



## **Unjust, Restrictive, and Inconsistent**

### **The Impact of Turkey’s Compensation Law with Respect to Internally Displaced People**

<b>Summary .....</b>	<b>1</b>
<b>Background.....</b>	<b>5</b>
<b>Impact of the ECtHR on provisions for Turkey’s displaced .....</b>	<b>9</b>
<b>Forced Conciliation .....</b>	<b>13</b>
<b>Trends since the İçyer Judgment .....</b>	<b>15</b>
<b>Methods used by damage assessment commissions to reduce or avoid payment ..</b>	<b>20</b>
House price scales manipulated to reduce property values .....	20
Arbitrary reductions in valuations.....	22
Underestimation of land holdings .....	23
Insufficient compensation for orchards .....	26
Exclusion of stock and stockkeeping.....	27
Exaggeration of compensation or assistance already received.....	28
The single-person “rule” .....	29
The “rule” concerning children born away from the village .....	30
Exclusion of applicants displaced prior to July 1987.....	30
1999 closure of conflict “rule” .....	32
Exclusion of rent from conciliation payments .....	34
<b>Inconsistency in conciliation payments.....</b>	<b>36</b>
<b>The fixed sum proposal .....</b>	<b>36</b>
<b>Recommendations .....</b>	<b>38</b>

## Summary

More than two years after coming into force, Turkey's law to compensate the several hundred thousand mainly Kurdish villagers forcibly displaced by the armed conflict in the southeast of the country is being implemented in a way contrary to the government's stated purpose and principles of fair and appropriate redress. Rulings by provincial commissions charged with the law's implementation are actually hindering those internally displaced who would like to return to their pre-conflict homes. With a pattern of woefully inadequate compensation payments now clear, Human Rights Watch urges the Turkish government to suspend the operations of the commissions that decide compensation amounts, pending a speedy review of their working methods and of the payments being offered.

The Law on Compensation for Damage Arising from Terror and Combating Terror (Compensation Law), was adopted by the Turkish parliament and went into effect in July 2004. The law was intended to indemnify victims of the armed conflict between Turkish government forces and the Kurdish Workers' Party (PKK), which took place in southeastern Turkey from 1984 onward. Among these victims were the 378,335 villagers—mainly Kurdish farmers and their families—who were forcibly displaced from their homes and livelihoods by the conflict. Payments under the Compensation Law to this group are intended to cover losses arising from the original displacement, as well as those incurred during the decade or more that these families were unable to return to their property. The Turkish government stated that the intent of the law was to “to deepen trust in the State, to strengthen the State-citizen relationship, to contribute to social peace and the fight against terrorism,”<sup>1</sup> and committed itself to seeing that it was effectively implemented.

During 2005 some of the provincial “damage assessment commissions,” which were appointed to negotiate so-called conciliation agreements (*sulhname*) between the government and individual victims from the conflict, made payments under the law that were substantial enough to assist families in returning to their former homes or making a new life by integrating in the cities where they had taken up residence following their

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<sup>1</sup> Preamble to Draft Law on Compensation for Damage Arising from Terror and Combating Terror (Law 5233) April 19, 2004.

displacement. The relatively good performance of the damage assessment commissions during this period appears to have been influenced, at least in part, by the fact that the Turkish government wanted to demonstrate that the new law provided an effective domestic remedy to the problems of the displaced, and that the more than 1,500 cases filed by displaced people against Turkey and pending before the European Court of Human Rights (ECtHR) could now be handled through this newly created channel. In January 2005 the ECtHR did, in fact, rule that the application of Aydın İçyer, who had been displaced since 1994, was inadmissible on the grounds that he had not exhausted domestic remedies. The ECtHR pointed to the Compensation Law as providing an effective remedy that the displaced needed to exhaust before applying to the court.

Since the ECtHR announced its decision in the *İçyer* case, there has been a noticeable deterioration in the implementation of the Compensation Law by provincial damage assessment commissions. The damage assessment commissions appear to approach their task in a much more grudging and arbitrary way, resulting in absurdly low compensation amounts. For example, in a recent decision by the Diyarbakır damage assessment commission, a family that has had no access to its house, crops, or silkworm business since they were destroyed by soldiers in 1993 was offered a total compensation amount of 5,000 Turkish Lira (TL) (US\$3,350).<sup>2</sup>

In theory, displaced people have the right to challenge such derisory compensation sums in the Turkish courts, but the obligation to pay a percentage of the court costs up front, long trial delays, and the courts' record of providing inadequate justice to displaced people rules this out as a realistic option. Villagers have no practical choice but to accept whatever the damage assessment commissions offer. To do otherwise would only result in further postponing their ability to move on with their lives.

Displaced persons also have the theoretical possibility of again submitting their cases to the ECtHR, after having exhausted all domestic remedies. In reality, however, the long delays before the ECtHR would issue a ruling means that internally displaced persons have a choice between some amount of compensation—no matter how inadequate—and the prospect of another five- to 10-year wait for the possibility of more adequate compensation.

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<sup>2</sup> At the time of writing, the Turkish lira was worth US\$0.67 and €0.53.

Damage assessment commissions appear increasingly to apply arbitrary and unjust criteria in calculating compensation, sometimes in defiance of the law's own implementing regulations.<sup>3</sup> These calculations appear consistently to favor the government and to be biased against the victims of government abuse.

Commissions manipulate government compensation scales to whittle down the value of family homes—by calculating house values on the basis of values for cowsheds, for example. In the region where most displacements took place, income was primarily earned through animal husbandry, but in defiance of the law, damage assessment commissions will not compensate any losses associated with livestock. They also implement a host of invented “rules” in order to exclude applicants and diminish state liability.

Thus, the Compensation Law is being implemented in a manner that directly undermines the stated purpose of the law and the government's express intent. It also undermines the possibilities for displaced villagers to obtain just compensation and hinders their ability to return to their pre-war homes.

The damage assessment commissions go through the motions of assessing the precise losses of each individual family. But this approach seems inappropriate to a region where the state land registry has barely started its work, and where the local economy was and remains almost entirely informal—two factors that make documenting economic loss particularly difficult. It is especially inappropriate to a program of forced evacuation of hundreds of thousands of Turkish citizens, which, although it was carried out by the Turkish civil service and security forces, was conducted without, it seems, a scrap of documentation or a trace of record keeping. In view of the lack of formal records relating to any aspects of the violations or family circumstances, the government should consider abandoning individual assessments, and instead pay a standard sum per household, calculated on a per-member, and per-year-of-displacement basis.

Whatever method is finally adopted, it should ensure that a family displaced for 12 years receives not less than TL 50,000 (\$33,500), which is the average for the first and widely

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<sup>3</sup> Implementing Regulation for Law on Compensation for Damage Arising from Terror and Combating Terror, Regulation No. 2004/7955, October 4, 2004, Official Gazette, October 20, 2004; Implementing Regulation for Law on Compensation for Damage Arising from Terror and Combating Terror, Regulation No 2005/9329, August 22, 2005, Official Gazette, September 15, 2005.

publicized friendly settlement, in Batman province, and close to the approximate average payment ordered by the ECtHR in forced displacement cases in Turkey. This is an appropriate baseline since it is recognized that ECtHR compensation rates, symbolic of restorative justice rather than a full enactment of it, are generally lower than would be given by a civil court.<sup>4</sup> A typical displaced family was threatened, abused, ill-treated by state officials, and then driven out of their home at gunpoint. The family home was burned down before the eyes of the children. The family was at once deprived of shelter and income, and forced, in a traumatized state, to improvise both in an urban situation to which they were not accustomed. They were obliged to find work and pay large sums in rent over the course of more than a decade, and kept away from their house and the property that provided their livelihood. Full restitution in any just civil court would surely run to the equivalent of hundreds of thousands of dollars.

If payment levels fall below the average set by the ECtHR, it would be a clear sign that the Compensation Law is not only operating unjustly, but also failing to provide a practical sum that would facilitate either return or integration.

The ECtHR and the Council of Europe, which were instrumental in establishing justice for Turkey's displaced and ensuring that violations against them were placed on the public record, should be vigilant and active in ensuring that the Turkish government halts, reviews, and revises the work of the damage assessment commissions. The situation of the displaced is a major agenda item in the relations between the European Union (EU) and Turkey, and the EU should use all its influence to ensure that the Compensation Law contributes to resolving the problems of the displaced.

The research for this memorandum was conducted by Human Rights Watch in Diyarbakır, Bingöl, and Elazığ provinces. Interviews were conducted with numerous internally displaced persons, government officials, representatives of international organizations,

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<sup>4</sup> See Bona, Marco. *Towards The "Europeanisation" Of Personal Injury Compensation: Contexts, Tools, Projects, Materials And Cases On Personal Injury Approximation in Europe*, published in "Personal Injury Compensation in Europe," edited by Marco Bona & Philip Mead, Deventer, Kluwer, 2003: "Awards by the Strasbourg Court are generally quite low. It should also be noted that the ECtHR tends to see the recognition of the violation itself as efficient and exhaustive satisfaction for the victim, in many cases appearing to consider compensation as something merely added to such recognition." Also Leach, Philip, "Taking a Case to the European Court of Human Rights", Oxford University Press, 2005: "In general, awards of damages are relatively low compared with damages awarded by the domestic courts of many Council of Europe states... This is probably due to a prevailing view that the primary remedy in Strasbourg is the finding of a violation of the Convention itself."

and diplomatic representatives based in Turkey. Human Rights Watch sought to conduct additional interviews with provincial government officials, and in particular with provincial governors responsible for damage assessment commissions in Bingöl and Diyarbakır, in order to better reflect their views on the damage assessment process. The fieldwork, including these attempts to meet with government officials, was hindered by interruptions and obstructions by gendarmerie, culminating in the arrest and deportation of Human Rights Watch’s researcher—on the pretext of visa irregularities, though the researcher was not in breach of visa requirements—on April 13, 2006. In a February 2006 letter to Deputy Prime Minister Abdullah Gül, Human Rights Watch also expressed concern about the inconsistency in rulings by the compensation commissions and called for an immediate and thorough review of the commissions’ work to ensure that all provinces were applying the criteria in a fair and consistent manner. The Turkish authorities did not respond to that letter.

The names of villagers and some of the lawyers interviewed for this report have been replaced with initials, to disguise their identities for their protection.

## Background

During the 1980s and 1990s, as part of its counterinsurgency effort, Turkish government security forces forcibly emptied an estimated 3,000 villages in southeastern Turkey. Official figures state that 378,335 villagers were displaced during this process, though the actual figure is probably much higher.<sup>5</sup> The inhabitants of these villages were mainly Kurdish peasants and farmers, who were caught between the Turkish military forces on the one side and the Kurdish Workers’ Party (PKK) on the other. Their displacement not only left them homeless, but deprived them of access to their lands and livestock and of their livelihoods.

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<sup>5</sup> Parliamentary Commission on Internal Migration of the Turkish Grand National Assembly, Report on “Remedies To Be Undertaken On The Basis Of Research Into The Problems Of Citizens Who Have Migrated As A Result Of Evacuation Of Settlements In East And Southeast Anatolia,” submitted to the Grand National Assembly of Turkey, January 14, 1998. Nobody knows for sure how many people were displaced in the 1990s. In 1998 the governor of the southeastern provinces—then under a state of emergency—stated that 378,335 villagers had been displaced from 820 villages and 2,345 smaller settlements. The Turkish government rounded this down to 350,000 in the figures supplied to the European Commission for the 2004 Regular Report. The U.S. State Department report for 1998 considered 560,000 a credible estimate. The Diyarbakır Bar Association suggests that as many as two million may have been displaced. At any rate, the estimate of 378,335 derived from provincial displacement figures is almost certainly too low.

The village destruction program, as this counter-insurgency effort was known, was intended to prevent the PKK from recruiting from the villages and using them for logistical support. Local gendarmerie (soldiers who police rural areas) required village populations to enroll in the “provisional village guards” who were armed, paid, and supervised by the local gendarmerie post. Villagers were confronted with an impossible dilemma: If they became village guards they were likely to be attacked by the PKK, but if they refused village guard service then the gendarmes would forcibly, unlawfully, and often violently, evacuate and destroy their settlement.

As Human Rights Watch has reported previously,

Evacuations were unlawful and violent. Security forces would surround a village using helicopters, armored vehicles, troops, and village guards, and burn stored produce, agricultural equipment, crops, orchards, forests, and livestock. They set fire to houses, often giving the inhabitants no opportunity to retrieve their possessions. During the course of such operations, security forces frequently abused and humiliated villagers, stole their property and cash, and ill-treated or tortured them before herding them onto the roads and away from their former homes. The operations were marked by scores of “disappearances” and extrajudicial executions. By the mid-1990s, more than 3,000 villages had been virtually wiped from the map, and, according to official figures, 378,335 Kurdish villagers had been displaced and left homeless.<sup>6</sup>

Throughout the 1990s the Turkish government refused to acknowledge that evacuations and expulsions were happening at all, and lied to cover up security forces’ abuses. One or two politicians spoke out against village destruction, at the cost of damaging their own political careers, but parliament failed to halt the conflagration. Internally displaced people desperately lobbied local and national politicians. On October 26, 1994, Prime Minister Tansu Çiller met a delegation of *muhtars* (village headmen) from Tunceli province. They told her that soldiers had burned their villages and that helicopters had supported the operations. But total

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<sup>6</sup> See Human Rights Watch, “Still critical”: Prospects in 2005 for Internally Displaced Kurds in Turkey, vol. 17, no. 2(D), March 2005, <http://www.hrw.org/reports/2005/turkey0305/index.htm>.

denial was now official policy. The prime minister told them: “Even if I saw with my own eyes that the state had burned a village, I would not believe it. Do not think that every helicopter you see is ours. It could be a PKK helicopter. It could also be a Russian, Afghan, or Armenian helicopter.”<sup>7</sup> Another *muhtar*, Mehmet Gürkan, of Akçayurt, in Diyarbakır province, stated on national television that security forces had burned his village in July 1994. When he returned to the village a month later an eye-witness saw soldiers detain him and take him away in a helicopter. He was never seen again.<sup>8</sup> The judiciary made every effort to suppress news of the operations. In April 1994 the Turkish Human Rights Association (HRA) published *A Cross-Section of the Burned Villages*, a 250-page document on human rights violations in the emergency region, focusing in particular on the destruction of villages. The book was confiscated and Akın Birdal, national president, and two other HRA officials were prosecuted at Ankara State Security Court on charges of “separatist propaganda” under Article 8 of the Anti-Terror Law.

News of the displacement was largely suppressed, but the consequent influx of Kurds into the cities of western Turkey provoked questions and protests. In 1995 a parliamentary inquiry into internal migration was initiated, and in 1996 the European Court of Human Rights ruled in *Akdivar and others v. Turkey* that the government’s security forces had unlawfully destroyed houses, and that the local judiciary, far from investigating the violation, had assisted in a cover-up.

By the late 1990s displacements slowed to a stop either as a result of international and domestic attention to the problem, or because, by then, most of the non-village guard communities had been moved out.

In order to fend off criticism, the government launched a few initiatives for the return of the displaced, all badly conceived and starved of political commitment and funds.<sup>9</sup> By

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<sup>7</sup> *Cumhuriyet* (Republic), October 28, 1994.

<sup>8</sup> See Amnesty International report *Policy of Denial*, February 1995, p 3.

<sup>9</sup> For a survey of such initiatives up to 1996, see: Human Rights Watch/Helsinki, “Turkey’s failed policy to aid the forcibly displaced in the southeast,” A Human Rights Watch report, vol. 8, no. 9 (D), June 1996. For an evaluation of later initiatives, including the Return to Village and Rehabilitation Project, see Human Rights Watch, “Displaced and Disregarded: Turkey’s Failing Village Return Program,” A Human Rights Watch report, vol. 14, no. 7 (D), October 2002, and Human Rights Watch “Still critical - Prospects in 2005 for Internally Displaced Kurds in Turkey,” March 2005.

2000, despite official statistics and claims to the contrary, there had been virtually no returns at all. But international interest in Turkey's displaced had increased, and the international community had become much more effective in pressing for change especially once the EU had recognized Turkey as a candidate member at the end of 1999 and moved towards opening full accession negotiations, a step conditioned on fulfillment of a program of human rights reforms.<sup>10</sup>

In November 2002 the then special representative of the UN secretary-general on internal displacement, Francis Deng, reported on a visit to Turkey and recommended, among other measures, that displaced villagers should be compensated.<sup>11</sup>

In May 2003 the EU revised its Accession Partnership with Turkey to include a requirement that "the return of internally displaced persons to their original settlements should be supported and speeded up."<sup>12</sup> In June 2004 the Parliamentary Assembly of the Council of Europe (PACE) urged the government to "move from a dialogue to a formal partnership with UN agencies to work for a return in safety and dignity of those internally displaced by the conflict in the 1990s" and to enact provisions for compensating the displaced.<sup>13</sup>

In response to the growing calls for an effective policy toward the internally displaced, the Turkish government passed the Law on Compensation for Damage Arising from Terror and Combating Terror (Law 5233) on July 17, 2004. The law went into effect on July 27, 2004, and regulations for implementing the law were published in the Official Gazette on October 20, 2004.

The Compensation Law offered the possibility of full compensation for material losses arising from displacement—potentially a powerful and effective mechanism for restitution. It also provided a potential mechanism to begin the process of

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<sup>10</sup> The opening of accession negotiations was decided by the European Council on December 16, 2004, to begin on October 3, 2005. For Human Rights Watch's assessment of the state of human rights in Turkey at the time of the decision on accession negotiations, see *A Crossroads for Human Rights? Human Rights Watch's key concerns on Turkey for 2005*, December 2004, <http://hrw.org/english/docs/2004/12/15/turkey9865.htm>

<sup>11</sup> Report of the Special Representative of the United Nations Secretary-General on internally displaced persons, Mr. Francis Deng, submitted pursuant to Commission on Human Rights resolution 2002/56, E/CN.4/2003/86/Add.2, November 27, 2002.

<sup>12</sup> European Commission, Turkey: 2003 Accession Partnership, May 19, 2003, *Priorities (2003/2004)*.

<sup>13</sup> Parliamentary Assembly of the Council of Europe, Resolution 1380 (2004), adopted June 22, 2004, 23.viii.

reconciliation and to underscore the government's goodwill toward a group of citizens who had been quite appallingly treated by state officials, as well as, in some cases, by illegal armed groups.

What is more, adequate compensation could also provide real practical choices for displaced people either to return to the village or make new lives in the cities. Villagers confront a variety of obstacles to return, ranging from occupations and violence by neighboring village guards<sup>14</sup> to landmines and lack of infrastructure—most destroyed villages have no electricity, reliable water supply, or a school.<sup>15</sup> But many villagers say that it is chiefly the financial cost of return that makes it a practical impossibility. Even before their displacement this population was among Turkey's poorest. The violent displacements left them homeless and unemployed, and in addition they suffered greatly from a decade of marginalization in a turbulent economy struck by repeated economic crises. Returning villagers would have to transport their family and belongings back to the southeast, reconstruct their homes—now no more than piles of stones covered with brambles—buy stock and equipment, clear farmland, replant crops and trees, and get through the first year or two before they could re-establish a stream of income and produce. All this would require a major outlay of funds, which most of the displaced simply do not have. Reasonable compensation for the destruction of property, loss of income, and the costs of the past decade in rent would help make return feasible.

## **Impact of the ECtHR on provisions for Turkey's displaced**

As indicated above, the 1996 *Akdivar v. Turkey* judgment by the ECtHR was a turning point in the relationship between displaced Kurdish villagers and the Turkish government. The case concerned a village guard family from Kelekçi village, near Dicle, in Diyarbakır province. When three members of the family were killed by a PKK attack in July 1992, the rest of the family resigned from the village guard corps. In November 1992 the gendarmerie instructed the *muhtar* to evacuate all of the

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<sup>14</sup> Since 2002 village guards have killed at least 13 unarmed villagers.

<sup>15</sup> See Human Rights Watch, *Displaced And Disregarded: Turkey's Failing Village Return Program*, vol. 14, no. 7(D), October 2002, <http://hrw.org/reports/2002/turkey/>; and "Still critical."

inhabitants. As he gathered the villagers together, soldiers in armored cars began firing with heavy weapons at the villagers and their houses; soldiers also set fire to nine houses, which burned to the ground together with their contents. The soldiers shot the villagers' livestock. The Kelekçi villagers fled to nearby towns. Soldiers burned the rest of the village—136 houses in total—in April of the following year.

The ECtHR judgment was especially important because, as the first of its kind relating to displacement in the southeast of Turkey, it established a true record of events and provided compensation. It stated clearly that the Turkish army had been responsible for driving law-abiding farming families from their homes. It provided substantial compensation for material losses, as well as non-pecuniary damages for the trauma of the displacement. Displaced villagers who had for years been chased away from the offices of government officials and local prosecutors now had somewhere they could apply for justice and expect a fair hearing. In other ECtHR decisions after *Akdivar*, the court held that Turkish security forces had burned Kurdish villagers' homes and/or forcibly evacuated them.<sup>16</sup> There were also friendly settlements—agreements to settle the dispute without a court judgment— during this period, in which the Turkish government paid substantial sums to displaced persons.<sup>17</sup> The damages awarded by the court and the settlements reached between the parties averaged, in mid-2005, TL 82,591 (\$55,336) per family. According to the Ministry of Justice in 2001, at that time there were 1,500 cases involving house destruction in the southeast that were pending against Turkey before the ECtHR.<sup>18</sup> These cases were of great concern to the Turkish government because they threatened to result in repeated court findings of Turkish military responsibility for the destruction of houses in the southeast and in substantial damages being awarded to the plaintiffs, as well as reprimands from the Council of Europe's Committee of Ministers. The large number of cases pending before the ECtHR may have been a determining factor in the Turkish government's decision to enact the Compensation Law.

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<sup>16</sup> See for example, *Menteş and others v Turkey*, ECtHR, November 28, 1997; *Selçuk and Asker v Turkey*, ECtHR, April 24, 1998; *Bilgin v Turkey*, ECtHR, November 16, 2000; *Dulas v Turkey*, ECtHR, January 30, 2001.

<sup>17</sup> See for example, *Aydın v Turkey*, ECtHR, July 10, 2001; *Kemal Güven v Turkey*, ECtHR, May 22, 2001; *Aygördü and others v Turkey*, ECtHR, May 22, 2001; *Ince and others v Turkey*, ECtHR, May 22, 2001, and *Isci v Turkey*, ECtHR, September 25, 2001.

<sup>18</sup> Prime Minister's Press and Information Directorate, bulletin for July 14, 2004.

The ECtHR, as well as the villagers, was ready to welcome a well-designed law on compensation that would be fairly implemented and provide an adequate remedy for the victims of the conflict. In its 2004 judgment in *Dogan and Others v. Turkey*,<sup>19</sup> the court had determined that Turkey's displaced were being deprived of any effective remedy, and quoted the recommendations of the rapporteur of the Committee on Migration, Refugees and Demography of the Parliamentary Assembly of the Council of Europe, who had specifically recommended measures for compensation. It is the view of Human Rights Watch that a functional compensation law would provide a degree of timely justice for the villagers, resolve a longstanding grievance, and reduce the caseload of the ECtHR.

The Compensation Law was passed in July 2004, just one month after the *Dogan* decision, and by 2005 damage assessment commissions operating under the Interior Ministry were beginning to evaluate claims by displaced persons. At this stage, the government was keen to establish the credibility of the law. In the summer of 2005 Deputy Prime Minister Abdullah Gül circulated a note to provincial governors calling on damage assessment commissions to work fast, be "flexible" in the level of proofs they required, and be generous in the settlements made.<sup>20</sup> The government made clear that it was concerned about the large number of cases pending before the ECtHR and that it wanted compensation decisions that could be submitted to the court as proof that the Compensation Law was an effective remedy for the displaced. Perhaps as a result of this clear political message from the Turkish government, provincial damage assessment commissions in Batman in early 2005 issued compensation decisions that awarded displaced families an average (per commission) of TL 50,000 (\$33,500). Such award amounts represented a realistic sum sufficient to permit the displaced to make a new start in the homes from which they had been driven a decade before, although considerably less than the real loss they had suffered (see below). The government submitted these settlement agreements to the ECtHR as evidence that the Compensation Law was an effective remedy for the displaced, in an effort to convince the court that the house destruction cases currently pending before it should be ruled as inadmissible.

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<sup>19</sup> *Dogan and others v Turkey*, ECtHR, June 29, 2004.

<sup>20</sup> Turkish Economic and Social Studies Foundation and the Internal Displacement Monitoring Centre, "Overcoming A Legacy Of Mistrust: Towards Reconciliation Between The State And The Displaced," (Geneva/Istanbul: NRC/IDMC/TESEV, June 2006), pp. 36-7.

Already at this time, however, some provincial damage assessment commissions were offering much lower settlements—in some cases derisory figures of TL 5,000 (\$3,350) or less.<sup>21</sup> Human Rights Watch wrote to Deputy Prime Minister Gül on February 22, 2006, urging that damage assessments should take a more consistent and fairer approach.

But in January 2006, the ECtHR had already ruled that the Compensation Law was an effective remedy “capable of providing adequate redress for the convention grievances of those who were denied access to their possessions in their places of residence”<sup>22</sup> and on these grounds had rejected as inadmissible the application of Aydın İçyer, who had been forcibly evicted in 1994 from the village of Eğrikavak, near Ovacık, in Tunceli province. The court found that the Compensation Law was a remedy specifically designed to meet the needs of people in İçyer’s situation, was in operation in all of the provinces of Turkey, and that 170,000 families had already submitted applications under the law. The court therefore rejected Aydın İçyer’s application on the grounds that an effective domestic remedy was now available to him and had to be exhausted before an application could be made to the ECtHR.

The court was certainly right that the Compensation Law and the commissions were *capable* of providing adequate redress, and that they did so for some applicants in 2005. Unfortunately, the law and its implementing regulations provide ample scope for arbitrary decisions by the damage assessment commissions. The *İçyer* decision appears to have been a signal to the damage assessment commissions to exploit every avenue to this end.

Since the *İçyer* decision, the work of the assessment commissions has deteriorated. Assessment commissions are now much freer to dictate the terms of settlements, to decide on lower sums than was previously typical, to revise existing assessments downwards, and to exclude more applicants from coverage under the law.

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<sup>21</sup> For example, Diyarbakır damage assessment commission, decision 2005/4-509, July 7, 2005 for TL 4,858; Diyarbakır damage assessment commission, decision 2005/4-388, August 1, 2005 for TL 4,200; Diyarbakır damage assessment commission, decision 2005/4-534, September 9, 2005 for TL 4,577; Diyarbakır damage assessment commission, decision 2005/4-507, September 9, 2005 for TL 3,640.

<sup>22</sup> Inadmissibility decision in İçyer v Turkey (application no. 18888/02), ECtHR, January 12, 2006.

## Forced Conciliation

*We do not want to go to court. We want what we deserve. I am frightened about opening a ten-year court case. Will I live that long? Honestly, my loss is TL 200,000 and they are offering me TL 7,000.*  
—N.Z., displaced in 1993 from Islamköy village, Diyarbakır<sup>23</sup>

What sets villagers at such a disadvantage in the process provided in the Compensation Law is the lack of independence of the damage assessment commissions and the absence of any effective appeals procedure. Villagers have no realistic alternative and must accept whatever terms the commissions care to propose. To refuse a conciliation offer would be to embark on a legal fight that, considering the pace of legal processes in Turkey, would entail a further decade of delay and substantial litigation expense. And as the analysis in this section shows, there would be little hope of justice at the end of that long fight. This is an almost unbearable prospect for a group of already traumatized and impoverished victims.

Theoretically, if a villager finds the assessment commission's conciliation offer unacceptable, he can go to court. In practice, this is not an option. Under administrative court rules, litigants opening an action must pay into court approximately 4 percent of their claim. But these are poor villagers, reduced to a state of misery by wide-scale criminal acts committed by officials of the state they would be challenging in the courts. A displaced farmer who has to sell puddings on the street to buy school books for his child cannot afford to lay out large sums in the hope of winning a court action against the state responsible for the tort originally committed against him.

Diyarbakır lawyer Habibe Deyar described the stark non-choices:

The assessment commission puts the offer in front of us. We have 20 days to decide. If my client feels he should be paid TL 100,000 [US\$67,000], he has to find TL 4,000 [\$2,680, to pay into court]. The case may take four years in the administrative court. If he wins, the

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<sup>23</sup> Human Rights watch interview with displaced villager N.Z., Elazığ, April 5, 2006.

state will appeal and the case will go to the Council of State. That will take another five years. Nine years—without much prospect of success, because we will have to start from the beginning by proving the state’s responsibility for the burnings. The last time we tried to do that they prosecuted us.<sup>24</sup>

### **The Dictator Game**

*Game theory is a branch of mathematics that studies strategic situations where players choose various tactics in order to maximize their returns. In the Ultimatum Game the proposer has to divide a large sum of money between himself and the respondent, who can take it or leave the offer. If he leaves it, neither side gets anything. Research shows that the proposer tends to offer almost half of the total sum, fearing a spiteful response from the respondent who, experiments show, is unlikely to settle for much less than half. In a variant of this, the Dictator Game, the proposer simply allocates what he likes and there is nothing the respondent can do about it. With no fear of reprisal, the proposer makes a much stingier offer. In fact, the rational offer, under these circumstances, is to give nothing at all, but in practice proposers often give a nominal sum, which researchers suggest is an “investment in reputation.”*

The Dictator Game is a nearly perfect model of how damage assessment commissions are operating. The applicants have no realistic course of action other than to accept what is offered. The only leverage on the commissions to offer anything at all is the need to make the transaction appear to be a genuine compensation process. Giving zero to every applicant would not play well publicly within Turkey or in Brussels, now that the issue of the displaced has been included in the EU accession partnership, and might provoke a swift reversal of the *İçyer* decision.<sup>25</sup>

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<sup>24</sup> See International Commission of Jurists, “Turkey: Final report on the trial of the president of the bar and three other lawyers,” February 11, 2004. Habibe Deyar and other Diyarbakır lawyers who attempted to bring court actions concerning displacement were indicted for “insulting the security forces,” but were finally acquitted.

<sup>25</sup> See, for example, Bolton, Gary, Elena Katok and Rami Zwick (1998), “Dictator Game Giving: Rules of Fairness Versus Acts of Kindness”, *International Journal of Game Theory*, 27, pp. 269-99.

Villagers accept the conciliation proposals not because this is the best option available to them, but because it is really the only option. Even families whose applications are rejected out of hand tend not to challenge the decision through the courts. Diyarbakır lawyer Sedat Aydın described how six families displaced from a village near Çınar, because they had refused service as village guards, were rejected from the Compensation Law process on the basis of testimony given by the current muhtar and the man who was muhtar at the time of the displacement. These officials said that the families had left of their own accord, but both muhtars were village guards, and the lawyer had good grounds for believing that the testimony was untrue. “I discussed the possibility of opening a case. The problem is, I would have to pay in the fee before opening the case. [The six families] decided not to take legal action for financial reasons.”<sup>26</sup>

There are provisions for state payment of court fees for destitute persons, but all displaced villagers who hold land (which would include most applicants, since their complaint is the unlawful denial of access to their land and house) are disqualified by that fact.

### **Trends since the İçyer Judgment**

*Alas for the İçyer judgment! I wish the European Court of Human Rights had waited even just a year to make this step. In the last months the assessment commissions have really started to become merciless. In Çaldere village in Silvan, for example, they made an assessment which we were satisfied with. We signed, they signed, and then just after the İçyer judgement they came back demanding to reduce the sum.*

—Lawyer Mahmut Vefa, Diyarbakır, April 4, 2006

The ECtHR came to the conclusion that the Compensation Law was an effective domestic remedy on the basis of a sheaf of hundreds of conciliation decisions submitted by the government to the court. Human Rights Watch’s letter to Deputy Prime Minister Gül of February 22, 2006 acknowledged that some of the conciliation

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<sup>26</sup> Human Rights Watch interview with lawyer Sedat Aydın, Diyarbakır, April 4, 2006.

decisions gave compensation at a level that would provide realistic assistance to a returning family. Subsequent events suggest that more generous initial decisions were not signs of a reliably fair system, but elements in a cynical agenda to prevent ECtHR from issuing judgements in cases concerning compensation for house destruction. The strategy prioritized the claims of those villagers who had actions pending in Strasbourg and gave some of them relatively generous payments. Lawyer Tahir Elçi observed,

It is clear that the ECtHR claims were dealt with first. [The government] wanted to make some model decisions, and they were successful in that. [The assistant governor responsible for dealing with the Compensation Law] recently boasted that he was a good patriot and had saved many millions for the state.<sup>27</sup> The ECtHR is tactically important, because the government knows and we know that without foreign pressure we would never have got this far.<sup>28</sup>

As soon as the *İçyer* judgment was announced, the damage assessment commissions started to issue much lower assessments, and even sought to revise the assessments that had already been made.

The case of C.S. in Lice, Diyarbakır province, is an example. In the autumn of 1993 soldiers put flammable chemicals in C.S.'s house and set it on fire, along with many other houses in Ziyaret village, near Lice. C.S. has so far been unable to return to his home. In 2005 the assessment commission made a conciliation proposal of TL 40,000 (US\$26,800). C.S. accepted the offer (despite his own assessment that his loss was "not less than TL 150,000 [\$100,500]"). Before the paperwork was finalized, the *İçyer* decision came through. The assessment commission is now refusing to settle the claim without a new assessment. C.S.'s lawyer Habibe Deyar expressed extreme frustration, since her application on his behalf had reached an advanced stage at the ECtHR in Strasbourg. The *İçyer* decision not only derailed that application, but also encouraged the assessment commission to seek to haggle down their existing offer

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<sup>27</sup> "I saved Turkey 20 billion euros in compensation for terror," Deputy Governor Erol Özer, quoted in "Fişleme Yeniden Gündemde" ("Secret files on the agenda again"), *Zaman* (Istanbul), April 1, 2006.

<sup>28</sup> Human Rights Watch interview with lawyer Tahir Elçi, Diyarbakır, April 3, 2006.

under the Compensation Law. “The officials at the damage assessment commission said that the figures were very high and asked to measure the property again—and probably the figures will come out lower.”<sup>29</sup> C.S. shared his lawyer’s disappointment: “We believed in the European Court of Human Rights and that’s why we applied to it. We hoped for something from them. You know... some justice.”<sup>30</sup>

The lawyer Habibe Deyar reported that agreement had been reached in 40 of her cases, and the decisions signed by the damage assessment commission, the deputy governor, and the plaintiff. After the *İçyer* decision the commission took advantage of the changed circumstances, and instead of submitting these agreed conciliations for signature by the governor—the last step before processing and payment—set aside the offer pending a new, lower agreement in most of the cases.<sup>31</sup>

Lawyer F.L. represents the Diyarbakır Bar Association on one of the damage assessment commissions in that province. He reported that, after January 2006, the commission seemed to lose its sense of urgency, and began to make lower payments: “I saw the level of conciliation payments go down after the famous ECtHR *İçyer* judgment. I started in December 2005. In the first month we did six or eight meetings, but in the past month we have not had a single meeting. I cannot say what the reason for this was, but it makes one doubtful, and it looks as if that judgment had an effect. After that judgment the approach in calculating the loss of trees, for example, seemed to be more restrictive. The ECtHR judgment has strengthened the hand of the government.”<sup>32</sup>

Lawyer Mehmet Kaya also observed the slowing down of the work of the commissions,<sup>33</sup> and a fall in the level of payments:

Before the ECtHR decision, the treasury sent monthly payments to provincial governors to enable conciliation payments to be made.

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<sup>29</sup> Human Rights Watch interview with lawyer Habibe Deyar, Diyarbakır, April 3, 2006.

<sup>30</sup> Human Rights Watch interview with displaced villager C.S., Diyarbakır, April 3, 2006.

<sup>31</sup> Human Rights Watch interview with lawyer Habibe Deyar, Diyarbakır, April 3, 2006.

<sup>32</sup> Human Rights Watch interview with lawyer F.L., Diyarbakır, April 3, 2006.

<sup>33</sup> The Turkish Economic and Social Studies Foundation’s May 2006 report *Overcoming A Legacy Of Mistrust: Towards Reconciliation Between The State And The Displaced*, noted that the work of the commissions had slowed and the level of payments had fallen.

Since [the decision] they have only sent one payment. In 2005, when the commission made its assessments, compensation for a person deprived of access to their land was set at TL 75 per decare and TL 100 per decare for irrigated land.<sup>34</sup> This year they are paying TL 25 and TL 45 respectively. They have cut the unit for calculating the evaluations. It is not clear where they get the basis for the decisions. Before the *Içyer* decision we used to discuss the claims with the commission, but now they just give us a computer printout, and we have no opportunity to discuss or argue the application.<sup>35</sup>

The same lawyer went on to quantify the change with illustrations from three Diyarbakır villages: In Gömeç village, near Hani, the average payment made before the *Içyer* decision to each of 110 households was TL 22,000 (\$14,740). In Şaklat village, Kocaköy, payment made before the *Içyer* decision to each of 192 households was TL 33,000 (\$22,110). At Güldiken village, near Lice, by contrast, the survey and conciliation proposals were made out after the *Içyer* judgment, and the offers to 250 households averaged TL 8,000 [\$5,360]—a more than fourfold decrease from the Şaklat example.

The drop in payments is not restricted to Diyarbakır province. Lawyer Sabri Erik reported that in Bingöl province, villagers deprived of access to their land had been receiving TL 75 per decare in 2005, but that after the *Içyer* decision it had fallen, first to TL 50, and by April 2006 to TL 25 per decare. “Last year they were giving TL 20,000 [\$13,400] as compensation for a destroyed house. Now they give from TL 8,000 to 10,000,” Erik said.<sup>36</sup>

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<sup>34</sup> A decare is one-tenth of a hectare, approximately a quarter of an acre.

<sup>35</sup> Human Rights Watch interview with lawyer Mehmet Kaya, Diyarbakır, April 6, 2006.

<sup>36</sup> Human Rights Watch interview with lawyer Sabri Erik, Bingöl, April 7, 2006.

ÖDENECEK MİKTARI	ÖDENECEK MİKTARI	ADİ	
16.187,00			59- GENEL TOPLAM
53.564,00			#YOK
25.132,00			10.080,00
24.476,00			0,00
34.160,00			1.435,00
20.921,00			0,00
12.836,00	A		11.959,20
32.070,00			12.085,00
16.184,00			10.080,00
53.823,00	A		3.008,20
41.634,00			7.195,70
5.835,00			2.545,40
28.694,00			0,00
20.400,00			8.190,20
34.020,00			10.232,50
35.560,00			0,00
72.643,00			11.528,75
26.740,00			9.083,00
20.037,00			8.592,50
45.038,00			3.034,20
14.225,00			9.904,90
20.930,00			14.465,00
12.250,00			410,00
18.476,00			9.834,18
25.256,00			0,00
36.512,00			4.710,00
23.930,00			9.942,00
11.050,00			0,00
25.907,00			3.980,40
25.830,00			0,00
14.475,00			9.615,00
55.953,00			0,00
38.863,00			11.821,65
22.232,00			7.485,00
25.102,00			11.176,00
29.708,00			0,00
33.726,00	SI		14.435,60
29.439,00	SI		0,00
33.189,00			23.055,06
14.112,00			33.795,00
20.198,00	ZIYA		0,00
29.547,00			2.647,90
16.214,00			0,00
19.096,00			3.570,40
31.647,00			2.647,90
50.734,00			15.867,00
			10.080,00
			3.551,00
			3.166,40
			3.721,40

The figures on the left are from a list of conciliation settlements proposed at Şaklat village, Kocaköy, Diyarbakır, prior to the *İçyer* judgment. The figures on the right are conciliation settlements offered after the *İçyer* judgment to villagers of Güldiken village, Lice, Diyarbakır. The villages are broadly comparable from the size of holdings and quality of land and housing, and both were destroyed by security forces in 1993, yet the general levels of proposed settlements are visibly lower in the post-*İçyer* settlements.

## **Methods used by damage assessment commissions to reduce or avoid payment**

In the March 2005 report *“Still critical”: Prospects in 2005 for Internally Displaced Kurds in Turkey*, Human Rights Watch warned that civil servants might, in order to protect their own career, be reluctant to pay out large sums of state money to displaced Kurds, and might seek unfair ways to force payments down. This concern seems to have been borne out by events. Two Bingöl lawyers reported that an official [whom they named] responsible for administering compensation had said that he found it “normal” that the security forces should burn a village to combat insurgency, that he did not believe in the compensation process and wanted no part of it, that the figures were big, and that he dared not sign for them.<sup>37</sup> This section describes some of the devices officials are using to reduce the “big figures.”

Adding insult to injury, in some areas villagers themselves are obliged to finance the operation of the provincial damage assessment commissions, and these expenses are substantial. Article 12 of the implementing regulation for the Compensation Law states that operating expenses are to be paid from the Interior Ministry budget. In practice, the villagers are underwriting the process. O.H., from a village near Dicle, Diyarbakir province, said that payments for transport by taxi, meals, and paper over the two weeks that it took the commission to complete the survey came to TL 4,000 (\$2,680), and that this cost was shared by 100 households of displaced people. “They get us every time—when I went to the provincial agriculture directorate to get a map for the survey, I had to buy a cartridge for their printer. It cost me TL 70 [\$47].”<sup>38</sup>

### **House price scales manipulated to reduce property values**

The government admits that at least 41,381 households were internally displaced from the southeast from 1987 to 2002.<sup>39</sup> It is well documented that most of the

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<sup>37</sup> Human Rights Watch interview with two lawyers, names withheld, Bingöl, April 8, 2006.

<sup>38</sup> Human Rights Watch interview with O.H., Diyarbakir, April 4, 2006.

<sup>39</sup> “Return to Village and Rehabilitation Project – Provincial Statistics for 12 Provinces,” supplied by the Interior Ministry to Human Rights Watch under a cover letter by Ambassador Duray Polat, Director General for Multilateral Political Affairs, November 24, 2004.

houses in which these households lived were destroyed as punishment for those who refused to join the village guard corps and in order to prevent the buildings being used by the PKK. Proper compensation for the destruction of 41,381 homes would be a very large allocation of government funds, but the civil servants who make up six of the seven members of each damage assessment commission are adept at finding ways to whittle the liability down.

Although the Compensation Law requires that provincial damage assessment commissions assess house values on the basis of compulsory purchase rates (*kamulaştırma*), in Diyarbakır and Bingöl commissions have used the lower public works (*bayındırlık*) rates. Within this lower scale the commissions then select the lowest unit rate they can possibly apply to a dwelling. Diyarbakır lawyer Mahsuni Karaman showed conciliation assessments for villagers in which the value of their houses had been calculated at TL 89 per square meter. This is the unit price for a cattle shed, according to the “2005 Approximate Unit Construction Costs for Use in Calculations for Architects and Engineers,” published by the Housing Ministry.<sup>40</sup> The same list sets the value of a prefabricated dwelling of the sort used to provide relief after earthquakes and similar natural disasters at TL 193 per square meter.

The damage assessment commissions further prune the compensation figure by means of depreciation scales. The Bingöl lawyer Hanifi Budancamanak described how this is done:

The state’s experts go out on the surveys: a building inspector, an agricultural engineer, and a cadastro [land registry] official. They are state officials. They go and work out what the loss is. When we go to the commission, we find they have reduced it. They say they have subtracted 25 percent for the subcontractor’s profit [the profit the builder of the original house would have], and 18 percent in depreciation, and if it is still too high they reduce it further.<sup>41</sup>

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<sup>40</sup> Official Gazette No. 25714, February 1, 2005.

<sup>41</sup> Human Rights Watch interview with lawyer Hanifi Budancamanak, Bingöl, April 7, 2006.

N.B. of Suçıktı village, Kocaköy, Diyarbakır province, had the value of his buildings estimated at TL 12,460 for the house, and TL 4,692 for the stable, giving TL 17,132 (\$11,478) in total. The commission reduced this by applying a depreciation scale (based on the age of the house) to reduce it by 45 percent, to TL 9,423 (\$6,313).<sup>42</sup>

The housing scales are quite complex, and the damage assessment commissions seem to be ready to use every possible assumption, including false ones, in order to lower the figure. For example, according to the table of rates issued by the Diyarbakır Housing Directorate that were shown to Human Rights Watch, the value of a 16- to 20-year-old building is reduced by 32 percent, but if the building is made of sun-baked clay bricks, it is reduced by 45 percent. A damage assessment board classed all houses in Ağıllı village, near Kulp, in Diyarbakır province, as sun-baked clay brick, though this is not a material used in that area and the houses of Ağıllı were almost exclusively built of stone.<sup>43</sup>

### **Arbitrary reductions in valuations**

The damage assessment commissions make a show of objective calculation on the basis of official unit prices and income tables, and of using aerial photographs and measuring tapes, but where the figures in survey reports still come out too high, they are often simply ignored.

Lawyer Nushattin Döner of Bingöl expressed the view that the commissions in that province are making up rules as they go along: “At the moment, the housing ministry’s unit figure for building a house is TL 193 per square meter, so if a house is 100 square meters, the cost is TL 19,100 [\$12,800]. If you add barns and outhouses it may come to TL 30,000 [\$20,100] or so. But the commissions in Bingöl are now saying that they will under no circumstances pay more than TL 16,000 [\$10,720] for all such structures taken together.”<sup>44</sup>

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<sup>42</sup> Human Rights Watch interview with displaced villager N.B., Diyarbakır, April 5, 2006.

<sup>43</sup> Human Rights Watch interview with lawyer Mahsuni Karaman, Diyarbakır, April 5, 2006.

<sup>44</sup> Human Rights Watch interview with lawyer Nushattin Döner, Bingöl, April 8, 2006.

Döner also reported that a damage assessment commission in Bingöl province had assessed the loss of villager R.G. at Aslanbey, Solhan, at more than TL 40,000 (\$28,800) but had subsequently reduced the conciliation offer to TL 14,000, without giving a reason for the cut.<sup>45</sup> Lawyer Abdullah Kaldık said that his client Z.K. in Kıraçtepe, near Karlıova, had received an expert assessment of TL 200,000 (\$134,000), but the damage assessment commission then reduced the sum to TL 45,000 (\$30,150). An assistant governor subsequently reduced the sum to TL 30,000 (\$20,100), and finally a newcomer to the commission said that Z.K. had made “a low tax declaration” in 1990 prior to being forcibly displaced, and on those grounds reduced the payment to TL 25,000 (\$16,750).<sup>46</sup>

### **Underestimation of land holdings**

Damage assessment commissions’ duties include calculating villagers’ loss of income resulting from their inability to access their lands for a decade or more. This should be done by taking the area of land held by a villager and multiplying it by an annual unit rate for the crop that would have been raised on the land. But the circumstances of the region complicate this process, resulting in further reductions of the villagers’ compensation.

Problems begin with the question of ownership. The land registry (cadastro) office is gradually building up a full record of land ownership in Turkey, but its work is far from complete, and is particularly patchy in the southeast. Its usual practice is to visit a village, and create a permanent record of ownership by taking statements from the owner, other villagers, village elders, and the *muhtar*, taking into account paper records of ownership and longstanding land use. The majority of villages burned in the 1990s had not been surveyed by the land registry, and consequently there is considerable scope for dispute about the extent of land holdings. Lawyers and villagers complain that the damage assessment commissions are using the state’s own tardiness in registering land ownership as a handy tool to keep payments low.

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<sup>45</sup> Ibid.

<sup>46</sup> Human Rights Watch interview with lawyer Abdullah Kaldık, Bingöl, April 7, 2006.

Diyarbakır lawyer Mahmut Vefa gave two examples of assessment commissions bargaining down the extent of landholdings on the grounds that land had not been registered, commenting: “The problem for these villages is that no cadastral survey had been carried out. They have ploughed, fertilized, and used these fields but the fields are not counted [into assessments].”<sup>47</sup> In Yorulmaz village, near Lice, villagers were between them cultivating 10,000 decares, but the damage assessment commission would only accept claims on land amounting to 1,900 decares. Akçabudak village, near Lice, has seven outlying settlements with land totaling 15,000 decares, but the damage assessment commission would only accept claims on land amounting to 1,910 decares.

A lawyer gave a detailed account of an attempt to reduce the area of property at Ulukaya village in Muş province, where there were 318 applications. The lawyer heard an assessment commission official say to the villagers that according to the gendarmerie intelligence service, there were 70 families in the village when it was evacuated.<sup>48</sup> The official proposed that if the villagers could reduce the applications to 70, then he would pay TL 13,000 (\$8,710) per application. But if they insisted on making 318 applications, then he would only pay TL 6,500 (\$4,355). The villagers refused the “deal” and the applications were unresolved at the time of writing.<sup>49</sup>

Since land registry data is unavailable for much of the affected region, damage assessment commissions in Diyarbakır are using an aerial photographic survey carried out in 1952. This document, which records the extent of cultivated land 40 years before the displacements took place, is a cause of great resentment: “The commission is treating the whole of Çiftlibahçe, a mountain village, as forest,” said lawyer Sedat Aydın. “The commission says that all the orchards and gardens they had there, which you can still see as burned stumps, cannot be counted, because the area is shown as forest on the 1952 map.”<sup>50</sup> Many other lawyers complained that their clients’ claims had been unreasonably depressed on the basis of the aerial survey.

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<sup>47</sup> Human Rights Watch interview with lawyer Mahmut Vefa, Diyarbakır, April 4, 2006.

<sup>48</sup> Official statistics for pre-displacement village populations are unreliable. See section on “Under-recording initial displacement” in Human Rights Watch, *“Still critical”: Prospects in 2005 for Internally Displaced Kurds in Turkey*, vol. 17, no. 2(D), March 2005, <http://www.hrw.org/reports/2005/turkey0305/index.htm>.

<sup>49</sup> Human Rights Watch interview with lawyer, name withheld, Bingöl, April 7, 2006.

<sup>50</sup> Human Rights Watch interview with lawyer Sedat Aydın, Diyarbakır, April 4, 2006.

Suçıktı village, near Kocaköy, in Diyarbakır province, had been scanned by the land registry, but here another set of problems arose. Suçıktı was originally the property of feudal lords who in the last century sold the land to the sharecroppers who had worked it. Because the villagers could not afford the added per-decare cost in stamp tax, they did not register their ownership, but they did record the change of ownership with the notary public and could have used this document at any time to formalize ownership at the land registry. They showed this evidence of their ownership to the damage assessment commission, but the commission refused to give any payment for the villagers' inability to access their land throughout the 1990s because the land had not been registered. The commission was prepared to pay only for the villagers' destroyed houses. By April 2006, the Suçıktı villagers, who hold a total of 5,000 decare, had refused to sign the conciliation agreements for eight months. The lawyer acting on their behalf was not optimistic about the outcome: "The villagers may start the conciliation process [by signing] or they may do nothing, and the commission's proposal will be eventually counted as having been *de facto* rejected. The villagers would like to go to court but if they have property, they will not qualify for legal assistance."<sup>51</sup> Villagers are disqualified for legal assistance if they hold property—even if this is property that they have been or still are denied access to, and they are otherwise destitute.

Once the commissions have decided the area of the land held by villagers, they have to choose a rate for the net return per decare. Villagers told Human Rights Watch that the rates chosen by the commissions were out of step with current agricultural values. The lawyer Abdullah Yavuz explained, "On dry farming land planted with wheat, the yield is 280kg/decare. One kilogram of wheat is currently TL 0.36, giving an income of TL 100/decare. After costs, they should pay approximately TL 75 per decare. But [the damage assessment commissions] give TL 26-35."<sup>52</sup>

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<sup>51</sup> Human Rights Watch interview with lawyer Abdullah Yavuz, Diyarbakır, April 5, 2006.

<sup>52</sup> Human Rights Watch interview with lawyer Abdullah Yavuz, Diyarbakır, April 5, 2006.[Ibid.] Human Rights Watch was interested to learn how the Turkish authorities' justified the working methods of the damage assessment commissions, and sought interviews with provincial governors responsible for damage assessment commissions in Bingöl and Diyarbakır. Unfortunately, as noted above, Human Rights Watch's researcher was arrested and deported on April 13, 2006, before these interviews could take place.

## Insufficient compensation for orchards

In southeast Turkey, a good deal of villagers' capital, income, and subsistence is derived from trees. Orchards and plantations were almost always destroyed when villages were emptied, and in subsequent years they were repeatedly burned by security forces to reduce cover and food for PKK militants, or cut down by village guards for their own use and income.

Lawyer G.Z., representing the Diyarbakır Bar Association on a damage assessment commission in Diyarbakır, stated: "Since the beginning of 2006 the attitude of the state has changed. They have started to say that they will not compensate for destroyed fruit trees unless the villagers produce a tax report for their earnings from selling fruit [prior to displacement] ... And when they make such requirements lawyers have to abandon the demand."<sup>53</sup>

Diyarbakır lawyer Mahsuni Karaman complains that major losses sustained by his clients at Ağıllı village are being unjustly set aside:

Now they will not pay [for lost income] on trees that are still alive, and will not pay for dead trees unless you can show a burned stump. The village of Ağıllı's income was largely from selling walnuts. They had about 3,000 walnut trees. The governor says we should accept TL 20 per tree, which makes TL 60,000 [US\$40,200] in all. I tried to find out what the rate was from the Provincial Agriculture Directorate using the freedom of information law, but they did not answer. I warned them that I would take them to court and then they sent me a list showing the productivity, costs, income, timber value etc., giving a total value of TL 1,980 per tree. If you multiply that by 3,000, it comes out to TL 5,940,000 [\$3,979,800]. Yes, it is a lot of money, but if you go and burn my walnut tree, you have committed a tort. If I sue you, the court will go and check these figures, and apply them to you. This shows

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<sup>53</sup> Human Rights Watch interview with lawyer G.Z., Diyarbakır, April 3, 2006.

that the governor is acting arbitrarily. There is no legal basis for the rate being offered.<sup>54</sup>

Diyarbakır lawyer Mahmut Vefa gave a practical example of how payments for walnut trees could be pushed down. He and the damage assessment commission had made a conciliation agreement for the inhabitants of Çaldere village, near Silvan, Diyarbakır.

We signed, [the commission] signed, and then just after the *İçyer* judgement, they came back with an attempt to knock off money. They wanted to knock TL 410,000 [\$274,700] off the conciliations for 88 households. These people had been growing lots of walnuts, but suddenly the commission said we should bring evidence of income for walnuts. They knocked TL 33,000 [\$22,110] off the assessment of one villager [name withheld], saying that he could not show that he had been earning money from walnuts. But who in the southeast gets a receipt when they sell walnuts? It is not surprising that [the damage assessment commission] has hung a copy of the *İçyer* judgment on the wall of their office.<sup>55</sup>

Lawyer N.H., Diyarbakır Bar Association, representative on another damage assessment commission, said: “In the ... region they are taking the following approach: if you show me the stump, I'll give you TL 20, but nothing for [inability to access and crop] a growing tree. They will give you TL 20 for the dried stump of a poplar, but then, after ten years a poplar does not even show a stump.”<sup>56</sup>

## **Exclusion of stock and stockkeeping**

Damage assessment commissions go into considerable detail in calculating agricultural yields for these villages, but for many of the destroyed villages agriculture was just a sideline, and their main income was derived from animal husbandry. It is,

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<sup>54</sup> Human Rights Watch interview with lawyer Mahsuni Karaman, Diyarbakır, April 5, 2006.

<sup>55</sup> Human Rights Watch interview with lawyer Mahmut Vefa, Diyarbakır, April 4, 2006.

<sup>56</sup> Human Rights Watch interview with lawyer N.H., Diyarbakır, April 3, 2006.

then, unfortunate for them that commissions in Diyarbakır and Bingöl refuse to pay anything either for stock destroyed in the course of the displacement, or for income lost because villagers were denied access to their pasture for a decade or more. There are no grounds for this practice: the Compensation Law does not exclude livestock and animal husbandry from compensation, and article 15 of the October 2004 implementing regulations explicitly includes them.

The displacements carried out by the security forces were punitive operations, and in many cases they machine-gunned sheep and cattle, or burned them in their pens. The lawyer Remziye Efe asked a damage assessment commission to provide a sum in consideration of cows and sheep burned alive in a barn at the house of a villager at Şaklat, Kocaköy, in 1993. She was told by the assistant governor that the commission could not pay for animals or loss of income from stockkeeping “because there is so much room for lying.” Remziye Efe obtained a court order forcing a survey of the site. During the survey, the ruins of the cattle shed were excavated, revealing the bones of three cows and 74 sheep, confirming the villager’s account. In spite of this, the commission proposed a figure for the loss of just 10 animals, and the villager had little choice but to accept.<sup>57</sup>

Over the course of a week of interviews with displaced villagers in Istanbul, Diyarbakır, Bingöl, and Elazığ, Human Rights Watch did not hear of a single applicant who had been compensated for being deprived of his livelihood as a stockkeeper.

### **Exaggeration of compensation or assistance already received**

Article 5c of the Compensation Law provides that payments should be reduced to reflect payments already received from public resources. Some villagers who returned to their villages in recent years received modest grants of building materials. Such grants usually consisted of 2,000 bricks, 500 kilograms of cement and two tons of steel reinforcement, reportedly to a value of TL 1,500 (US\$1,005).<sup>58</sup> In Diyarbakır these grants have been uniformly assessed by damage assessment commissions as worth TL 17,000 (\$11,390). A villager from Kurşunlu village, near Dicle, M.O., described the

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<sup>57</sup> Human Rights Watch interview with lawyer Remziye Efe, Diyarbakır, April 4, 2006.

<sup>58</sup> Human Rights Watch interview with lawyer Abdullah Yavuz, Diyarbakır, April 5, 2006.

impact of this rule on a returning villager: “Some people... went back and accepted a few blocks, iron, and cement. This is now valued at TL 17,000. They say ‘your damage is TL 20,000 and now, after we subtract the TL 17,000, you get TL 3,000.’”<sup>59</sup>

Article 2c of the October 2004 implementing regulations directs that commissions should not indemnify losses for which payment has already been made on the basis of judgments or friendly settlements at the ECtHR. But at least one assessment commission operates this provision as an automatic bar on any conciliation with successful ECtHR plaintiffs. Villager H.F. had a grocery shop in the town of Lice, which was burned down by security forces in 1993. H.F. complained to the ECtHR and won his case, receiving substantial damages. He also had a house in the village of Ağıllı, near Kulp, Diyarbakır province, and security forces burned this down in 1994. The destruction of this house was not included in the ECtHR action. His lawyer Mahsuni Karaman showed Human Rights Watch the commission’s list of offers, which indicates that H.F. deserves nothing for the destruction of his home. Karaman’s inquiries revealed this was because of the payment he had already received from the government on the basis of the ECtHR complaint, which was for the destruction of his shop.

### **The single-person “rule”**

Another automatic exclusion with no basis in the Compensation Law, or indeed in common sense, disqualifies any applicant who was running a household as a single person at the time of the displacement. When lawyers questioned this, commission officials claimed that a single man cannot live separately in the cultural environment of the rural southeast. Lawyers in Bingöl said that the automatic exclusion for single-person households is having a damaging impact because many villagers in that province are married with *imam nikahı*, a religious ceremony with no official records, and the males are therefore viewed in law as single men.

A related “rule” is that no single male born after 1970 could possibly have owned a house independently. Mahsuni Karaman gave a specific example of the unfair impact of this exclusion: “The story of T.C. is well known in Ağıllı village. In 1994 he had just come back from military service, and built a house for his future wife. A week or so

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<sup>59</sup> Human Rights Watch interview with displaced villager M.O., Diyarbakır, April 4, 2006. Name withheld for safety reasons.

before he was going to bring his bride to her fully appointed home, the soldiers came and burned the lot. The damage assessment commission is now questioning whether he had a house at all, although the stones are there to be seen.”<sup>60</sup>

### **The “rule” concerning children born away from the village**

Another *ad hoc* across-the-board exclusion applied in Bingöl is that families who have children born after 1987 in a place distant from the place of application are deemed to have left the village for social or economic reasons and therefore to be ineligible for compensation. This “rule” may also result in injustices. Families who for any reason happened to have children born in neighboring provinces may be unfairly disqualified from compensation for the destruction of their home and loss of income.

B.P. stated that security forces burned down his village, Geyikdere, near Genç, Bingöl, in 1994, but he had already left two years earlier. “I was young, and there was a great deal of pressure on young men. When one side or another came to the village, it was very dangerous for us. Consequently only two of my three children were born in the village, and I don’t know what the commission’s attitude is going to be to that.”<sup>61</sup>

### **Exclusion of applicants displaced prior to July 1987**

The Compensation Law indemnifies losses sustained between July 19, 1987 and July 17, 2004. This is an injustice to villagers displaced prior to July 1987, who are treated as conventional economic migrants and excluded not only from payments for damage arising in the displacement, but also from payments due to them for their inability to access their lands. Examples of these early displacements in Tunceli province were noted by a Human Rights Watch fact-finding mission to Turkey in June 1987, and published in a report entitled *Turkey: State of Flux* in December that year.

In April 2006 Human Rights Watch’s researcher attempted to enter the province of Tunceli to speak to inhabitants of the displaced settlements around Hozat mentioned in the 1987 report. On April 10 gendarmes turned the researcher back at the Tunceli provincial boundary on the grounds that he was not authorized to

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<sup>60</sup> Human Rights Watch interview with lawyer Mahsuni Karaman, Diyarbakır, April 5, 2006.

<sup>61</sup> Human Rights Watch interview with displaced villager B.P., Bingöl, April 8, 2006.

conduct such research—although no authorization is required under Turkish law. The following day the researcher spoke to two displaced inhabitants of these villages who travelled out of Tunceli province to Elazığ for the interview.

N.Z., of Kavuklutepe, described as a “snuffed out village” in *Turkey: State of Flux*,<sup>62</sup> said that illegal armed militants had repeatedly visited the village in the 1980s demanding food:

We said we could not comply because there were local security checks that limited the amount of flour, sugar, and provisions that we could bring in. The PKK said “You are going to bring it. We will give you five days to bring it. Or you will die here.” They would come in a group of 40 or 60, heavily armed. And if the state heard that you were supplying them, they would come and perhaps take you up to the top of some mountain and finish your business [kill you]. The PKK would call you an informer, the state would say you were PKK, and then you would disappear. Some people left in 1987, I stayed on until 1993. I applied under the Compensation Law, and it is now with [the officials]. I have no idea whether they are going to pay it.<sup>63</sup>

D.F. left the Dereköy district of Boydaş village, Hozat, in 1987. It was in the same district as those described in *Turkey: State of Flux*, though not referred to by name:

Our permanent home was in Dereköy, but after the terror started we began to get frightened. It was hellish, because you would go out to graze your sheep and there were soldiers and guerrillas all over the place. Until 1994 we used to travel to Dereköy to sow and reap, and we put our house out to rent, but in 1994 the terror was getting worse, with more and more clashes, and the state and the other side started to destroy villages. The PKK killed teachers. The military took a villager

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<sup>62</sup> Other villages mentioned in the report as having been displaced are: Ormanyolu, Yenibaş, Casitli, Karaçavuş, Esenevler, Kurukaymak, Korum, Kavuktepe, Koçkozluca near Hozat, and Oymadağ, Kuşhane, Otlukaya, Öreniçi, Dallibel, Ataçınar, Alhan, Dayılar, İbnimahmut, Sarıkoç, Güleç, Koyukuşağı, Dedebağ, and Akdöven, near Mazgirt.

<sup>63</sup> Human Rights Watch interview with displaced villager N.Z., Elazığ, April 11, 2006.

from Dereköy, Hasan Çiçek, and we found his bones three months later. The gendarmerie told his wife that the PKK had taken him. I saw the soldiers take him in broad daylight. I have not seen my home since 1994.

In October 2005 he learned that his application under the Compensation Law had been completely rejected on the pretext that he left the village for social and economic reasons. “I was living with the dream that I would be paid some money and be able to return to the village. I am getting older. I thought about this all the time, and I suffered a big crisis when the application was rejected. I have two girls at university, one working in the textile industry, and I have three children belonging to a brother who died, and my mother who is 75. I am looking after all of these.”<sup>64</sup>

### **1999 closure of conflict “rule”**

The Compensation Law sets July 17, 2004, as the terminal date for damages subject to compensation payments, but in Diyarbakır and Bingöl provinces, damage assessment commissions will not pay losses resulting from inaccessibility of agricultural lands after 1999. The commissions assert that by this date full security had been re-established and villagers were free to return.

It is difficult to see how the authorities can make such a claim, when the state of emergency was only finally lifted in November 2002, and the government still insists (in the face of domestic and international criticism) that security threats oblige them to maintain a paramilitary force of more than 88,000 professional and voluntary village guards.<sup>65</sup> As Human Rights Watch indicated in its reports on Turkey’s internally displaced (*Displaced and disregarded*, 2001, and *Still Critical*, 2004), the rate of return to villages has been slow because villagers were kept at bay by official obstruction and persistent dangers. Until 2002 many communities were still prohibited by gendarmes from returning, and others still dare not return for security reasons, including threats from neighboring village guards. Village guards have

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<sup>64</sup> Human Rights Watch interview with displaced villager D.F., Elazığ, April 11, 2006.

<sup>65</sup> Statement of Interior Minister Abdulkadir Aksu, reported in the monthly bulletin of the Turkish Human Rights Foundation, August 2004. Turkish Grand National Assembly Record of Debates, parliamentary question from Diyarbakır deputy Mesut Değer, January 27, 2004.

killed 13 people in the past four years, most of them returning villagers.<sup>66</sup> Meanwhile, village guards are frequently killed in PKK attacks on their communities.

Akımlı village, near Yedisu, in Bingöl province, is still considered so insecure that the damage assessment commission was unable to carry out a site survey in the village and made its decisions on the basis of a map and the account given by the village *muhtar*. Human Rights Watch spoke to two villagers from Akımlı, C.P. and I.N., who are still unable, for security reasons, to return to their homes, yet received conciliation offers drawn up on the basis that peace and order had returned in 1999.

C.P. said that he had been present when soldiers burned Akımlı village in 1993. Since then he has moved around in the districts north of the village with his five children. He says he has made regular applications to the governor and the Ministry of the Interior to return, but received a reply in 2005 saying that the village was not safe for return. “The last time we saw the village was on a visit in 2000. It was a stone two-storey house and we had nut and fruit trees. Now we are living in a derelict building, since I just could not earn enough to pay rent anywhere.” The expert assessment calculated his loss at TL 40,000 (\$26,800), but the damage assessment commission has offered him TL 13,000 (\$8,710).<sup>67</sup>

I.N. told Human Rights Watch, “I had 2,000 poplars, and 20 walnut trees, and a mill too. On that day the soldiers took me up into the mountains. They insulted me and ill-treated me, and when they brought me back it was all burning. They offered me village guard service but by that time the village was burned and I did not accept. If there was any chance of going home I would go. Now we have to pay for everything. That is the problem. We have to pay for food and firewood, absolutely everything... The neighbors give us some yogurt.” The expert assessment calculated his loss at TL 30,000 (\$20,100), but the damage assessment commission has offered him TL 12,000 (\$8,040).<sup>68</sup>

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<sup>66</sup> See letter from Human Rights Watch, to Interior Minister Abdulkadir Aksu, calling for the abolition of the village guards, June 8, 2006, <http://hrw.org/english/docs/2006/06/08/turkey13578.htm>.

<sup>67</sup> Human Rights Watch telephone interview with displaced villager C.P., April 11, 2006.

<sup>68</sup> Human Rights Watch telephone interview with displaced villager I.N., April 11, 2006.

They were clear that they would accept the offers, however unsatisfactory. C.P. stated: “If we went to court they would swindle us. I have just no choice at all but to accept.”<sup>69</sup>

### **Exclusion of rent from conciliation payments**

Akımlı villager C.P., quoted immediately above, told Human Rights Watch, “the last time I paid rent was in 2000 – TL 150 a month.”<sup>70</sup> C.P. would have paid the equivalent of approximately TL 16,500 (US\$11,055) in rent alone in the nine years before he and his family took up residence in a derelict building. I.N., also quoted above, stays in rented accommodation a few kilometers from his home. He pays TL 500 a month in rent, so he would have paid the equivalent of approximately TL 84,000 (\$56,280) during the 14 years of exile.<sup>71</sup>

Damage assessment commissions almost never pay rent for the decade or more that villagers were deprived of their homes. The Diyarbakır lawyer Abdullah Yavuz asked the reason for the restrictive policy on rent, and was told by a deputy governor that this was because there was no way of confirming that rent had been paid.<sup>72</sup>

Other assessment commission officials have said that they would be willing to pay rent costs provided that the applicant can show a rental agreement. The difficulty is that landlords rarely provide a formal rent contract because this would cost them a stamp fee and commit them to paying tax on the rental income. Lawyers protest that a rent contract is unnecessary from an evidential point of view. If a family did not own property in Diyarbakır, or wherever they fled after the displacement, then they must have been living in rented accommodation, and deserve compensation for this expense.

Every villager interviewed pointed out that they have paid massive sums in rent over the years as a direct consequence of their displacement, quite aside from their loss of income and the destruction of their property:

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<sup>69</sup> Human Rights Watch telephone interview with displaced villager C.P., April 11, 2006.

<sup>70</sup> Human Rights Watch telephone interview with displaced villager C.P., April 11, 2006. [Ibid.]

<sup>71</sup> Human Rights Watch telephone interview with displaced villager I.N., April 11, 2006.

<sup>72</sup> Human Rights Watch interview with lawyer Abdullah Yavuz, Diyarbakır, April 5, 2006.

- A villager from Ziyaret, near Lice, Diyarbakır, deprived of his house, lands, and livelihood as a stockkeeper for 13 years, is now paying TL 200/month in rent. He has paid approximately TL 31,200 (\$20,900) in rent alone over the course of his displacement. He was initially offered TL 40,000 (\$26,800) for his entire loss, but the damage assessment commission has now said that it wants to reduce that sum.<sup>73</sup>
- A villager from Kurşunlu village, Dicle, Diyarbakır, estimates he has paid approximately TL 15,000 in rent alone, but has been offered TL 8,900 for loss of income and the destruction of his home.<sup>74</sup>
- A villager from Suçıktı village, near Kocaköy, Diyarbakır, has paid TL 21,600 in rent alone. He has been offered TL 35,000 for inability to access his 500 decares of land for a decade, and the destruction of his house and three agricultural buildings.<sup>75</sup>
- A villager from Islamköy has been offered TL 7,000 for the loss of his house and livelihood. In the 13 years since he was expelled from his home, he has paid the equivalent of TL 10,920 in rent alone.<sup>76</sup>
- Another villager from Islamköy, in Diyarbakır province, paid rent for nine years after 1993, and was last paying TL 120 a month, giving a total payment of approximately TL 12,960. He has been offered TL 5,000 to cover the destruction of his house and 56 decares of tobacco, and a decade's loss of income from his silkworm business.<sup>77</sup>

Clearly, paying compensation for rent in the absence of any documentary evidence poses a genuine practical challenge for damage assessment commissions, unless they adopt a fixed sum approach, as indicated in the relevant section.

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<sup>73</sup> Human Rights Watch interview with displaced villager K.U., Diyarbakır, April 3, 2006.

<sup>74</sup> Human Rights Watch interview with displaced villager O.H., Diyarbakır, April 4, 2006.

<sup>75</sup> Human Rights Watch interview with displaced villager N.B., Diyarbakır, April 5, 2006.

<sup>76</sup> Human Rights Watch interview with displaced villager N.Z., Diyarbakır, April 5, 2006. This man described how he had carried his flock of sheep through one meter deep snow when he was expelled from his home by security forces. He left them in a paddock by the road and went to hire transport from Diyarbakır. When he returned, his entire flock had been slaughtered by wolves.

<sup>77</sup> Human Rights Watch interview with displaced villager B.Z., Diyarbakır, April 5, 2006.

## **Inconsistency in conciliation payments**

An untransparent arbitrary system was likely to produce inconsistent results, and has done so. A lawyer from the Bingöl bar gave the specific and detailed example of two villagers (whom they named) from Güzeldere, in Genç, Bingöl province. One received a conciliation proposal of TL 25,000 (US\$16,750) in January 2006, while another villager with considerably more land received a proposal in March for TL 13,000. Bingöl lawyer Cevat Ishakoğlu also gave detailed information about two brothers from a named village near Solhan, Bingöl province. The brothers had almost identical circumstances, and were displaced on the same day, but one received TL 6,500 while the other received TL 18,000 (\$4,550 and \$12,060, respectively).

Ishakoğlu said that lawyers find the inconsistencies upsetting because they lead clients to suspect underhand dealings between the lawyers and the authorities, or between fellow villagers and commission officials. He said that he himself had noticed that on one particular day a large group of conciliation proposals had been issued with an extremely low average of payments. He went to the assessment commission and was astounded when an official told him that the reason the commission had made such low payments was that on the day in question the members had been “all very depressed.” Ishakoğlu reported that on one occasion, due to a bureaucratic oversight, two different commissions assessed the losses of a single villager, one of his clients. One commission found the loss to be TL 14,000 (\$9,380), the other TL 9,000 (\$6,030).

## **The fixed sum proposal**

With the exception of a few contemporary reports by human rights organizations and local newspapers and some judgments at the ECtHR, the internal displacement of at least a third of a million Turkish citizens was conducted entirely off the record. Many of the victims are illiterate or semi-literate. The entire economy of the southeast was, and still is, largely informal. In this context, applying a compensation system based on scrupulous paper-based accounting is likely to result in very unfair decisions. While it is understandable that the government would want to avoid payment of illegitimate

claims for compensation, the current approach appears less intended to ferret out a few unjustified claims than an attempt to deny appropriate levels of compensation to the overwhelming majority of legitimate claims. Arbitrary withholding of funds will further delay the return or integration of the displaced, and the sheer capriciousness of the system as currently operated, far from contributing to the stated purpose of the law—reconciliation and “healing of wounds”—seems likely to stoke jealousy and a sense of grievance in the local population.

A.Z., a villager from Suçıktı village, near Kocaköy in Diyarbakir province, gave an account which typifies much of what is wrong with the application of the Compensation Law—the ostentatious but meaningless show of “objective measuring,” and arbitrary rules aimed at limiting state liability—but goes on to suggest a sensible fixed sum of compensation might be more acceptable. “The mufti who works on the commission was measuring the ruins of my house. The area was 180 square meters, but they put down 80 square meters. When I questioned this, he told me ‘We don’t pay for the courtyard.’ All our houses are like Diyarbakir houses—built round a central open area. We argued while he was on one end of the tape-measure and I was on the other. If the mufti had said, ‘Let’s forget about this business with the tape-measure. Let’s put the tape aside and make a fair figure, which we can give to all the applicants,’ then I think people would have accepted.”<sup>78</sup>

Almost all the lawyers and villagers interviewed by Human Rights Watch favored a standard payment of a fixed sum per household per year of displacement, at least over the system as it currently operates.

Diyarbakir lawyer Habibe Deyar:

We think that a fixed sum for each family would be better, fairer, with less cause for discontent. The discrepancy in the sums is a cause of unhappiness in the villages. If the state had come saying ‘I’m sorry, I’ve done wrong but this is all I can afford,’ they might have got an understanding response. If the government had proposed a straightforward sum, there would have been no problem. It would have strengthened the reconciliation side of the process. Those who

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<sup>78</sup> Human Rights Watch telephone interview with displaced villager A.Z., April 5, 2006.

were not satisfied with a standard settlement of about TL 45,000 [US\$30,150], for example, could go to the court if they really felt angry about it.<sup>79</sup>

Providing compensation calculated on a scale per year of displacement would inevitably result in comparative injustices, since some homes destroyed at the original displacement were more valuable than others, and some families lost far more than others because of their inability to access their lands. Relinquishing objective assessment of each individual case is a departure from strict justice.

However, as indicated above, the existing system already inflicts much greater comparative injustices, and some people who have suffered enormous losses have been excluded from payments or quite arbitrarily bargained down to derisory sums. Also, the current system already sets aside strict justice. The scrupulous measurements of the damage assessment commissions are merely a performance of fair play, since even at their most generous, the sums these commissions were paying were far below what any fair court would rule as appropriate compensation for the gross abuses inflicted by state officials and the resulting severe and chronic hardships.

If the purpose of the “effective remedy” was to get useful sums into the hands of displaced people so that they can make a fresh start by integrating in the cities or returning to their former homes and way of life, the present arrangement is a failure and a fixed sum system appears more promising.

## **Recommendations**

The sheer scale of the damage, dislocation, and wholesale wrongdoing committed by the security forces and the PKK over the past 20 years present serious problems for any effort at compensation. Even in 2005 the Compensation Law did not reliably provide an effective remedy for displaced people, but since the *Içyer* judgment at the ECtHR it has become swiftly and progressively less just and less functional.

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<sup>79</sup> Human Rights Watch interview with lawyer Habibe Deyar, Diyarbakır, April 3, 2006.

The Compensation Law, in its original conception, was a creative and fair initiative. Few post-conflict reconstruction processes have included proper compensation of the displaced populations. This measure was secured in large part by the influence of the Council of Europe in general, and the ECtHR in particular. It will be a great injustice if grudging local officials are allowed to use an ECtHR judgment to undermine an innovative provision for displaced people, and set an unfair, restrictive, and inconsistent procedure as a precedent and standard for similar future processes elsewhere in the world.

Human Rights Watch recommends to the Turkish government that it should:

- immediately freeze the work of the damage assessment commissions while a speedy review is conducted of their working methods, and the levels of conciliation payments made.
- consider shifting to the payment of a standard sum per household, calculated on a per-member, and per-year-of-displacement basis, and provide a legal mechanism for those who wish to opt out of this standard-sum-solution.
- ensure that an average-sized family displaced for 12 years receives not less than TL 50,000 (\$33,500), the average for the first and widely publicized conciliation proposals in Batman, and the approximate average payment made by the ECtHR in forced displacement cases in Turkey.

Meanwhile, the European Court of Human Rights and the Council of Europe should seek further information on the impact of the *İçyer* judgment. The court should consider revising that judgment in light of the rapid deterioration in the performance of the damage assessment commissions.

The European Union should maintain its close monitoring and reporting of how the Compensation Law is implemented, and use its authority to raise the problems caused by the *İçyer* judgment with the Turkish government, the Committee of Ministers of the Council of Europe, and the European Court of Human Rights.