¹²¹ The only apparent exceptions are the settlement of a limited number of IDPs in the mid-1990s in the Tunceli and Diyarbakır provinces in vacant housing built after earthquakes, and the building of some urban housing for IDPs in the provincial centre of Van several years after displacement. This information comes from TESEV interviews with IDPs in Istanbul and Diyarbakır as well as some newspaper reports. See also, Leyla Şen, "Poverty Alleviation, Conflict and Power in Poor Displaced Households: A Study of the Views of Women in Diyarbakır", *New Perspectives on Turkey*, 32 (2005): 113-136.

¹²² There are a number of studies that emphasise the link between internal displacement in Turkey's south-east region and growing urban poverty. For instance, see: Bilgin Ayata and Deniz Yüksek, "A Belated Awakening: National and International Responses to the Internal Displacement of Kurds in Turkey", *New Perspectives on Turkey*, 32 (2005): 5-42, available from <http://home.ku.edu.tr/~dyukseker/ayata-yukseker-NPT.pdf>; Şen, "Poverty Alleviation"; R. Dağ, A. Göktürk and H.C. Türksoy, editors, *Bölgeçi Zorunlu Göçten Kaynaklanan Toplumsal Sorunların Diyarbakır Kenti Ölçeğinde Araştırılması* (2nd Expanded Edition), Ankara: TMMOB, 1998; Mehmet Barut, *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 Araştırılması ve Çözüm Önerileri*, Göç-Der, İstanbul, 1999-2001; and Bediz Yılmaz, "The Dialectics of Exclusion and Integration in the Example of Kurdish Conflict-Induced Migrants in Istanbul", unpublished paper (on file with the TESEV Working Group).

¹²³ For more information on IDPs' problems related to health and psychosocial care, see TESEV Report, footnote 2.

¹²⁴ The majority of male household heads interviewed by TESEV in Istanbul and Diyarbakır were unemployed. Various surveys conducted among IDPs in Diyarbakır and other cities reveal adult unemployment ratios between 60 and 80 percent. For instance, see Mehmet Barut, *Zorunlu Göçe Maruz Kalan Kürt Kökenli T.C. Vatandaşları* (op. cit.) for a survey conducted in several provinces among IDPs; and R. Dağ, A. Göktürk and H.C. Türksoy, *Bölgeçi Zorunlu Göç* (op. cit.) as well as M. Ersoy, and H. T. Şengül (editors), *Kente Göç ve Yoksulluk: Diyarbakır Örneği* (2000, ODTÜ, Ankara) for surveys of IDPs in Diyarbakır.

¹²⁵ For a study about IDP women's conditions in Istanbul, see Betül Çelik, "I Miss My Village!": Forced Kurdish Migrants in Istanbul and their Representation in Associations", *New Perspectives on Turkey*, 32, Spring 2005: 137-163.

Lack of access to education is a broader problem for IDPs irrespective of child labour. Especially in the early years of displacement, many families could not send their children to school due to financial problems. Many displaced children grew up without any formal education, and cannot find jobs in the urban labour market. Furthermore, lack of access to education is also a problem for returnees and those considering return, as many rural settlements where returns are taking place do not have operating schools (see "Return" below.)

Lastly, the trauma of displacement and ensuing poverty in cities has triggered psychological and other health problems. Most families the TESEV Working Group visited lived in unhealthy, inadequate, overcrowded and small living spaces. These living conditions facilitate the outbreak of disease and make recovery difficult. Children suffer from malnutrition. Despite the existence of a free health care programme for the poor (see the section below) and also because most urban displaced do not have social security,¹²⁶ they do not have adequate access to public health institutions and services. Furthermore, there are no services specifically designed for psychosocial care for displaced women and children. In some women's and children's support centres in the districts of Istanbul, Batman, Hakkâri and Diyarbakır, where IDPs are concentrated, there was awareness of their specific conditions; however there were no particular services designed to help them.

4.4 Government Programmes from which IDPs Benefit

Despite the lack of *specific* projects addressing the current conditions of the displaced, many IDPs have benefited from a number of nationwide programmes targeting the poorest segments of the Turkish population. Chief among these is the "green card" which provides free health care and medication to the poor; one time only food, fuel, clothing, stationery and cash grants given by the local chapters of the Social Aid and Solidarity Fund; bi-monthly conditional cash transfers to families who keep their children in school and have their vaccinations done regularly; and annual direct income support to farmers independent of agricultural production. In addition, some social services have become available for IDP children working on the streets in Ankara, Istanbul and Diyarbakır in the past few years and their families have been enrolled in the above-mentioned conditional cash transfer programme.

The "green card" may deserve special attention in this context as the farthest-reaching programme among IDPs. Currently, more than 3 million people have the "green card" in 14 provinces in the eastern and south-eastern regions (those provinces from where displacement originated and where the RVRP is being implemented) among a total of 10 million "green card" holders across the nation. Although the number of IDPs within these figures is not known, TESEV Working Group's interviews suggest that access to the "green card" is relatively widespread among the displaced.¹²⁷ In addition, direct income support to farmers also deserves some mention because of its reach in the south-east. The number of farmers and the amount of money paid to them in the 14 RVRP provinces is in line with the proportion of this region's population to the total population of Turkey.¹²⁸ The reason why the eastern and south-eastern regions were able to benefit relatively well from this programme despite internal displacement must be related to the fact that farmers can in practice receive the direct income support even if they have not tilled their agricultural lands for many years.

These are welcome developments, but two serious concerns regarding their implementation vis-à-vis the displaced need to be underlined. First of all, these programmes are broad poverty and "social risk" alleviation schemes and so may not take account of the special circumstances and needs of IDPs. A second concern is that many IDPs are not eligible to receive assistance under these schemes. For instance, one of the criteria for determining poverty status is lack of agricultural property; many displaced households own rural

¹²⁶ In Turkey, social security benefits are not universal; one needs to be legally (self-) employed or be the dependent of a legally (self-) employed person in order to be covered under a social security programme. Although lack of social security is a broader social problem and hence far from being unique to the displaced population, the fact that most adult IDPs are either unemployed or sporadically employed in the informal sector has the consequence that most of them do not have social security.

¹²⁷ The Ministry of Health does not provide an urban/rural breakdown of green card holders; however, we may conjecture that the urban poor are the majority among them since health care facilities are sparse in the countryside. It is noteworthy that nearly 30 per cent of green card holders in Turkey live in the 14 "RVRP provinces", whereas these 14 provinces account for only 10.6 per cent of Turkey's overall population according to the 2000 Population Census. These ratios were calculated by the TESEV Working Group based on the Health Ministry's green card statistics (available from http://tdms.saglik.gov.tr/ojspdemos/ykbs/ykbs_ilaktif.jsp) and 2000 Population Census data (available from <http://www.die.gov.tr>).

¹²⁸ Farmers receiving direct income support in the 14 RVRP provinces constitute 11 per cent of all farmers receiving this support in Turkey; and the agricultural area in the RVRP provinces supported through this programme is 14 per cent of all the area included in the programme across Turkey. The TESEV Working Group calculated these ratios based on the Ministry of Agriculture's direct income support figures for 2004 (available from http://www.tarim.gov.tr/arayuz/9/icerik.asp?efl=desteklemeler/Tugem_destekleme/destek.htm&curdir=desteklemeler\Tugem_destekleme&fl=dgd2004_nisanweb.htm).

property which they have not been able to access for nearly a decade, a situation which disqualifies them from some of the aid programmes. Additionally, some of these programmes came too late to meet IDPs' urgent needs and are not planned to be extended. For example, the conditional cash transfer for families with school children and farm support programmes are part of two World Bank-financed projects which started in 2001 and are scheduled to end in 2006 and 2007, respectively.¹²⁹

Finally, the last few years have seen growing concern among policymakers about the issue of child labour among displaced families. A Turkish Parliament Commission report on the problem of “street children” enumerated internal migration and unemployment among the causes of the increasing numbers of children working and/or living on streets in urban centres including Istanbul, Diyarbakır, Mersin and Adana (all of which have significant IDP populations) and recommended that centrally-coordinated policies should be developed to keep them off the street.¹³⁰ A number of children's centres exist in Istanbul where social service workers are aware that a significant portion of the target group is from displaced families; but no special programmes exist for IDP children. However, a project launched in Diyarbakır last year with the collaboration of public authorities, the municipality and NGOs, and which aims at rehabilitating children living and/or working on streets and children with substance abuse problems, might prove to be a model in this sphere.¹³¹

Outstanding issues/further recommendations:

The majority of the IDP population in Turkey has been living in urban centres for around ten years. Since there are no programmes specifically addressing the current conditions of the displaced, they have had to face enormous problems such as endemic unemployment, abuse of child labour, lack of access to education and health care services, and almost no psychosocial care for adults and children. The government, UNDP and civil society organisations urgently need to cooperate in order to develop projects that specifically target the problems of urban IDPs. These projects should on the one hand address children's education, adult literacy and skill training. On the other hand, they should focus on employment creation and preferential loans for small business start-ups. Such programmes should target both urban centres in the south-eastern region and metropolises in the south and west.

Regarding psychosocial care for women and children, it may be possible to increase the numbers of community, women's and children's centres and to work with them to build their capacity to serve the particular needs of the displaced. The government, the UN and civil society organisations should collaborate in providing training and capacity building to these centres.

¹²⁹ See, World Bank, “Social Risk Mitigation Project. Project Brief” and “Agricultural Reform Implementation. Project Brief” (both available from <http://www.worldbank.org.tr>).

¹³⁰ “TBMM Çocukları Sokağa Düşüren Nedenlerle Sokak Çocuklarının Sorunlarının Araştırılarak Alınması Gereken Tedbirlerin Belirlenmesi Amacıyla Kurulan Meclis Araştırması Komisyonu”, 2005, available from http://www.tbmm.gov.tr/komisyon/sokak_cocuklari_kom/raporlar.htm.

¹³¹ Interview with the Mayor of Diyarbakır, February 2005.

5. RETURN

5.1 Relevant Recommendations from the Representative

To the government of Turkey:

(i) Clarity and consultation on the return issue: in view of the various return initiatives and the apparent lack of clarity about how these initiatives relate to one another, at which segments of the displaced population they are aimed and the concerns to which these issues give rise, the government is strongly encouraged to facilitate broad consultation with the displaced and the NGOs and civil society organisations working with them. Assuming that the Village Return project remains the government's principal vehicle for facilitating large-scale return and resettlement in the south-east, the government should consider producing a document that clearly outlines the objectives, scope and resource implications of the project. Furthermore, the GAP administration should make available, if it has not already done so, the results of the feasibility study undertaken by the Turkish Social Sciences Association and facilitate an open discussion with the displaced and NGOs on the findings of this study and the steps which should be taken to implement them;

(ii) Ensuring non-discrimination in return: the government should ensure a non-discriminatory approach to return by investigating and preventing situations in which former village guards are allegedly given preference in the return process over those persons perceived as linked to the PKK. In order to avoid such problems, or the perception that such practices are taking place, it is recommended that local authorities review the need for the displaced to indicate the specific reason for their displacement when applying to return or, alternatively, present a single option which clearly applies to displacement as a result of both terrorist activities and evacuation by the security forces. The authorities should also investigate allegations concerning the use of forms bearing a non-litigation clause. In this connection, the Representative would appreciate receiving information from the government on the outcome of the administrative inspection of the judicial system in Diyarbakir which provided a context in which, according to officials in the Ministry of Foreign Affairs (MFA), this issue might be addressed.

5.2 Government Policy on Return

The most comprehensive step taken by the government to facilitate IDPs' returns to their original places of residence is the RVRP, which was initiated based on a 1998 government circular.¹³² This project – which initially included the 12 provinces of Batman, Bingöl, Bitlis, Diyarbakır, Elazığ, Hakkâri, Mardin, Muş, Siirt, Şırnak, Tunceli and Van – was later extended to include Adıyaman and Ağrı as well.¹³³ The RVRP consists of the following activities in these 14 provinces: resettlement of those who wish to return to their own villages or to other available areas; the building of the necessary social and economic infrastructure; facilitating sustainable living conditions during resettlement; the rebuilding and revival of the disrupted rural life; the development of a more balanced settlement plan in rural areas; a more rational distribution of government investments and services; and supporting the development of "central villages". In 2000, the RVRP's administration passed from the General Directorate of Rural Services to the interior ministry and to relevant governorships, for the purpose of enlarging the project's scope and to facilitate implementation. There are two main types of assistance under the RVRP. First, individual IDP households may be provided with building materials and some farm animals when they apply to a governorship to return to their village (covered under a government-allotted RVRP budget). Secondly, governorships rebuild public infrastructure in some resettled villages (covered under individual governorships' "Special Provincial Administration Budget" (*İl Özel İdare Bütçesi*)).¹³⁴

¹³² Bekir Sıtkı Dağ, Presentation at UNDP Workshop.

¹³³ RVRP was originally introduced in 1994 and covered six provinces. The Project took its current form after the issuance of the 1998 Government Circular.

¹³⁴ For instance, the Diyarbakır Governorship built water pumping stations in 37 villages and 23 hamlets where IDP returns took place and repaired the roads of some resettled villages as part of its 2005 Special Administration Budget. This was in addition to construction materials, farm animals and bee hives given to individual applicants. Phone interview with Diyarbakır Vice Governor, 27 February 2006.

According to the interior ministry, approximately one third of the displaced (138,000 persons) had returned to their villages under the RVRP as of 31 January 2006.¹³⁵ The numbers provided by the ministry are criticised by national and international NGOs as inaccurate, for two reasons.¹³⁶ First, considering that many people were displaced more than ten years ago, their households have grown in many cases and new households have been formed in others. Secondly, many people only return temporarily because either the conditions in their villages of origin are not suitable for returning permanently or because they are now settled in urban areas, but return to their villages of origin seasonally. For example, many displaced people – in particular the elderly – stay in their villages for the planting and harvesting season and then return to the cities for the winter, raising the question of what exactly return means.¹³⁷

5.3 Clarity and Consultation on Return

The government considers the RVRP to be the main return and resettlement programme, but it has not produced a document that clearly outlines the objectives, scope and resource implications of the project. The Framework Document is a positive step in the direction of clarifying overall government policy on returns. However, it does not clarify how the RVRP has been implemented in the past, nor does it specify the particular scope of the project and resource implications. In addition, concrete projects and programmes for the socio-economic revival of the rural areas of the affected region are still lacking, although the Framework Document addresses the need to formulate policies for social, economic, cultural and educational development projects as part of the return process (see “Clarifying and Disseminating the National Policy” above).

The Framework Document commits the government to consultation with NGOs on return.¹³⁸ Yet, until the present, the government has not engaged in any systematic cooperation and consultation with the displaced and civil society organisations on this issue. Some officials say that the RVRP is in some ways still at the “research” stage and that once it moves to the implementation stage, the government plans to consult NGOs.¹³⁹ However, bearing in mind that the RVRP in its current form has been in effect for nearly a decade, this argument is questionable. Consultation with the displaced and civil society is especially important to determine IDPs’ expectations and needs during the return process as well as for the purpose of providing a more secure environment for the returnees.

5.4 Obstacles to Return

Several factors continue to pose obstacles to return in the areas where original displacement took place, including real or perceived security threats to IDPs, landmines and UXO, paucity of aid for returnees, and lack of public and social services in the return areas. The relative importance of these obstacles changes from one place to another.

Security forces do not hinder IDPs from returning on the grounds of lack of safety in most areas about which the TESEV Working Group has gathered information, with the notable exception of Hakkâri. For instance, it is generally safe for IDPs to return to their villages in Batman and Diyarbakır provinces, except several hamlets of a particular village in the Kulp District of Diyarbakır. In Kulp, security forces are reported to have warned villagers wanting to return to those hamlets that there was a safety problem.¹⁴⁰ While conducting the Hacettepe Survey, the HIPS team was unable to reach only two villages (in Bingöl and Ağrı) for security reasons out of the many villages in the sample they have drawn from the 14 provinces where original displacement took place.¹⁴¹ But in Hakkâri, security conditions have posed and continue to pose an obstacle to return. A limited process of return has only started in this province within the past few years and these

¹³⁵ MOI presentation at UNDP Workshop.

¹³⁶ For instance, HRW’s 2005 report documented that there were far fewer returnees in many villages than the figures disclosed by the ministry. See, HRW, “‘Still critical’: Prospects in 2005 for Internally Displaced Kurds in Turkey”, 2005, available from <http://www.hrw.org/reports/2005/turkey0305/index.htm>. Likewise, HRA shared with the TESEV Working Group figures pertaining to selected villages in the region in which the numbers of returnees were clearly below the numbers provided by the ministry. Informal communication with HRA’s Diyarbakır Branch, May 2005.

¹³⁷ For a critical discussion of what “return” means for different people, see Ayata and Yüsekser, “Belated Awakening”, pages 35-36.

¹³⁸ Framework Document, Implementation Principle 10.

¹³⁹ Interview with government officials, 14 February 2006, Ankara.

¹⁴⁰ Phone interviews with Mahsuni Karaman, Migration Coordinator for the Diyarbakır Bar Association, 25 February 2006, and Ahmet Kalpak, Director of Göç-Der’s Diyarbakır Branch, 27 February 2006.

¹⁴¹ Sinan Türkyılmaz, HIPS Presentation at UNDP Workshop.

returns have been seasonal for the most part, with IDPs returning for the summer to harvest their fields.¹⁴² However, an escalation in fighting accompanied by the burning of IDP tents last summer compelled these temporary returnees to once again leave their villages.¹⁴³ There are some villages in Hakkâri, particularly in the Çukurca district along the border with Iraq, where security officials do not allow IDP returns on the basis of lack of security.¹⁴⁴ Security risks include the presence of landmines and unexploded shells (see "Mine Clearance" above) as well as military operations against the PKK or the presence of PKK militants in a particular area.

Although security forces do not prevent IDPs from returning on safety grounds in most areas, many IDPs cite lack of security as one of the key reasons why they are currently unable to return. It should be borne in mind that although armed clashes between the PKK and the Turkish security forces had almost ceased in 1999, armed activity has escalated in the region since 2004, especially in the spring and summer months. Security forces have been conducting operations against PKK hideouts and against PKK infiltration across borders, while the PKK has mined roads and planted bombs. Both sides' actions have resulted in casualties among the military, civilians and PKK militants.¹⁴⁵ Almost all persons interviewed by the TESEV Working Group in the four provincial centres and in some districts of Batman and Hakkâri said that they could not consider returning to their original areas before security and peace were guaranteed. They feared being compelled to flee again due to military operations, armed clashes, assaults by PKK militants, or pressure from the state to become village guards. Urban IDPs are not the only ones to harbour fears for their security if they returned. TESEV Working Group interviews with returnees in several villages in Batman where the return process has gradually started said that they wanted to stay in their villages, but that they feared having to leave again if armed clashes flared up.

In addition, there are obstacles to return that stem from problems in the implementation of the RVRP, paucity of aid and lack of socio-economic infrastructure. The implementation of the RVRP has not been sufficiently transparent, and the authority to allocate payments rests with the governorships (*valilik*) and sub-provincial governorships (*kaymakamlık*) which have created inconsistencies in the allocation of financial assistance for returns in the different provinces. IDPs consider RVRP aid (often in the form of construction materials) to be insufficient for rebuilding a house, covering the costs of moving back and starting agricultural activities.¹⁴⁶ They also emphasise that there are often no public services (piped water, electricity, paved roads, etc) or social services (schools, healthcare) in their villages of origin. The lack of public infrastructure has been a considerable barrier to sustainable return. It should however be emphasised that in some provinces, IDPs' expectations in terms of public amenities may have grown during the many years since they were displaced, making it unattractive especially for younger people and adult women to return to a barren rural life.¹⁴⁷ It should also be noted that in some provinces, for instance Diyarbakır, public authorities have made some investments in rebuilding the infrastructure of returnee villages.¹⁴⁸

In several south-eastern provinces, some families have been resettled in places other than their own villages or hamlets, usually in housing projects in central villages. Some IDPs claimed that the governorships of Tunceli and Van proposed that their families settle in places other than their original places of residence through the RVRP, but that they lost the opportunity to benefit from the RVRP when they refused this offer.¹⁴⁹ Given the social and cultural structure in the region and animosities between groups which emerged in the course of the armed conflict, many families may not want to live in centralised settlements.¹⁵⁰ Therefore, it must be ensured that returns are voluntary and that assistance is not made contingent on certain conditions.

¹⁴² Interview with a public official in Hakkâri, 19 October 2005. NGOs and municipality officers report that IDPs return to their villages only during summer and live in tents, October 2005.

¹⁴³ Interview with Deputy Mayor, Hakkâri, 10 October 2005. The Deputy Mayor said that the burning of tents was concentrated in the villages of the Çukurca district. The HRA also stated that the seasonal returnees in Çukurca, whose harvest was burnt, suffered considerably in 2005. Interview with Necibe Güneş, HRA Hakkâri, 19 October 2005.

¹⁴⁴ An IDP told the TESEV Working Group that IDPs who attempted to return to the Işıklı village of Çukurca were not granted access. Interview with IDPs in Çukurca, 21 October 2005.

¹⁴⁵ For instance, HRA's annual reports indicate a noticeable increase in the number of people killed in armed clashes in 2004 (240 killed) and 2005 (496 killed) up from 104 in 2003, 30 in 2002 and 92 in 2001. 857 people were killed in clashes in 2000. The report does not give a breakdown of where these clashes took place. See HRA Report-2005, footnote 77.

¹⁴⁶ Interviews with IDPs in Diyarbakır and Istanbul in February and July 2005, respectively.

¹⁴⁷ For an elaboration of the different expectations of IDPs regarding return based on gender and generation, see TESEV Report, pages 8-13.

¹⁴⁸ Phone interview with Diyarbakır's Vice-Governor, 27 February 2006.

¹⁴⁹ Interviews with two IDPs from Tunceli and Van in Istanbul, July 2005.

¹⁵⁰ HRW has also argued that IDPs do not wish to be resettled in central villages, citing testimony by IDPs in Van's Konalga village. See HRW, "Displaced and Disregarded: Turkey's Failing Village Return Programme", vol. 14, no. 7 (October 2002), available from <http://hrw.org/reports/2002/turkey/Turkey1002.pdf>. Interestingly, the sub-regional development plans commissioned by the GAP Authority also mention that the overwhelming majority of surveyed IDPs would not want to be resettled in centralised villages because of cultural reasons, tribal rifts and their preference for living close to their agricultural property. For instance, see Türk Sosyal Bilimler Derneği, "Diyarbakır İli Yeniköy Merkez Köyü ve Alt Bölge Planı" in *Doğu ve Güneydoğu Bölgesi Köyü Dönüş ve Rehabilitasyon Projesi Alt Bölge Gelişme Planları*, 2002, Ankara: GAP, p.11.

5.5 Ensuring Non-discrimination in Return

Some IDPs say that in the early 2000s village guards were prioritised in the return process and in the allocation of government aid and investments targeting returnees.¹⁵¹ But there have been no recent reports about priority treatment being given to village guards in the return process.¹⁵² Nevertheless, there may be other types of discrimination in allocating RVRP aid since eligibility criteria are not transparent.¹⁵³

In earlier stages of the return process, there were reports that IDPs who wished to return in the framework of the RVRP had to sign forms on which they had to tick an option saying that they had left their home because of the PKK. This is no longer practiced.

Outstanding issues/further recommendations:

Security forces no longer hinder returns on the grounds of lack of safety in most areas where original displacement took place, with the notable exception of Hakkâri. However, given that armed activity by the PKK as well as military operations by the Turkish armed forces have increased in the past two years, actual or perceived security threats continue to prevent many IDPs from considering return to their original homes and lead returnees to consider leaving their villages again. The government should take further measures to protect the safety of the returnee population in order to prevent a new wave of displacement. Local NGOs and public authorities in the region should cooperate in building trust between IDPs and the state in order to remove perceptions of lack of safety in places where this is not the case.

Other obstacles to return are the paucity of aid under the RVRP, lack of infrastructure and public services in the rural areas from which original displacement took place and resistance against centralised settlements. The government should clarify its implementation of the RVRP in line with the Framework Document, and in consultation with NGOs. A focal point should be created in the interior ministry to work systematically with NGOs on the issue of returns. Concrete steps should be taken to rebuild the rural economy and public infrastructure so that returns may become sustainable.

6. PROPERTY

6.1 Relevant Recommendations from the Representative

To the government of Turkey:

Compensation: the Representative welcomes the steps that are being taken within the government to develop legislation providing compensation to those affected by the violence in the south-east, including those who were evacuated from their homes by the security forces. While aware of the fiscal pressures under which the government is currently operating, the Representative encourages the early submission of this legislation to Parliament and in the meantime urges the government to begin considering the modalities of establishing a system for the efficient handling of claims that will arise under the proposed legislation.

¹⁵¹ For instance, the TESEV Working Group has heard that evacuated village guards were given priority in the provision of housing in a government-built project in Van (Yalım Erez Mahallesi). Similarly, some IDPs in Diyarbakır considered investments in housing in a particular central village to have given priority to village guards. Interviews with IDPs in Diyarbakır and Istanbul, February 2005 and July 2005, respectively. Some IDPs interviewed by TESEV in Batman also claimed that village guards were given priority in access to aid under the RVRP, June 2005.

¹⁵² Phone interviews with Mahsuni Karaman of Diyarbakır Bar Association, 25 February 2005, and with Ahmet Kalpak of Diyarbakır Göç-Der, 27 February 2006. According to the Diyarbakır Governorship's figures, 19,800 of the originally evicted 43,664 people have returned. Phone interview with Diyarbakır's Vice-Governor, 27 February 2006.

¹⁵³ In a village of Batman whose evicted Yazidi population had sought asylum in Germany, a returnee told the TESEV Working Group that he believed that the rejection of his application to the RVRP stemmed from the misguided belief that he must be wealthy since he had lived in Germany. Interview on 30 June 2005.

6.2 Compensation Law

The enactment of the Compensation Law in 2004 is without doubt the most significant step taken to date towards addressing the problem of internal displacement in Turkey. In adopting this law, the government took an important step towards fulfilling the RSG's recommendation, which was also reiterated by the EU in its annual Progress Reports.¹⁵⁴ The government's Framework Document identifies the enactment of the Compensation Law as "a major step ... towards the elimination of the difficulties faced by [IDPs]", and sets as its objective "ensuring effective implementation" of the law.¹⁵⁵

6.2.1 The Procedure and Substance of the Compensation Law

The Compensation Law was enacted on 17 July 2004 and entered into force on 27 July 2004.¹⁵⁶ The implementing regulation was issued by the Council of Ministers on 4 October 2004,¹⁵⁷ and amended on 15 September 2005.¹⁵⁸ Initially, the duration for applications for losses suffered prior to the date of enactment was limited to one year; but this deadline was extended to the beginning of 2007 under a recent amendment to the Compensation Law.¹⁵⁹

The law aims to indemnify persons for material damages since 1987 "arising from acts of terror or from measures taken to fight against terror", and provides compensation to anyone who has sustained losses due to terrorism or anti-terror activities, including (but not limited to) IDPs, members of the armed forces, the police and the village guards.¹⁶⁰ It provides reparation for three kinds of losses: damage to moveable or immovable property, damage to the life and body of the person, and damage sustained due to inability to access one's property.¹⁶¹ The task of processing the petitions, evaluating the incurred losses, and specifying the amount of compensation is conferred on damage assessment commissions,¹⁶² established in provinces on demand.¹⁶³ These commissions are composed of seven members, six of whom are public employees. The chairman is a deputy governor designated by the governor. The remaining members are five public employees appointed by the governor from the departments of finance, public works and housing, agriculture and rural affairs, health, and industry and commerce; and a lawyer appointed by the relevant bar association. The lawyer is the only non-governmental member of the commissions.¹⁶⁴

Upon assessing the damage sustained by the applicants, the commissions prepare declarations of friendly-settlement (*sulhname*), which specify the compensation to be paid in cash or in kind, and present it to the applicant.¹⁶⁵ Any prior payment made to the applicant by the state is deducted from that amount.¹⁶⁶ Should the applicant disagree with the terms of the declaration and refuse to sign it, a protocol of non-agreement is signed,¹⁶⁷ after which time the applicant retains the right to bring an action for compensation in the relevant administrative court.¹⁶⁸

¹⁵⁴ EC, 2004 "Regular Report on Turkey's Progress towards Accession", (6 November 2004) and 2005 "Regular Report on Turkey's Progress towards Accession", (9 November 2005), both available from <http://europa.eu.int/comm/enlargement/turkey/docs.htm>

¹⁵⁵ Framework Document, Objective 7.

¹⁵⁶ Terör ve Terörle Mücadeleden Doğan Zararların Karşılanması Hakkında Kanun [Law on Compensation for Losses Resulting from Terrorism and the Fight against Terrorism], no. 5233, 17 July 2004, (hereafter "Compensation Law"), *Resmi Gazete*, no. 25535, 27 July 2004, available from <http://rega.basbakanlik.gov.tr/>.

¹⁵⁷ Terör ve Terörle Mücadeleden Doğan Zararların Karşılanması Hakkında Yönetmelik [Implementing Regulation on Compensation for Losses Resulting from Terrorism and the Fight Against Terrorism], Decision no. 2004/7955, 4 October 2004, *Resmi Gazete*, no. 25619, 20 October 2004, available from <http://rega.basbakanlik.gov.tr/>.

¹⁵⁸ Terör ve Terörle Mücadeleden Doğan Zararların Karşılanması Hakkında Yönetmelikte Değişiklik Yapılmasına Dair Yönetmelik [Implementing Regulation on the Amendment of the Implementing Regulation on Compensation for Losses Resulting from Terrorism and the Fight Against Terrorism], Decision No: 2005/9329, 22 August 2005, *Resmi Gazete*, no. 25937, 15 September 2005.

¹⁵⁹ This amendment was passed by the parliament on 28 December 2005 and came into effect on 3 January 2006. Terör ve Terörle Mücadeleden Doğan Zararların Karşılanması Hakkında Kanunda Değişiklik Yapılmasına Dair Kanun [Law on the Amendment of Law on Compensation for Losses Resulting from Terrorism and the Fight against Terrorism], no. 5442, 28 December 2005, (Hereafter Law no. 5442), *Resmi Gazete*, no. 26042, 3 January 2006.

¹⁶⁰ Compensation Law, article 1.

¹⁶¹ *Ibid*, article 7 reads: "The damage to be compensated by this Law, through friendly settlement, is as follows: a) All types of damage caused to livestock, trees, agricultural products and any moveable or immovable property; b) Damage resulting from injury, physical disability and death and expenditure incurred for medical treatment and funeral expenses; and c) Material damage suffered by those who could not gain access to their property because of the acts carried out within the context of the fight against terrorism".

¹⁶² *Ibid*, article 5.

¹⁶³ *Ibid*, article 4.

¹⁶⁴ *Ibid*.

¹⁶⁵ *Ibid*, article 5(b).

¹⁶⁶ *Ibid*.

¹⁶⁷ *Ibid*, article 5(c).

¹⁶⁸ *Ibid*, article 12.

As of 31 January 2006, a total of nearly 180,000 applications had been made to the 92 commissions established in 79 provinces.¹⁶⁹ Of these applications, some 16,000 (less than 10%) had been concluded; 6,000 applications resulted in positive decisions for the payment of compensation, 10,000 were rejected.¹⁷⁰ An interior ministry official explained that more than 5,000 of the rejections were on the grounds that the applicants were security personnel who had received compensation earlier.¹⁷¹ He did not indicate the reason for the rejection of the remaining 4,000. An official document TESEV obtained, which provides information on nationwide implementation of the law, includes a breakdown of the grounds for rejections.¹⁷² As of the end of 2005, 8,826 out of 177,416 applications were rejected for the following reasons: 1,650 for falling outside the substantive scope of the law; 5,144 for having received compensation earlier; 474 for falling outside the time period covered by the law; 634 for lack of proper information and documents; and 924 for “other” reasons. Among these, the ground of “lack of information and documents” is of particular concern. This issue is discussed in detail below (see “Evidentiary Matters: High Rates of Rejection Arising from Undue Burden of Proof”).

6.2.2 Shortcomings in the Substance of the Law

The scope of the Compensation Law as defined in Article 1 is positive in that it indemnifies damages, regardless of who has caused them.¹⁷³ Thus, the law encompasses victims who were forced to leave or flee their homes, either by the PKK for having become village guards; or by the security forces for refusing to become village guards or for allegedly aiding the PKK. However, the limitation of the scope of the law to people who were forcibly evicted goes against the Guiding Principles’ broader description of IDPs which also includes people who are “obliged” to flee due to the consequences of armed conflict, situations of generalised violence and human rights violations.¹⁷⁴ The limitation in Article 1 of the law to losses “arising from acts of terror or from measures taken to fight against terror” risks excluding in practice IDPs who were not directly evicted by the PKK or the security forces but who were obliged to flee due to the effects of the conflict in the area. The wide administrative discretion afforded in the application of this provision may lead to narrow interpretations by some commissions. Indeed, a deputy governor in Hakkâri said that the applications of individuals who claim to have been obliged to flee due to security concerns are being rejected because “this law does not allow the assessment of such claims”.¹⁷⁵ While commissions in other provinces, such as Diyarbakır, have so far been flexible in the implementation of this provision,¹⁷⁶ the case of Hakkâri points out to the need to limit the margin of administrative discretion by a legislative amendment, which would explicitly state that losses “suffered due to the armed conflict” are also covered.

Similarly, the law’s temporal scope is problematic: initiating the law’s coverage from 1987 – the year the state of emergency was declared – results in the non-compensation of losses sustained between 1984, the year when the PKK launched its armed struggle, and 1987. The statement in the Framework Document that “[n]umerous villages were deserted in Turkey between 1984 and 1998” also indicates this weakness in the law.¹⁷⁷ Upon having this discrepancy pointed out, an interior ministry official explained that the rationale behind having 1987 as the cut-off date was to provide a remedy to those who could not bring a claim in the courts during the state of emergency, when government policies were exempt from judicial review.¹⁷⁸ While he acknowledged that the clashes started in 1984, he argued that people who have suffered losses then had the chance to bring an action in courts. However, for many people it was not practically possible to sue the state between 1984 and 1987, during which time there was martial law in the region.¹⁷⁹

¹⁶⁹ Bekir Sıtkı Dağ, Presentation at the UNDP Workshop.

¹⁷⁰ *Ibid.*

¹⁷¹ *Ibid.*

¹⁷² Interior ministry document showing the nationwide results of applications under the Compensation Law (Hereinafter “MOI Document”). On file with the TESEV Working Group.

¹⁷³ Compensation Law, article 1.

¹⁷⁴ Article 2 of the Guiding Principles 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 generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border”.

¹⁷⁵ Interview with a deputy governor in Hakkâri, 19 October 2005.

¹⁷⁶ Interview with a lawyer in Diyarbakır, 14 March 2006.

¹⁷⁷ Framework Document, line 1.

¹⁷⁸ MOI official, responding to questions, UNDP Workshop.

¹⁷⁹ Indeed, lawyers point out that the legal process was actually much more inaccessible during martial law, when both the political and judicial processes were under the control of the army. They point out the contrast between the constitutionality of the state of emergency with the extra-legality of martial law. Interview with Tahir Elçi, Istanbul, 12 March 2006.

6.2.3 Dissemination of Information about the Law

The government has not adequately disseminated information on the law. Rather, a group of NGOs, including HRA and Göç-Der, and local bar associations took the initiative to disseminate information and to raise awareness. Notwithstanding, there is an uncertainty as to the depth of awareness among IDPs about the law. It is uncertain whether and how much IDPs know about their rights and how to apply to the law. While most IDPs interviewed by the TESEV Working Group had heard about the law and had applications pending before the commissions, almost all of them lacked meaningful information about these issues and many confused their applications under the law with those under the RVRP or the claims they had brought to courts immediately following their displacement in the 1990s.

IDPs also have an insufficient understanding of the scope of the law. Many believe that the Compensation Law only covers losses resulting from evictions and not death and injury.¹⁸⁰ In another case, a man whose village was burnt down by security forces said that he was not intending to apply since he had not suffered personal injury.¹⁸¹ The law's title has also been a source of confusion. Intimidated by the word "terror", individuals may fear that they would be considered a terrorist if they filed a petition.¹⁸² A lawyer in the region said that victims perceive making an application under the law not as a legitimate claim of their rights, but as lodging a complaint against the state.¹⁸³

The government's failure to adequately disseminate information about the Compensation Law may also serve to feed the widespread feelings of mistrust towards the state. Many NGOs and attorneys perceive the law as intended to appease the EU and the ECtHR. Others harbour mistrust towards the state and doubt that it would act in good faith. The government's initiation of a public awareness campaign about the Compensation Law might help eradicate that mistrust.

6.2.4 The Special Responsibility of NGOs and Lawyers in Establishing Trust

NGOs and lawyers play a critical role in the effective implementation of the law but in certain cases, they have also undermined the process. A complaint expressed by many public officials is that IDPs have abused the law by exaggerating their losses and/or filing applications for losses incurred by their parents when they were minors, in other words claiming compensation when they lack the grounds. While such incidents verified by lawyers are insignificant in number, they are nonetheless causes for concern in that they serve to feed the existing environment of mutual mistrust between the state and the IDPs. Within this context, lawyers have a special responsibility to advise their clients to be truthful in their claims.¹⁸⁴ Another issue is the poor quality of legal services available to IDPs, which is partly related to the perception by some lawyers of the Compensation Law as a revenue-generating source. In Batman, two NGOs' monopoly-like dominance over the representation of IDPs raises concern not only from the perspective of professional ethics, but also in terms of its impact on the quality of legal services. Some lawyers working with these NGOs have up to 600 files in their hands, and it is virtually impossible for them to be able to represent the best interests of each of their clients.¹⁸⁵ Submitting petitions that do not sufficiently reflect the subjective case of each applicant may result in the awarding of low amounts of compensation.

There is also concern about lawyers' abiding by their ethical responsibilities towards their clients. For some lawyers, settling with the government and thus receiving from their clients a pre-agreed commission within a matter of few years may be preferable over a long, difficult and unpredictable legal process. However, some IDPs, albeit in small numbers, prefer to bring their claims to administrative courts and later to the ECtHR with the hope of getting compensation for pain and suffering or winning a judgment against the state. Other lawyers may take an ideological stand and advise their clients not to settle with the commissions

¹⁸⁰ Interview with a former headman (*muhtar*) of two IDP-populated neighbourhoods in Batman.

¹⁸¹ Interview with returnees in a village of Batman, June 2005.

¹⁸² An interviewed IDP in Batman said he would not claim compensation for the death of his father for fear of reprisal, June 2005.

¹⁸³ Interview with Bengi Yıldız, Batman, 29 June 2005.

¹⁸⁴ Indeed, many lawyers interviewed in Batman and Hakkâri were cognizant of their ethical responsibility and have been instrumental in correcting the misrepresentations made by their clients. NGOs have also played an important role in advising IDPs to be truthful.

¹⁸⁵ Interview with Mazlum-Der, Batman, 24 June 2006. Some lawyers in Diyarbakır also conceded privately that some of their colleagues considered applications to this law to be a source of revenue and so they were not protecting the best interests of their clients. Anonymous interview in Diyarbakır, February 2006.

in order to bring an action against the state.¹⁸⁶ Yet some others may engage in clientelist relationships with the commissions in order to expedite the processing of their applications.¹⁸⁷ These examples are grounds for concern in that they may serve to exacerbate the feelings of mutual distrust between the state and the IDPs.

6.2.5 The Types and Amounts of Damages

A uniform view shared by virtually all lawyers and NGOs the TESEV Working Group interviewed is that the non-provision of damages for pain and suffering is a fundamental shortcoming of the Compensation Law. In having paid compensation for pain and suffering to several IDPs who have won a case¹⁸⁸ or friendly settlement¹⁸⁹ at the ECtHR but not granting the same right to those who apply to the Compensation Law, the state effectively discriminates between IDPs who have experienced similar grievances. The lawyers and NGOs the TESEV Working Group interviewed emphasised that the payment of compensation for pain and suffering has great significance in encouraging victims' belief in justice and in achieving social reconciliation (see “Reconciliation” below). It would also serve to compensate losses suffered by a significant number of IDPs who did not own land, but were uprooted from the lands they cultivated and used. In a similar manner, non-pecuniary damages could, to a certain extent, remedy grievances in cases where rights over the land cannot be proven.

The law provides an extremely low amount of damages for death and bodily harm. All attorneys and victims, and some public officials interviewed stated that the 14,000 NTL (\$10,350)¹⁹⁰ paid for death “cannot be the value of a human life”.¹⁹¹ Lawyers also point out that a predetermined, fixed amount of compensation for death and bodily harm contradicts the general principles of the law of damages in Turkey.¹⁹² Pursuant to these principles, it is common practice for the courts to take into account the subjective conditions of the deceased or injured person, such as his/her age, income, and education level, in determining the compensation amount to be paid to such person or his/her legal heirs.

6.2.6 Problems in Implementation

Based on the TESEV Working Group's fieldwork, problems related to implementation have three fundamental causes: 1) Some commissions are well-meaning and hard-working, but have their hands tied due to the shortcomings in the law and the lack of requisite financial and human resources. 2) Others may have good intentions, but wait for clear political instructions from the government to improve and expedite the process. 3) Others are prejudiced against victims whom they perceive as opportunists who want to abuse the law and/or are PKK collaborators.

The main factor explaining the discrepancy in the attitudes of the commissions and the lack of uniformity in their practice is the absence of a clear government directive on the implementation of the Compensation Law. In summer 2005, the foreign ministry asked the interior ministry and the Ministry of Justice in a circular to expedite the assessment of the applications, to be flexible in evidentiary issues and to be generous in

¹⁸⁶ A lawyer in Hakkâri said he would bypass the commissions and the administrative courts and directly apply to the European Court of Human Rights (ECtHR). Interview in Hakkâri on 21 October 2005. Such a legal strategy not only entails a very high risk in light of the ECtHR's rule of exhaustion of domestic remedies, but also raises ethical issues in view of lawyers' duty to represent the best interests of their clients. The ECtHR eventually ruled in the case of *Içyer v. Turkey* that the compensation commissions provide an effective legal remedy which the applicants must exhaust before filing an action in Strasbourg. ECtHR, *Içyer v. Turkey* (2006) Application No: 18888/02, 12 January.

¹⁸⁷ Declaration announcing the conclusions reached by around 50 lawyers at a meeting at the Diyarbakır Bar Association, 2 February 2006 (hereafter the “Lawyers' Declaration”). On file with the TESEV Working Group.

¹⁸⁸ In a case where the ECtHR found that “the security forces deliberately destroyed the applicant's family home and possessions, obliging his family to leave their village”, (para. 194) which “constituted serious violations of Article 13 of the Convention [protecting the right to an effective remedy before a national authority] and Article 1 of Protocol No.1 [protecting the right to the peaceful enjoyment of possessions]” (para. 239) and where it found that the “unacknowledged and presumed death of the applicants' sons in the hands of the security forces” (para. 237) following their “unacknowledged detention by the security forces” (para. 168) violated Articles 2 [protecting the right to life], 5 [protecting the right to liberty and security of the person] and 13 of the European Convention on Human Rights (paras. 168, 191 and 201), the Court awarded non-pecuniary damages to the applicants “for the distress and anguish” they suffered on account of these violations. The ECtHR similarly awarded compensation for non-pecuniary harm in other cases such as ECtHR, *Case of Hasan İlhan v. Turkey* (2005) Application No: 22494/93, 9 November; ECtHR, *Case of Mentese and Others v. Turkey* (2005) Application No: 36217/97, 18 January.

¹⁸⁹ See e.g. ECtHR, *Case of Kemal Güven v. Turkey* (2001) Application No: 31847/96, 25 May; ECtHR, *Case of Cemal and Nurhayat Güven v. Turkey* (2001) Application No: 31848/96, 22 May; ECtHR, *Case of Aygördü and Others v. Turkey* (2001) Application No: 33323/96, 22 May; ECtHR, *Case of Ince and Others v. Turkey* (2001) Application No: 33325/96, 22 May.

¹⁹⁰ This amount will slightly increase to 16,000 YTL (\$11,800) in proportion to the increase in a multiplier based on the salaries of public servants in 2006. Phone interview with Mahsuni Karaman, Migration Coordinator of Diyarbakır Bar Association, 25 February 2006.

¹⁹¹ Interview with a deputy governor in Batman, 23 June 2005.

¹⁹² Lawyers in Batman and Diyarbakır said that it was against the principles of equity to pay the same amount of damages for the death of a 17-year-old and a 60-year-old, or for the death of a small-holding farmer and a big landlord. Interviews in Batman, June 2005, and in Diyarbakır, February 2006.

awarding damages, warning that around 1,500 cases of evictions were pending in the ECtHR.¹⁹³ Seemingly in response to that, the interior ministry sent circulars to the commissions instructing them along the same lines and urging them to issue settlements that the government could present as a precedent to the ECtHR.¹⁹⁴ Based on the sample decisions presented by the government, the ECtHR eventually ruled in its *Içyer* judgment that the commissions provide an “effective remedy” which the IDPs must exhaust before applying to Strasbourg.¹⁹⁵ Pointing out that these sample decisions were issued under political pressure and that such pressure has ceased after *Içyer*,¹⁹⁶ lawyers state with great concern that implementation has already slowed down and deteriorated,¹⁹⁷ and that the compensation amounts noticeably dropped.¹⁹⁸

While it is positive that the Framework Document sets the “effective implementation” of the law as a clear government objective, experience so far calls for caution. It is imperative that the government develop a clear and binding political position on the law; create guidelines for the commissions on how to implement the law in order to guarantee uniformity in implementation; and, in cooperation with national and international NGOs, provide training not just to governors and deputy governors, but to all members of the commissions. These measures are particularly necessary in the aftermath of the ECtHR’s *Içyer* ruling, which seems already to be causing the commissions to be “more lax” in their work.¹⁹⁹

6.2.7 Evidentiary Matters: High Rates of Rejection Arising from Undue Burden of Proof

The biggest source of problems in implementation relates to the evidentiary burden of proof requirement. The impossibility of documenting evictions, most of which were undertaken by security forces, has so far resulted in a mixed record in implementation. What lies at the core of the problem is the national authorities’ continuing reluctance to take responsibility for evictions by security forces in Turkey,²⁰⁰ although this was settled long ago in the Parliamentary Report.²⁰¹ It has also been pointed out in the recommendation of the RSG, who in 2002 welcomed the drafting of a law to compensate IDPs, “including those who were evacuated from their homes by the security forces”. This stance critically influences applications where IDPs claim that they were evicted by the jandarma. The practice so far in such cases shows that the commissions follow one of the two routes: they ask IDPs to produce a document issued by the jandarma showing that the latter had indeed evicted the villagers, or they conduct on-site investigations and/or accept as evidence the testimony of credible witnesses. The decision over which route to follow can determine the outcome of the case. While the undertaking of fact-finding missions in Diyarbakır has resulted in positive decisions,²⁰² the acceptance of the information provided by the jandarma as binding evidence has led to rejections in Hakkâri (see below).

A vital and welcome recent amendment to the regulation²⁰³ now allows IDPs to prove their losses by means of any kind of information or document available to them, yet this change seems to have had little impact on the practice of some commissions. The commissions in Diyarbakır and Batman have not strictly applied formal evidentiary rules even under the former regulation. As a result, not a single rejection has been issued in these provinces on the ground of insufficient proof of losses.²⁰⁴ In contrast, the commissions in Şırnak, Mardin and Hakkâri continued to impose on IDPs a high burden of proof even after the amendment.²⁰⁵

¹⁹³ “İstediği Tazminatı Alamayan AİHM’e Başvuruyor”, *Akşam*, 4 August 2005. At the time, the ECtHR was closely following the implementation of the Compensation Law before ruling on the mounting cases pending before it.

¹⁹⁴ The TESEV Working Group has been told this open secret by various lawyers, most recently by a member of Batman Bar Association (phone interview on 15 February 2006) and a member of the Diyarbakır Bar Association (written communication on 14 March 2006).

¹⁹⁵ See footnote 186.

¹⁹⁶ A member of Batman Bar Association stated that the government’s hitherto regular communications to the commissions have ceased after the *Içyer* judgment. Phone interview, 15 February 2006.

¹⁹⁷ Two members of the Diyarbakır Bar Association, one of whom is a member of one of the compensation commissions, stated that the hitherto exemplary work done by the commissions in Diyarbakır had recently been deteriorating as a result of the ECtHR’s judgment. Written communication on 14 March 2006.

¹⁹⁸ Diyarbakır Bar Association’s Migration Coordinator Mahsuni Karaman gave the following examples of the drop in compensation amounts awarded in comparable cases in Diyarbakır: in the case of a quarter of an acre of land, from 85 YTL to 50 YTL (\$63 to \$37); and in the case of a walnut tree from 35 YTL to 20 YTL (\$26 to \$15). Phone interview, 25 February 2006.

¹⁹⁹ Lawyers’ Declaration.

²⁰⁰ The governors and deputy governors the TESEV Working Group interviewed in Batman and Hakkâri were adamant in emphasising that security forces did not “evict” inhabitants from their villages, but that these villages were “deserted”. A similar correction was made by an interior ministry official during a phone interview, 10 February 2006.

²⁰¹ See footnote 9.

²⁰² For example, the commissions awarded compensation to IDPs in the Şaklat and Narlıca villages of Lice and Kulp districts, respectively.

²⁰³ See footnote 158.

²⁰⁴ MOI Document. See footnote 172.

²⁰⁵ Phone interview with a lawyer in Diyarbakır Bar Association, October 2005.

The latter approach has led to a high number of rejections due to lack of proper documents. In Hakkâri, as of 31 January 2006, out of a total of 1,325 applications, 844 had been rejected. While most of these rejected petitions were applications by security personnel who had received compensation earlier,²⁰⁶ 309 were rejected on the grounds of “lack of information and documents”.²⁰⁷ Upon request for specification regarding the latter type of rejections, the Hakkâri Governorship stated that these generally relate “to the lack of a fact-finding report [by the jandarma] and the absence of such information in the communications received from the relevant military [authority], police [authority] and prosecutor’s office”.²⁰⁸ In other words, more than one in every four application has been rejected because IDPs could not provide official documents to prove either that they had been evicted from their villages by security forces or that they were obliged to flee for fear of their personal security. The deputy governor justified the rejection of the latter kind of claims on the grounds that there cannot possibly be any document to prove “security concerns”.²⁰⁹ As for the former, his answer was straightforward: no one has been evicted from his/her village by the security forces.²¹⁰ He categorically ruled out allowing IDPs to prove their claims by introducing credible witnesses.²¹¹ The different standards of implementation show how administrative discretion can lead to inconsistent implementation between provinces.

Undoubtedly, the government has a legitimate interest in preventing the abuse of the law. However, this can be achieved without putting a heavy burden on the IDPs. Requiring victims to provide documents that do not exist or are impossible to obtain – such as an admission of guilt by the jandarma – makes the law practically inaccessible for some victims. As long as this practice continues, the government cannot claim to have fulfilled the RSG’s recommendation to provide compensation to “those who were evicted from their homes by the security forces”. In this regard, the above-recommended provision of instructive guidelines and training to the commissions becomes all the more critical.

6.2.8 Evaluation of Eviction Claims: Jandarma as a Source of Information

The evidentiary weight attributed by the commissions to the information provided by the jandarma is critical, particularly with respect to claims of damage to immovable property, since it has so far caused a discrepancy between various provinces. The determining factor in this respect is whether the commissions consider the jandarma’s official information conclusive in processing the applications. In Diyarbakır, while the commissions may receive information from the jandarma, the ultimate evidentiary weight is given to the outcome of on-site fact-finding missions.²¹² In Hakkâri, on the other hand, the jandarma’s opinion can determine the outcome of applications.²¹³

A striking example from Hakkâri testifies to the dangers of relying on information provided by the jandarma. On 7 March 2005, one of the commissions rejected the application of an IDP who claimed to have incurred losses to his property when he was evicted from his village by security forces in 1996 and from his inability to access his property ever since.²¹⁴ The commission based its decision on the information provided by the jandarma that villagers had been residing in the Tümsek hamlet of Otluca village since 1987, that the hamlet was still accessible and that the applicant had voluntarily left the hamlet in 1997.²¹⁵ Two members of the commission, including the lawyer, dissented. What is striking about this decision is that it contradicts a previous final court order, which held that the inhabitants of the Otluca village had indeed been evicted by the Hakkâri Mountain and Commando Brigade on 24 August 1996 and that access to the village had thereupon been subject to special permission.²¹⁶ In asking for information from the jandarma, the alleged perpetrator of the events, instead of admitting as evidence a court decision on file,

²⁰⁶ Compensation Law, article (II)(A)(2)(a) (excluding from the scope of the law losses for which compensation has previously been paid through other legal means).

²⁰⁷ Written information received from the Hakkâri Governorship, 10 February 2006.

²⁰⁸ *Ibid.*

²⁰⁹ Interview with a deputy governor in Hakkâri, 19 October 2005.

²¹⁰ *Ibid.*

²¹¹ *Ibid.* However, in a welcome development, the commissions in Hakkâri seem to have changed their stand on this issue recently. They took a decision to be more flexible in evidentiary issues by allowing applicants to present credible witnesses. Apparently, the commissions are also working on formulating a solution to re-evaluate the rejected applications. Phone interview with a lawyer in Hakkâri, 31 January 2006.

²¹² Interview with Sezgin Tanrikulu, President of Diyarbakır Bar Association, 14 March 2006.

²¹³ See text accompanying footnote 215.

²¹⁴ Decision dated 07.03.2005/4433 and numbered 2005/16 in the application of Hamdi Alçiçek on 25.08.2004. Damage Assessment Commission No: 1, Hakkâri Governorship.

²¹⁵ Report of the Hakkâri Province Jandarma Command dated 17.12.2004.

²¹⁶ Van Administrative Court decision dated 30.09.1999 and numbered 1999/913.

the commission produced an unlawful decision which has since been taken to the court for review.²¹⁷ The outcome of this and other similar rejection decisions by commissions will be the real test of how effective and adequate the legal mechanism established by the Compensation Law is.

The government should set up an administrative body to re-examine upon appeal the rulings of the commissions, including those of inadmissibility. Provided that its evaluation of petition files is limited to a reasonable timeframe, such a body would exert a positive pressure on resistant commissions and guarantee their supervision without obstructing the implementation of the law. Furthermore, while the Compensation Law provides judicial review of the decisions made by the commissions, the financial cost of filing a lawsuit²¹⁸ and the length of the judicial process²¹⁹ could discourage applicants from seeking review in courts. Indeed, official figures indicate that so far the vast majority of IDPs have agreed to settle with the commissions in the cases concluded so far.²²⁰ In this respect, the exemption of IDPs from legal fees in cases they will bring in administrative courts and the provision of legal aid to the indigent could force the commissions to give the applications due consideration and care. This is particularly vital since seeking judicial review at the cost of time and money is not a realistic option for most IDPs who are in dire financial need.

6.2.9 Damage Assessment Commissions: Composition, Resources and Working Conditions

The commissions' composition predominantly of public officials undermines their impartiality and independence. It also results in arbitrariness and inconsistencies in implementation, by making the commissions' performance contingent on the attitudes of public officials. As a result of the goodwill of the public officials in Batman and Diyarbakır, commissions in these provinces operate in a swift, coordinated and fair manner within the constraints of the law.²²¹ By contrast, the commissions in Mardin and Şırnak are reported to rule most of the petitions inadmissible and work very slowly.²²² The equitable and fair handling of applications is only feasible with the help of competent and independent experts able to evaluate losses caused by internal displacement. The inclusion in the commissions of local administrations, human rights lawyers and NGOs working on internal displacement would not only help achieve that purpose, but would also assure the legitimacy of the commissions in the eyes of the IDPs.

For the commissions to work effectively, they also need to be provided with the requisite working conditions and resources. That the commission members provide this public service in addition to their main duties without receiving a meaningful compensation not only slows down the process, but also makes the commissions' performance contingent on the goodwill of their members.²²³ Attorneys serving at the commissions suffer an additional grievance, because, unlike the rest of the members, they do not have a regular income. The absence of funds allocated to the commissions, and the lack of personnel and technical equipment also slow down their performance. Even in Batman – which has a good implementation record – only 410 out of a total of 7,843 petitions had been finalised as of 25 October 2005.²²⁴ In other words, more than a year after the establishment of the first commission in Batman, not even 10 per cent of the total petitions had been finalised. The situation in Diyarbakır gives even greater reason for concern. As of 15 February 2006, only 1,690 out of a total of 31,830 petitions, in other words a little over five per cent, had been evaluated.²²⁵ When one considers that in some provinces most of the petitions that have been

²¹⁷ Pending before the Van Administrative Court.

²¹⁸ On a positive note, the Compensation Law exempts IDPs from legal fees in the applications they file with the damage assessment commissions.

²¹⁹ Lawyers point out that the conclusion of a case at the administrative courts takes between 4-6 years under the current workload of the two regional administrative courts in the southeast. They point out that this period could further increase with the addition to the case load of these courts new applications filed under the process initiated by the Compensation Law.

²²⁰ According to national figures, as of the end of 2005, 4,003 applicants had signed declarations of friendly settlement as against 261 that refused to do so. MOI document, see footnote 172.

²²¹ However, there are reports that the commissions in these provinces have slowed down after the ECtHR's *İcyer* judgment. See the discussion above under "Problems in Implementation". Recently, the number of commissions in Diyarbakır has been reduced from four to three, notwithstanding that the vast majority of the applications have not yet been processed. Written communication with Murat Güzel and Tahir Elçi, Diyarbakır Bar Association, 15 March 2006.

²²² Phone interview with a lawyer in Diyarbakır. October 2005. Indeed, according to official figures, 732 out of 847 and 1,224 out of 1,415 processed applications have been rejected in Mardin and Şırnak, respectively. MOI Document, see footnote 172. Furthermore, commissions in Şırnak have not yet started to evaluate the applications regarding village evictions nor undertaken fact-finding missions. Written communication with Murat Güzel and Tahir Elçi, Diyarbakır Bar Association, 15 March 2006.

²²³ While the recent amendment to the Compensation Law requires the payment to each commission member of nearly 22 NTL per session, not to exceed six sessions a month, this minimal amount fails to correspond to the long working hours the members put into their work. Furthermore, the prospective application of the amendment suggests that the work that the commission members have done for more than a year since the enactment of the Compensation Law will not be compensated. For the amendment to the Compensation Law, see Law no. 5442, see footnote 159.

²²⁴ Written communication provided by the Batman Governorship, 25 October 2005.

²²⁵ Information provided by the Diyarbakır Governorship, 19 February 2006.

evaluated so far are “easy” cases that do not require damage assessment²²⁶ and that the commissions seem to have slowed down after *Içyer*, it is clearly impossible for commissions to process the pending petitions within the mandatory two-year period.²²⁷ The government’s decision to extend the deadline for applications until 3 January 2007 is a very welcome development.²²⁸ In order to ensure an equitable process, it should also extend the two-year limit for the evaluation of the applications.

Outstanding issues/further recommendations:

The shortcomings in the Compensation Law and the problems in its implementation undermine its significance. The temporal and substantive scope of the law should be extended so as to cover all IDPs who were forcibly evicted or were obliged to flee due to the armed conflict. The law should be amended to cover non-pecuniary damages in accordance with the ECtHR case law, in order to compensate the pain and suffering of IDPs whose rights to life, liberty and security, as well as property have been violated. The government should initiate a public information campaign on the law in Turkish and Kurdish, in collaboration with NGOs and local administrations. The Turkish Bar Association and local bar associations should advise their members to abide by codes of professional conduct and monitor their implementation of the Compensation Law. The bar administrations could seek assistance from international institutions in drafting a set of guidelines to lawyers as well as an information pamphlet to IDPs on their rights and options under the Compensation Law. The commissions should be allowed to determine all types of damages on a case-by-case basis, taking into account the subjective circumstances of each case. The two-year period for evaluating petitions should be extended to a more realistic timeframe. To ensure unity in implementation, the government should develop a clear position on the law; send the commissions binding implementing guidelines and instruct them not to abide by strict formal evidentiary rules in processing claims; and cooperate with civil society to provide training not just to the governors and their deputies, but to all members of the commissions. As a first step, the government should publicly express its political support to the effective and just implementation of the law. The Commissions should not attribute evidentiary weight to the information provided by the jandarma. An administrative appeal body should be set up to evaluate the decisions of the commissions within a time limit of two-three months. To ensure their access to courts, IDPs should be exempted from legal fees in administrative courts and be provided with legal aid upon need. The structure of the commissions should be changed in favour of a balanced representation of civil society and the public sector. The commissions should be professionalised, their numbers should be increased and their working conditions should be improved.

7. COOPERATION WITH INTERNATIONAL PARTNERS

7.1 Relevant Recommendations from the Representative

To the government of Turkey:

Cooperation with international agencies: in its efforts to meet the current needs of the displaced and to facilitate their return and resettlement, it is strongly recommended that the government examine areas of possible cooperation with the international community. So far, the international community has not contributed to the government’s return efforts, and the government has not requested any such international assistance. However, the task ahead of the government is a formidable one for which assistance from international agencies would be a significant asset. The government might consider convening a meeting with international agencies, including the World Bank, and representatives of the potential partners to explore ways in which the international community could assist the government in responding to the needs of the displaced.

²²⁶ This is the case, for example, in Şırnak. Written communication with Murat Güzel and Tahir Elçi, Diyarbakır Bar Association, 15 March 2006. This was also the case in Batman and Diyarbakır until around Summer 2005. *Ibid*, and fieldwork in Batman, June 2005.

²²⁷ Provisional Article 1.

²²⁸ Law no. 5442, see footnote 159.

To the United Nations:

Enhanced role for UN agencies: in connection with the foregoing, it is recommended that UN agencies in the country review their activities with a view to identifying ways in which they might enhance their role in supporting the government in its efforts to assist the displaced. The RSG also recommends that the UN Development Assistance Group expressly request the Resident Coordinator to develop, in cooperation with the United Nations Country Team (UNCT), a strategy to assist the government, in particular with regard to its efforts to return and resettle the displaced. In addition, and with a view to facilitating cooperation between the government and UN agencies, the Resident Coordinator and UNCT are encouraged to consider the establishment of a thematic group on internally displaced persons to bring together the relevant UN and government actors and provide a forum for regular dialogue on this issue.

7.2 Cooperation with the United Nations

The clearest result of the RSG's visit to Turkey has been the Turkish government's willingness to cooperate with the international community, especially with the UN. The government has been closely working with the UNDP, although progress is somewhat slow. UNDP has provided technical advice on the development of the Hacettepe Survey and support for capacity building; and the agency plans to continue to assist the government on the development of policies targeting IDPs.

In line with the recommendations in the RSG's report, the government took the initiative to organise a series of meetings at the foreign ministry with the participation of international organisations in December 2003 and January 2004. Representatives from the office of the UN High Commissioner for Refugees (UNHCR), International Organisation for Migration (IOM), UNDP, the World Bank and the European Commission (EC) as well as officials from relevant government departments participated in these meetings. The clearest outcome of this cooperation was the initiation of the Hacettepe Survey, which is expected to be the basis for the formulation and implementation of further national and international IDP programmes. Another outcome was the translation of the Guiding Principles and their Annotations into Turkish and the training of sub-provincial governors and officials from the interior ministry in the use of the Guiding Principles. A further outcome of this cooperation is the Framework Document, which names the interior ministry as the coordinating body on IDP-related issues.

Recently, the foreign ministry signed an international agreement with the UNDP. It is awaiting approval by the Council of Ministers to become official. According to the agreement titled *Support to the Development of an IDP Programme in Turkey*, the UNDP will assist the government of Turkey in developing a well-defined IDP return programme by (i) supporting the development and implementation of an IDP survey according to international standards through consultation and advice; (ii) piloting a project to facilitate the government's efforts to support the return and/or integration in one of the provinces in south-east or east Turkey; (iii) enabling UNDP to respond to the technical and other expertise needs of the government and the UNCT²²⁹ on the basis of demand; and (iv) disseminating the Guiding Principles and supporting activities to raise awareness about them, and supporting capacity building. As explained above in this report (see "Data Collection"), the government was in consultation with the UNDP with regard to the Hacettepe Survey.

During RSG Walter Kälin's visit to Turkey between 4 and 6 May 2005, the NRC Internal Displacement Monitoring Centre, in cooperation with the UNDP, provided a training workshop on the Guiding Principles to the vice-governors of the 14 provinces affected by internal displacement. UNDP and the NRC Internal Displacement Monitoring Centre are planning to organise capacity-building and awareness workshops on the use of the Guiding Principles for local civil society organisations in the months to come.

²²⁹ The UNCT is formed of chief representatives of all the UN institutions operating in Turkey.

UN representatives note that the interior ministry has been cooperative and receptive to their advice. However, this cooperation cannot be considered “systematic” until the agreement is approved by the Council of Ministers. UN consultation with the government on the IDP issue will continue to be considered *ad hoc* until this agreement becomes “official”.

The RSG’s report also recommends convening a meeting with international agencies, including the World Bank, whose representatives were present in meetings at the initial stages of the cooperation between the government and international agencies. A foreign ministry official said that the government would be open and willing to cooperate with the World Bank in various projects related to IDPs if the Bank approaches them.²³⁰

7.3 Cooperation with the European Commission

Since Turkey became a candidate for EU accession at the Helsinki Summit in December 1999, the EU has played an important role in Turkey’s evolving approach on the IDP issue.²³¹ It should be noted that all significant developments, including the RSG’s mission and the international cooperation that ensued, have been realised in the wake of the Helsinki Summit. From that point, the European Commission’s annual progress reports, which note Turkey’s progress as well as the areas for further improvement in fulfilling the Copenhagen Criteria,²³² have mentioned the conditions of the displaced. The EC reports have addressed rights, return and compensation-related issues pertaining to internal displacement. For instance, in the 2004 Progress Report which came just before the EU declared in December that accession negotiations with Turkey would begin, the Commission noted that the situation in the eastern and south-eastern region of the country had continued to improve since 1999, both in terms of security and the enjoyment of fundamental freedoms, that the emergency rule has been lifted and that IDP return continued. But it also said that the situation of IDPs remained critical.²³³

The European Commission has been a chief international actor calling on the government to take action on the issue of internal displacement through its political dialogue with the government. But the Turkish government’s response in addressing these issues in terms of clarifying and developing policies has been relatively slow (see “Clarifying and Disseminating the National Policy” above).

7.4 Enhanced Role for United Nations Agencies

As recommended by the RSG, the the UN Country Team formed a thematic group on IDPs in 2003, with representatives from UNHCR, UNDP, UN Children’s Fund (UNICEF), IOM, as well as occasional participation by the International Labour Organisation (ILO). The objective of the *IDP Working Group* is to provide guidance to national agencies on advocacy and policy issues related to internal displacement. The group is led by Jakob Simonsen, the UN Resident Coordinator, and it takes the Guiding Principles and its annotations as the basis of its work.

The thematic group determined its annual work plan and a strategy to provide guidance to national agencies. According to UN officers, the Turkish government fully cooperated with the UN thematic group during this process (see also “Clarifying and Disseminating the National Policy” above).²³⁴ As mentioned above, the UNDP plans to provide capacity-building training for NGOs for the use of the Guiding Principles. However, UN assistance to civil society should not be limited to such awareness-raising activities. NGOs may assume constructive roles in fostering trust between national authorities and IDPs in the process of return and in helping with the reintegration of urban IDPs. The UNDP should help build bridges between the government and civil society for cooperation in these areas.

²³⁰ Interview with a foreign ministry official, 13 February 2006.

²³¹ For further discussion of how the European Union affected Turkey’s policies related to the issue, see Ayşe Betül Çelik, “Transnationalisation of Human Rights and Its Impact on Internally Displaced Kurds”, *Human Rights Quarterly*, 27:3 (2005): 969-996.

²³² European Council in Copenhagen (21–22 Jun. 1993), Conclusions of the Presidency, SN 180/1/93 Rev 1, available at http://ue.euint/ueDocs/cms_Data/docs/pressData/en/ec/72921.pdf.

²³³ EC, 2004 “Regular Report on Turkey’s Progress towards Accession”, 6 October 2004, available from <http://europa.eu.int/comm/enlargement/turkey/docs.htm>.

²³⁴ Interview with a UNDP officer, 14 February 2006.

Outstanding issues/further recommendations:

Since RSG Deng's visit in 2002, an active cooperation has developed between the government and the UN on the IDP issue, culminating in the signing of an agreement in 2005 for a UNDP project titled *Support to the Development of an IDP Programme in Turkey*. But while the UN has been giving consultation to the government, there is also a need for more systematic and transparent cooperation between the UN and NGOs on the IDP issue. The UN, in cooperation with the government, should encourage NGOs to participate in the design and implementation of policies targeting IDPs on the issues of return and reintegration.

The European Commission has been a significant external factor in encouraging Turkey to take steps for addressing its IDP problem since the Helsinki Summit in 1999 when Turkey became a candidate for EU accession. It should also be more proactive in providing consultation and guidance to the government on its evolving IDP policy. The government may incorporate the EU into the policy implementation process through socioeconomic and other projects related to IDPs' return and reintegration. In addition to the EU progress reports published annually, the European Commission should provide information and disseminate its opinion on the IDP issue more frequently.

8. RECONCILIATION

The issue of "reconciliation" was not addressed by the RSG in his recommendations to the Turkish government. The government's Framework Document does not address the issue of past human rights violations committed against IDPs – such as the burning and destruction of property, killings, disappearances and torture – committed by security forces, village guards and PKK members in the process of displacement. However, the TESEV Working Group's fieldwork shows that there is a genuine and urgent need for the government to take steps towards answering the need for reconciliation between the parties to the conflict.

It should be noted that the Compensation Law's Preamble makes an allusion to the need for reconciliation. The Preamble states among the law's aims, "bolstering trust towards the state, rapprochement between the state and its citizens and contributing to social peace".²³⁵ The Compensation Law, however, is limited to providing reparation for material damages, and precludes compensation for pain and suffering (see "Compensation Law" above). However, reconciliation and durable peace require confronting past human rights abuses and establishing restorative justice.

The Compensation Law has raised expectations among IDPs, civil society organisations and lawyers that it would open the way for the public admission of forced evictions by security forces as well as other human rights violations, and lead to either bringing the perpetrators before courts or at least paying reparation for pain and suffering.²³⁶ The law does not require proof of fault on the part of the administration, but rests on the "doctrine of social risk based on the objective responsibility of the state".²³⁷ However, in order for justice to be achieved it is essential that those responsible for violations are identified and brought before the court. The TESEV Working Group observed in Batman and Hakkâri that particularly some families whose relatives have disappeared or been killed by unidentified perpetrators believe that justice will not be achieved unless the perpetrators are prosecuted.

Those who committed abuses, including security forces, village guards and the PKK during the original process of displacement have rarely been prosecuted.²³⁸ A recent development well-covered in the national media – the discovery of a mass grave near a village whose population was evicted in the Kulp district of

²³⁵ Compensation Law, Preamble.

²³⁶ For instance, the Planning and Budgeting Commission's Report on the draft law of 13 July 2004 stated that "it is not equitable for only material damages to be compensated" alluding to the need for paying compensation for pain and suffering as well. *Terör ve Terörle Mücadeleden Doğan Zararların Karşılınması Hakkında Kanun Tasarısı Hakkında Plan ve Bütçe Komisyonu Raporu*, available from <http://www.tbmm.gov.tr/sirasayi/donem22/yil01/ss650m.htm>.

²³⁷ Compensation Law, Preamble.

²³⁸ Many IDPs the TESEV Working Group interviewed testified that village guards or the jandarma burned their homes; threatened, publicly humiliated or hassled them; and then forcefully evicted them from their homes.

Diyarbakır – triggered a wave of demands for bringing to justice the killers of 11 villagers. Local human rights organisations, Human Rights Association’s Diyarbakır branch, the Diyarbakır Bar Association and two members of parliament called for the perpetrators to be brought to justice, echoing a call made time and again by the ECtHR in many cases involving human rights violations committed by security forces during the process of internal displacement.²³⁹ Both organisations are demanding judicial and parliamentary investigations of the incident.²⁴⁰ If a judicial process gets initiated on this matter as a result of pressure from civil society, it would set an important precedent. The emerging public debate about this case and several others on violations committed during the emergency rule suggests that the time may be ripe for initiating a candid discussion about setting up a mechanism of reconciliation to address issues of impunity.

Outstanding issues/further recommendations:

IDPs, NGOs and the government express the need for rebuilding “trust towards the state” and “social peace”, goals identified in the Compensation Law. Establishing social rehabilitation in the wake of a traumatic period of conflict and ensuing displacement cannot be limited to issues concerning the payment of reparation, return and reintegration, but should also include reconciliation. Although achieving reconciliation may take a long time, the government should take steps to initiate the process. The state’s public acknowledgement of responsibility for village evictions, compensation for pain and suffering, and declaration of a will to identify and prosecute – where possible – those who committed human rights violations during displacement and return may be among such measures. However, it is also important to bear in mind that reconciliation would require the PKK to demonstrate a similar will to assume its responsibility for the human rights violations it has committed. A dialogue should be initiated between the civil society and the government about setting up a structure for reconciliation bearing in mind the examples of truth and reconciliation commissions elsewhere in the world.

²³⁹ The ECtHR has stressed that “effective remedy” within the meaning of Article 13 of the ECHR requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of the perpetrators of human rights violations. See e.g. ECtHR, *Case of Hasan Ilhan v. Turkey* (2005) Application No: 22494/93, 9 November; ECtHR, *Case of Mentese and Others v. Turkey* (2005) Application No: 36217/97, 18 January; ECtHR, *Case of Ipek v. Turkey* (2004) Application No: 25760/94, 17 February; ECtHR, *Case of Orhan v. Turkey* (2002) Application No: 25656/94, 18 June.

²⁴⁰ Zihni Erdem and Ahmet Kivanç, “Katliam Emrini Kim Verdi”, *Radikal*, 14 February 2006, available from <http://www.radikal.com.tr/haber.php?haberno=178653>.

TESEV

The Turkish Economic and Social Studies Foundation (TESEV), established in 1994, is an Istanbul-based independent think-tank, which forms a bridge between academic research and the policy-making process. TESEV has three programmes: Democratisation, Foreign Policy and Governance. The TESEV Democratisation Programme undertakes projects in five main areas, which it deems to be the main obstacles to democratisation in Turkey: internal displacement and the Kurdish question; minority rights and constitutional citizenship; the democratic oversight of the security sector; religion-state-society relationship; and social perceptions and mentalities hampering democratisation.

The “Internal Displacement and Social Rehabilitation Project” was launched by the TESEV Democratisation Programme in 2004. Designed and implemented by an independent and inter-disciplinary Working and Monitoring Group composed of five academics, the Project’s objective is promoting a democratic and just solution of Turkey’s internal displacement problem. Through this Project, TESEV Working and Monitoring Group carries out research, advocacy and monitoring activities targeting the government, the media, civil society and public opinion.

The Internal Displacement Monitoring Centre

The Internal Displacement Monitoring Centre (IDMC), established in 1998 by the Norwegian Refugee Council, is the leading international body monitoring conflict-induced internal displacement worldwide. Through its work, the Centre contributes to improving national and international capacities to protect and assist the millions of people around the globe who have been displaced within their own country as a result of conflicts or human rights violations.

At the request of the United Nations, the Geneva-based IDMC runs an online database providing comprehensive information and analysis on internal displacement in some 50 countries. Based on its monitoring and data collection activities, the Centre advocates for durable solutions to the plight of the internally displaced in line with international standards. The IDMC also carries out training activities to enhance the capacity of local actors to respond to the needs of internally displaced people (IDPs). In its work, the Centre cooperates with and provides support to local and national civil society initiatives.