

INTERNALLY DISPLACED PERSONS - WORKING

SESSION 5

Current Situation

Presently the situation for IDPs in Turkey remains the same as in years past; hundreds of thousands of people have been forced out of their homes due to violence or other disturbances and have had difficulty making a home in a new place. The number of IDPs continues to grow in Turkey as, despite official proclamations of intent to rehabilitate IDPs, people removed from their homes as long ago as the 1990s remain displaced, and new conflicts continue to displace others in the present. The Turkish government has formally responded to these problems ostensibly by developing a program designed to help restore displaced persons to their original communities, and has passed legislation that provides monetary remedies to displaced persons who have suffered measurable loss. Unfortunately, these attempts to ameliorate the plight of IDPs are in fact quite superficial and ineffective as they are applied inconsistently and interpreted by courts such that they provide little real relief.

The Turkish Compensation Law

While the Turkish Law on Compensation for Damage Arising from Terror (Law 5233) has on its face been declared a valid source of recourse by the European Court of Human Rights (ECtHR) in its January 2006 decision to reject the application of Aydın İçyer, recent studies have shown that in practice it leaves the majority of IDPs either under-compensated or denies them the opportunity to bring a claim altogether. In fact, there is some evidence to suggest that the Turkish government had been purposefully approving higher compensation awards prior to the İçyer decision in order to illicit such a ruling from the ECtHR, which had previously been systematically ruling low awards inadequate. Now that the ECtHR has declared that applicants must first exhaust domestic remedies before applying to this body for relief, the Turkish government has reverted to issuing low awards, knowing that most IDPs do not have the resources to apply to the ECtHR after first financing a long court case in Turkey.

In 2006 the Kurdish Human Rights Project in conjunction with the Bar Human Rights Committee of England and Wales sent a fact finding mission to Turkey to examine the problems behind this troubling trend. It identified three major problems with the current compensation scheme that render it unable to adequately address the needs of IDPs in Turkey. First, compensation commissions have been able to limit awards for damages by refusing to award compensation for non-pecuniary losses and requiring strict standards of proof of

ownership of animals, land and other resources. Furthermore, these commissions are often led by government officers with little or no legal training who realise they are more likely to be promoted if they keep damage awards low.⁵¹ The result is an arbitrary and inconsistent application of the Compensation Law that often yields absurdly low awards, if any at all. For example, the KHRP mission learned of a family from Bingöl that was forced to migrate to Diyarbakir after their home was burned to the ground. They were denied any compensation at all based on the fact that they had had a child in the city, despite the fact that neither the Compensation Law nor indeed any other piece of Turkish legislation explicitly denies compensation to families who have children after being displaced.⁵² Human rights defenders operating in Van told the KHRP mission that commissions often set a random compensation rate for goods that bear no relation to their current or even historic value, such as 20 YTL (\$15.75) for a walnut tree when a single bushel of walnuts is worth 7 YTL (\$5.50).⁵³ A Human Rights Watch report issued in December of 2006 supports this conclusion, arguing that this flawed application of the law by untrained commission officers has allowed “displaced villagers [to be] victimised yet again

⁵¹ ‘The Status of Internally Displaced Kurds in Turkey: Return and Compensation Rights – An Update’, KHRP 2006, p.34.

⁵² ‘The Status of Internally Displaced Kurds in Turkey: Return and Compensation Rights – An Update’, KHRP 2006, p.37.

⁵³ ‘The Status of Internally Displaced Kurds in Turkey: Return and Compensation Rights – An Update’, KHRP 2006, p.38.

by the arbitrariness of a compensation process that was supposedly established to help them".⁵⁴

Secondly, the Compensation Court has been able to refuse hearing certain claims by both the exclusionary provisions of the law itself, and also further by interpreting the language of the law narrowly to restrict the types of circumstances in which the Court will approve compensation. On its face, the compensation law excludes all those who have already received some form of compensation (no matter how small), 'voluntary' evacuees and anyone who has been sentenced under the Anti-Terror Law. Under the guise of these provision, the Compensation Court has refused to hear applications from those who received as little as a few packets of bricks from the government in 1999, families who in the past were forced to sign a pre-printed form listing a pre-determined reason for leaving their homes and those convicted of aiding or abetting the PKK in a partial and unfair court proceeding. The effects of these exclusions are profound; the KHRP mission suggests that they contribute the alarming statistic that of the 27,011 applications decided by 3 May 2006, only 11,899 (44 per cent) were awarded any compensation.⁵⁵

Thirdly, it is not a widely-publicised remedy and therefore is not pursued by all those who would benefit from its use. According to a study sponsored by the Turkish government, only 53 per cent of IDPs are aware that the

⁵⁴ *Recent Study Estimates 1.2 Million Kurds Forcibly Displaced*, BIA News Centre, Tolga Korkut, 12 December 2006.

⁵⁵ 'The Status of Internally Displaced Kurds in Turkey: Return and Compensation Rights - An Update', KHRP 2006, p.36.

Compensation Law exists.⁵⁶ Indeed, this ignorance is part of the reason why the deadline to file for compensation was just extended for another year when it expired on 23 May 2007. Even IDPs who are aware of their options, however, may choose not to pursue compensation or return to their original homes for fear of retaliation by state security forces. The Turkish military was so obviously following the KHRP mission that many of the displaced villagers it attempted to interview were too frightened to speak of their experiences, and urged the mission to leave.⁵⁷

The Return to Village and Rehabilitation Project

KHRP's 2006 mission also found that though the Turkish government should be commended for at least formally attempting to redress the country's vast IDP population, its Return to Village and Rehabilitation Project (RVRP) currently fails to actually place people in better situations. This program remains inadequate both because the aid it provides is not commensurate to the needs of the IDP community and also because it fails to address the underlying problems that prevent IDPs from successfully returning to their villages. First, the government does not provide those who try to return with enough money or supplies to make restoration to their previous situation even a remote possibility. KHRP's 2006 found that the government has to date provided 51,403,426 YTL to

⁵⁶ *Recent Study Estimates 1.2 Million Kurds Forcibly Displaced*, BIA News Centre, Tolga Korkut, 12 December 2006.

⁵⁷ 'The Status of Internally Displaced Kurds in Turkey: Return and Compensation Rights – an Update', KHRP 2006, p.29.

93,451 people, which comes to roughly \$433 per person.⁵⁸ Such a sum, provided usually in kind and not in cash, is wholly inadequate to the reconstruction efforts needed to really provide returning IDPs with a place to live. In addition to the inadequacy of government aid in rebuilding, the continued presence of landmines and other security threats from the ongoing violence between insurgents and the Turkish Armed Forces serve as practical deterrents to the repopulation of villages. Those who wish to return to their homes must do so under surveillance by the village guards, who continue to view villages as centres of insurgency and do not wish them to re-form. The Turkish military also keeps a close watch on re-populating villages; villagers in Taşnacak reported feeling intimidated and afraid due to regular visits as often as three or four times a week from soldiers.⁵⁹

OSCE Commitments

We recall to the Turkish state the following commitments that it has made and ask it to renew its undertaking to respect them.

- participating States recognise that “among the acute problems within the human dimension, the continuing violations of human rights, such as involuntary migration (...) continue to endanger stability in the OSCE

⁵⁸ ‘The Status of Internally Displaced Kurds in Turkey: Return and Compensation Rights – an Update’, KHRP 2006, p.23.

⁵⁹ ‘The Status of Internally Displaced Kurds in Turkey: Return and Compensation Rights – an Update’, KHRP 2006, p.29.

region” and are “committed to... address[ing] these problems”. (Lisbon Document 1996, “Summit Declaration”)

- these states “condemn and pledge to refrain from any policy of ‘ethnic cleansing’ or mass expulsion...[and] will facilitate the return, in safety and in dignity, of refugees and internally displaced persons, according to international standards”. (Lisbon Document 1996, “Summit Declaration”)
- participating States “express their concern at mass migratory movements...including millions of refugees and displaced persons, due mainly to war, armed conflict, civil strife and grave human rights violations”. Accordingly, they will “expand their co-operation with appropriate international bodies in this respect”. (Budapest Document 1994, “Decisions: VIII. The Human Dimension”, par. 32)
- OSCE participating States “emphasize the importance of preventing situations that may resulting mass flows of refugees and displaced persons and stress the need to identify and address the root causes of displacement and involuntary migration”. (Helsinki Document 1992, “Decisions: VI. The Human Dimension”, par. 40)
- They also “recognize that displacement is often a result of violations of OSCE commitments, including those relating to the Human Dimension”, [and] “reaffirm the importance of existing international standards and instruments related to the protection of and assistance to refugees”.

(Helsinki Document 1992, “Decisions: VI. The Human Dimension”, par. 42-43)

- participating States “recognize the importance of...non-governmental organizations involved in relief work, for the protection of and assistance to refugees and displaced persons”. (Helsinki Document 1992, “Decisions: VI. The Human Dimension”, par. 44)
- participating States “welcome and support unilateral, bilateral and multilateral efforts to ensure protection of and assistance to refugees and displaced persons with the aim of finding durable solutions”. (Helsinki Document 1992, “Decisions: VI. The Human Dimension”, par. 45)

Assessment 2006-2007

2006-2007 bore witness to a few positive developments in the situation for IDPs, mostly in that new information came to light that affords greater insight into the situation for IDPs and will hopefully allow for greater precision in creating strategies to deal with this problem in the future. In December 2006 the results of a study conducted by the Institute of Population Studies at Hacettepe University in Ankara were released. The study was commissioned by the Turkish government in 2004 at the behest of the EU and UN. It sought to both accurately measure the current number of IDPs in Turkey and track the welfare of these people over time. Hopefully the results will shock the Turkish government into recognising the gravity of the IDP situation in actual fact and

will serve as the impetus to take real steps towards resettling and compensating these people.

Whereas before the Turkish government estimated that 350-400,000 people in Turkey had been internally displaced, the Hacettepe study found that the number was actually 950,000-1.2 million. Of this number, 53 per cent were aware of the availability of the Compensation Law as a potential remedy, 50 per cent were aware of the RVRP and 79 per cent had heard of the European Court of Human Rights as a body that could help them gain assistance. These new statistics highlight the fact that the government's current strategy in dealing with IDPs is not working, as the sheer number of IDPs is over three times what the government had estimated, and nearly the majority of these people were not even aware of the remedies currently available to them.

The Ilisu Dam Project

Perhaps more shocking than the Turkish government's wilful ignorance of the country's ongoing IDP problem and its refusal to make genuine efforts to either compensate these people or restore them to their homes is news of a new development project that will displace thousands more. First proposed in 1999, the Ilisu Dam project is proclaimed by the Turkish government to be a hydro-electric power generator and not an irrigation system, which allows it to claim that its environmental and sociological impact will be slight. Independent assessments reveal, however, that the dam as proposed will flood the ancient

town of Hasankeyf and hundreds of other unexplored archaeological sites, displace 50-78,000 people, the majority of which are Kurds and severely impact the environment upstream and downstream of the dam, most notably by severely reducing the water flow downstream into Iraq and Syria. The extent of the damage and destruction this project would cause has attracted censure from a range of NGOs and human rights defenders from The Corner House to World Monuments Watch, which included Hasankeyf on its list of 100 most endangered sites for 2008.⁶⁰ Flooding from the dam will directly disrupt the lives of 199 villages from 5 different provinces in Turkey, and increase the pressure on already overflowing south-eastern Turkish towns such as Batman and Diyarbakir, which will have to absorb another influx of displaced villagers. Indeed, the political, economic, environmental and sociological impact of this dam is so great that international public outcry has kept the Turkish government from being able to secure financiers for several years. In March 2007, however, a consortium led by Austria's Andritz AG with Alstom Switzerland and German construction company Züblin agreed to undertake the project with the support of government-backed export credit guarantees from Austrian, German and Swiss export credit agencies (ECAs). These ECAs approved financing for the project despite the fact that the project lacks an environmental impact assessment and resettlement plan, subject to Turkey meeting 150 obligations and conditions

⁶⁰ http://www.worldmonumentswatch.org/files/sites_by_country.pdf

within the repayment period of 15 years.⁶¹ Thus far, Turkey has failed to meet several of the obligations it was meant to fulfil before construction begins, including providing Iraq with information it requested about the dam before the approval of financing.⁶² If Turkey has failed to meet such conditions before construction has even begun, it seems unlikely that it will do so after the dam is completed.

Good news surfaced on 15 June 2007 when Swiss bank Zuercher Kantonalbank announced its withdrawal from the project. Austrian and Turkish investors remain committed, however, which means that the project could continue despite drawing international censure. KHRP joins with other NGOs including WEED, Eca-Watch and Berne Declaration in urging all other investors and the Turkish government to abandon the Ilisu Dam Project.

Recommendations to the Government of Turkey

In light of the concerns raised by this report and the reports of other NGOs and human rights defenders, KHRP urges the government of Turkey to:

- adequately investigate and punish the perpetrators of the violence towards IDPs, both in the past and on an ongoing basis;
- abolish the village guard system and initiate an anti-landmine campaign, to include the safe removal and disposal of landmines and

⁶¹ 'The Ilisu Dam: Downstream Water Impacts and Iraq Report of Fact Finding Mission to Iraq, 29 March 2007', KHRP and The Corner House March 2007, p. 4.

⁶² 'The Ilisu Dam: Downstream Water Impacts and Iraq Report of Fact Finding Mission to Iraq, 29 March 2007', KHRP and The Corner House March 2007, p. 5.

an educational programme about their dangers for the local community;

- create viable conditions for IDPs to return to their villages and rehabilitate themselves;
- draft a new compensation law in partnership with members of the IDP community that provides a simple, concrete structure for compensating displaced persons for both economic and non-pecuniary loss resulting from displacement, suffering and trauma;
- immediately cease the operations of the damage assessment commissions and allow an independent review of their working methods;
- agree to train the Judiciary and all compensation assessment committee members in accordance with new legislation and the principles of rehabilitating IDPs articulated by the OSCE Commitments as well as Turkey's other international obligations;

Recommendations to the OSCE

Recalling the commitment to ending the plight of IDPs it has articulated in the Lisbon, Helsinki and Budapest Documents, KHRP urges the OSCE to:

- maintain contact and initiate dialogue with NGOs and human rights defenders operating in Turkey and monitoring the situation of this country's IDP community;

- provide opportunities for participating States to discuss and examine solutions to the IDP problem, including legislation, compensation schemes and government assistance;
- send a fact-finding mission to observe compensation courts.