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Case Studies on Transitional Justice and Displacement

# Reparations and Displacement in Turkey

Lessons Learned from the Compensation Law

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### **Transitional Justice and Displacement Project**

From 2010-2012, the International Center for Transitional Justice (ICTJ) and the Brookings-LSE Project on Internal Displacement collaborated on a research project to examine the relationship between transitional justice and displacement. The project examined the capacity of transitional justice measures to respond to the issue of displacement, to engage the justice claims of displaced persons, and to contribute to durable solutions. It also analyzed the links between transitional justice and other policy interventions, including those of humanitarian, development, and peacebuilding actors. Please see: [www.ictj.org/our-work/research/transitional-justice-and-displacement](http://www.ictj.org/our-work/research/transitional-justice-and-displacement) and [www.brookings.edu/idp](http://www.brookings.edu/idp).

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ICTJ assists societies confronting massive human rights abuses to promote accountability, pursue truth, provide reparations, and build trustworthy institutions. Committed to the vindication of victims' rights and the promotion of gender justice, we provide expert technical advice, policy analysis, and comparative research on transitional justice measures, including criminal prosecutions, reparations initiatives, truth seeking, memorialization efforts, and institutional reform. For more information, visit [www.ictj.org](http://www.ictj.org).

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The Brookings-LSE Project on Internal Displacement was created to promote a more effective response to the global problem of internal displacement and supports the work of the UN Special Rapporteur on the Human Rights of Internally Displaced Persons. It conducts research, promotes the dissemination and application of the Guiding Principles on Internal Displacement, and works with governments, regional bodies, international organizations and civil society to create more effective policies and institutional arrangements for IDPs. For more information, visit: [www.brookings.edu/idp](http://www.brookings.edu/idp).

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## Introduction

In countries that have experienced large-scale displacement, compensating victims for their losses raises political, financial, and legal challenges for governments. The difficulty of designing and implementing a reparations program is further increased in contexts where displacement both occurred on a massive scale and was forced, a human rights violation in and of itself; where the displaced have been subject to other serious human rights abuses, such as torture, arbitrary deprivation of liberty, summary executions, and disappearance; where the perpetrators of these crimes were largely or exclusively security and military forces, as well as paramilitary organizations armed by the state; where the context in which these incidents occurred is an armed conflict between security forces and a group claiming to fight for the liberation of an ethnic, religious, or social group in the country; and where both the conflict and displacement are ongoing. When victims demand not only compensation, but also accountability for state officials, an effort to develop an effective reparations scheme becomes even more complicated. The economic, administrative, and legal challenges involved with the design and implementation of a mass-scale compensation program for hundreds of thousands, if not millions, of victims are then exacerbated by the complexity of the political and legal issues associated with prosecuting state agents.

The forced displacement of more than one million people in Turkey in the context of the armed conflict between the Turkish armed forces and the Kurdistan Workers' Party (PKK) is a prime example of the situation outlined above. The war formally lasted for 15 years, beginning with the PKK's Eruh and Şemdinli attacks in August 1984,<sup>1</sup> escalating with the government's declaration in 1987 of a state of emergency in the provinces predominantly populated by Kurds, and concluding with the abduction and arrest of PKK leader Abdullah Öcalan in 1999. Though there was then a period of political stability and de facto ceasefire in the region, fighting resumed in late 2004<sup>2</sup> and has continued ever since, with periodic interruptions due to ceasefires unilaterally declared by the PKK.<sup>3</sup> Thus, the armed conflict between the PKK and the Turkish armed forces has never fully come to an end.

In recent years, however, the Turkish government has developed a series of laws and policies to address the situation of displaced Kurds. Initiated with an executive program for the return of internally displaced persons (IDPs) in late 1990s, these efforts intensified after the commencement of Turkey's European Union (EU) accession process in the mid-2000s. The most significant of these

policies has undoubtedly been the adoption of a compensation law for the displaced in 2004. Notably, government laws and policies seeking to facilitate the return of IDPs and compensate their pecuniary losses were adopted at a time when the conflict still continued. In other words, the Turkish government's limited reparative efforts took place in the absence of a political solution to the Kurdish question or a "transition" to peace.

Still, as one of the few countries actually compensating the displaced for their economic losses, Turkey has often been pointed to as an exemplary case by the international community. Turkish government officials have been invited to conferences to share their experiences and insights with their counterparts in other countries where there is conflict-induced displacement. The UN secretary-general's special representative for the human rights of internally displaced persons, representatives of key international institutions working with the displaced, and experts on reparations and displacement have all commended Turkey for its endeavors to provide compensation to its displaced population. Ironically, after decades of having denied the existence of displacement within its boundaries and refusing to cooperate with the UN, Turkey has become a success story in the eyes of the international community.

Yet, a close study of the government's policies on displacement in general and the compensation law in particular shows that the international community has hailed Turkey prematurely for its compensation scheme for the displaced. Both the content and the implementation of the law suffer from serious shortcomings, making it far from an exemplary model that should serve as a precedent for other countries experiencing conflict-induced displacement. While the law partially compensates the displaced, it fails to fully and effectively repair the harms that they have suffered. Most notably, the law does not provide compensation for mental harm. It also treats different groups within the displaced population unequally, including as beneficiaries IDPs who had joined the paramilitary force known as the "village guards," for example, while excluding those who had joined the PKK as well as those who had been convicted under Turkey's notoriously overinclusive anti-terrorism laws. The compensation law also entirely lacks a truth and justice perspective. Based solely on the strict liability of the state, it does not provide any mechanism for documenting the conditions in which displacement has occurred or for identifying and prosecuting the perpetrators of human rights abuses. Furthermore, the administrative commissions tasked with implementing the law are not independent from the executive, and no administrative or legal monitoring mechanism exists to review the decisions of these bodies, including declarations of inadmissibility—which amount to 43 percent of the concluded applications nationwide.

Drawing on the lessons from the Turkish case, this paper will reflect on the challenges of designing and implementing an effective reparations program for the displaced in situations where the root causes of displacement remain unresolved.

## Transitional Justice and Reparations

As defined by the United Nations in 2004, transitional justice is "the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation."<sup>4</sup> The UN outlines the elements

of transitional justice as follows: “individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.”<sup>5</sup> However, none of these mechanisms alone can provide an effective remedy for victims but should be “thought of as parts of a whole.”<sup>6</sup>

In 2006, the UN developed a definition of reparations, which was effectively an elaboration of the concept of transitional justice developed in 2004, with the exception of the element of peacemaking. This new approach to reparations focuses on victims and their right to a remedy.<sup>7</sup> Accordingly, “full and effective reparation” must be prompt and proportional to the gravity of the losses of the victim, and it consists of five principal forms.<sup>8</sup> Restitution tries to restore victims to their *ex ante* situation through, among others, the return of property; restoration of employment, identity, dignity, and liberty; and the recognition of the right to return to the original residence. Compensation provides for “any economically assessable damage, as appropriate and proportional to the gravity of the violation,” such as physical or mental harm, material damages and losses of earnings, moral damage, and the costs of medical, legal, and social services. Rehabilitation seeks to provide to the victim with medical and psychological treatment, as well as social and legal services. Satisfaction entails truth-seeking; official and public apology; the search for the disappeared, abducted, and bodies of those killed; prosecutions of perpetrators; and public commemorations for the victims. Guarantees of nonrepetition include enhanced protection of human rights, effective civilian oversight over the security sector, judicial reform, human rights training for law enforcement officers, conflict resolution, and legal reform.

Based on this definition developed by the UN Basic Principles, the remaining sections of this paper will focus on Turkey’s 2004 Compensation Law within the context of the broader elements of reparations. Following a brief overview of the conflict-induced displacement that took place in the 1990s, the government’s recent efforts to address the needs of the displaced will be analyzed and critically assessed.

## Forced Displacement in Turkey

The exact number of people who were killed, disappeared, executed, tortured, and displaced during the armed conflict in Turkey remains a matter of great controversy between the state and the Kurdish political movement. There is no comprehensive and reliable official data regarding the death toll or the human rights violations committed during the state of emergency regime. The available statistics provided by various public bodies often conflict with each other, and at any rate are substantively and temporally limited. For example, the exact number of soldiers, village guards, police, PKK members, and civilians who lost their lives during the war, both in the course of fighting and due to mine explosions and bombings, is unknown. A query made in 2003 by a member of parliament received different responses from different ministries of the same government.<sup>9</sup> While the Ministry of Defense reported the official total number of individuals who lost their lives in the conflict during the state of emergency (July 10, 1987, to November 30, 2002) to be 34,843,<sup>10</sup> the Ministry of the Interior stated that number to be 33,753 (excluding as “unknown” the number of civilians who were killed during combat between the two sides).<sup>11</sup>

Similarly, the number of disappearances or unresolved political killings remains unknown and under dispute. While the Kurdish political movement claims the number of unresolved political killings and disappearances to be 15,000, this number is not substantiated by research. The only reliable statistics were made available in two stages. First, the 1995 report of a special parliamentary research commission found 908 unresolved political killings between 1975 and 1994.<sup>12</sup> Later, a special commission established by the Istanbul Bar Association sought to complete and complement the work of Parliament both substantively and temporally. The commission found 2,435 unresolved political killings and disappearances between 1975 and 2000.<sup>13</sup> There are ongoing efforts by civil society organizations such as the Diyarbakır branch of the Human Rights Association to find out and document the exact number of unresolved political killings and forced disappearances during the war.

The number of the displaced has also been controversial. While the official number of evacuated settlements (approximately 3,000–3,400)<sup>14</sup> provided by the authorities has been widely accepted by the Kurdish political movement, civil society, and academics, just how many individuals were displaced from these settlements continues to be a contentious issue. A government-commissioned survey conducted by Hacettepe University (the only available study so far that rests on a statistically representative sample) found between 953,680 and 1,201,200 individuals “that migrated from 14 provinces for security reasons” between 1986 and 2005.<sup>15</sup> However, pointing out that the average size of households in the region is at minimum five, some argue that the real number is at least 1.5 million, while the Kurdish political movement and civil society insist on a figure of three million to four million.

The displacement of, at minimum, one million Kurdish civilians was accompanied by large-scale atrocities. The gendarmerie officers and village guards (paramilitary Kurdish forces armed and paid by the state, operating under the command of the military) committed summary executions, torture, disappearances in state custody, unlawful and prolonged detentions, and destruction of property. These crimes have been well documented in the decisions of the European Court of Human Rights,<sup>16</sup> the report of the Turkish Parliament,<sup>17</sup> and academic research.<sup>18</sup> While the largest category of the displaced are those who were forcefully evicted by security forces, some were obliged to leave due to security concerns and lack of livelihood, and those who had or were perceived to have cooperated with the state were forced to leave by the PKK.

In addition to being part of a deliberate military strategy, the displacement of civilians was forced and punitive. It rested on a military rationale of eradicating civilians from remote, mountainous rural areas to enable the army to maintain “field domination”<sup>19</sup> in the region, and to sever the physical links between the PKK and Kurdish peasants. The army believed that its full control required a territory without people, in order to deprive the PKK of the logistical support it received from peasants and to prevent Kurdish youth from joining the organization.<sup>20</sup> The implementation of this doctrine was not limited to rural areas, but also extended to urban centers in the region. Displacement was also punitive because it targeted villages that refused to side with the state in the war, and were therefore assumed to be providing shelter, food supplies, and recruits to the PKK. In many cases, villagers were displaced by the military for their refusal to join the village guard force and fight against the PKK. In some cases, advance notice was given to the displaced, while in others they were told to leave immediately after watching state security forces burn down their houses and villages.<sup>21</sup> Those

who succumbed to the military's pressure and joined the village guard force were allowed to remain, provided that they joined in military operations along with the army and fought against the PKK.<sup>22</sup> This punitive aspect of displacement has been documented both by academic research<sup>23</sup> and the 1998 parliamentary report.<sup>24</sup>

## Reparation and Displacement in Turkey

Until 2002, Turkey's official position on displacement was one of denial: the government vehemently rejected the "allegations" of the international community that Kurdish civilians were displaced by the millions. Attempts by Francis Deng, the former special representative of the UN secretary-general on internally displaced persons, to conduct a mission to Turkey to identify the conditions and needs of the displaced were rejected on the grounds that "there does not exist a displacement issue in Turkey."<sup>25</sup> The government's attitude changed considerably with the initiation of Turkey's EU accession process in 1999, however, after which it started to cooperate with the international community in addressing the human rights situation in the country. This cooperation culminated with the approval of Deng's fact-finding mission and the subsequent release of his 2002 report, which contained a number of recommendations to the government. Among these were the provision of compensation for the losses of the displaced; the identification of the number, current conditions, needs, and expectations of IDPs; the facilitation of their return, reintegration, or resettlement; the abolition of the village guard system; and the clearance of landmines.<sup>26</sup> Noticeably absent in Deng's report was a call for the Turkish government to develop a justice-based approach to displacement.<sup>27</sup>

Deng's report, coupled with pressure from the EU, forced the government to finally acknowledge the problem and take measures to address the needs of the displaced. Also critical in this policy change were the nearly 1,500 cases brought by IDPs to the European Court of Human Rights that were pending at the time.<sup>28</sup> However, the Turkish government's official acknowledgment of the existence of displacement was a far cry from an acknowledgment of state responsibility. To this day, the government has still not accepted any responsibility for displacement, nor has it admitted that it had a policy of evacuating villages. None of the policies, laws, and measures adopted by the Turkish government have reflected a political will to address the root causes or the real consequences of the Kurdish conflict.

Thus, Turkey's responses to displacement were not based on a human rights or justice approach. Rather than coming to terms with its responsibility for the displacement of civilians through a holistic and integrated program of documenting the truth, ensuring justice by holding perpetrators accountable, and developing safeguards to ensure the nonrepetition of similar atrocities in the future, the government took ad hoc, sporadic, and disconnected measures to ease international pressure and expedite the EU accession process. While the government pronounced the terms "internal displacement" and "internally displaced persons" for the first time in 2005, these references were made in a low-profile cabinet decree that has by and large escaped public attention.<sup>29</sup> The title, substance, and implementation of the high-profile measures, on the other hand, have continued to reflect more conventional state policy, as is evident in the title of the 2004 compensation law, which portrays displacement as a collateral consequence of anti-terrorism measures.<sup>30</sup>

In what follows, several of the forms of reparation outlined earlier will be briefly discussed in the Turkish context; compensation will be discussed at length in the following section.

## Restitution

While the ceasefire declared by the PKK in 1999 brought about a period of calm and stability in the region, fighting between the parties resumed in late 2004. Although this most recent phase of the conflict did not generate mass-scale displacement, nor did the army evict villagers this time—at least as far as is known to the public—there have been news reports about civilians leaving their villages due to a lack of security. The absence of large-scale and forceful displacement of civilians in the 2000s, however, may also be due to the fact that the vast majority of those displaced in the early 1990s have not been willing or able to return to their homes—a central element of restitution according to the Basic Principles.

The continuation of the armed conflict well into the early 2000s and the presence of landmines across the Kurdish region not only created physical obstacles to return, but also made it impossible for returnees to make a living from agriculture and husbandry. The perpetuation of the village guard system and the presence of armed Kurdish civilians, many of whom were parties to blood feuds with IDPs or were occupying land and property belonging to IDPs—or both—also raised serious risks for physical safety.

A further reason why the displaced did not or could not return in the early 2000s was economic. The vast majority of IDPs had to rebuild their lives, because their houses were completely destroyed and they had no livestock or cultivable lands with which to make a living through husbandry or agriculture. The limited in-kind assistance provided by the government to those who wanted to return fell far short of meeting the IDPs' immediate needs to rebuild their lives in rural areas.<sup>31</sup>

## Satisfaction

A key form of reparation as defined in the UN Basic Principles, satisfaction refers to the adoption of effective measures to ensure the cessation of human rights violations. Among such measures are the cessation of violations, full and public disclosure of the truth, search for the whereabouts of the disappeared, identification and reburial of bodies, issuance of a public apology, and enforcement of accountability for perpetrators.

In contexts where displacement was caused by an armed conflict, as was the case in Turkey, the most urgent reparative measure is the cessation of the conflict to prevent more civilians from being displaced. The Turkish government had not taken steps toward establishing a durable peace until 2009, when it launched the “Kurdish opening.” While the declared goal of the initiative was to develop a democratic solution to the Kurdish question, its unofficial and much less public aim was to bring an end to the fighting. Toward that end, as was later acknowledged by the prime minister himself, the government has been in talks with the PKK's leader, Abdullah Öcalan, who has preserved his control over the organization despite being imprisoned since 1999. While the PKK, upon the orders of its leader, declared another ceasefire to “give the government a chance” to find a lasting political solution to the conflict, it has time and again made clear that “disarmament” was out of the question until its

political demands were met and the root causes of the conflict were eradicated. Specifically, the PKK demands an unconditional amnesty for its militants and leaders, including the combatants in the mountains as well as those in prison and exile. Furthermore, it calls upon the government to adopt laws to meet the Kurds' demands for mother-tongue education, administrative autonomy, and political participation.

The talks between the state and Öcalan are extremely fragile and vulnerable to potential derailments, such as a nationalist backlash from Turkish society and terrorist attacks by factions within the PKK that the leadership may lack control over. In fact, the conflict re-escalated in April and May 2011, on the eve of national elections in June. Following the military's deadly operations against PKK militants hiding in the rural areas of the Kurdish region, the PKK staged an attack on the prime minister's election convoy in western Turkey, killing a police officer. These developments make it unlikely that the government, which had already practically halted the "Kurdish initiative," seemingly to appeal to Turkish nationalists in advance of the elections, will meet the PKK's demands.

Beyond the cessation of violations, one of the principal demands of IDPs has been the establishment of the truth concerning the atrocities committed during the state of emergency. The most vocal and visible grassroots initiative that IDPs have been involved with is the "Saturday Mothers,"<sup>32</sup> who demand the identification of the whereabouts of their disappeared relatives, the recognition of their right to burial, and the prosecution of perpetrators. Extremely marginalized by the state and society, the group gained political visibility and capital due to unexpected developments in recent years. In 2010, a national daily newspaper published an interview with an exiled former PKK guerilla-turned-state-informant, who gave information about the locations where Kurdish civilians and PKK militants, summarily executed by the notorious gendarmerie intelligence unit JITEM, were secretly buried. This testimony enabled the families of the missing to apply to prosecutors for the undertaking of excavations in these sites, which unearthed the remains of a few missing individuals. This marked the first time the state has searched for and located bodies of the disappeared, notwithstanding that the excavations were not conducted as part of a structured and comprehensive government program. Unsatisfied with the scope and quality of these searches,<sup>33</sup> the Saturday Mothers met with Prime Minister Recep Tayyip Erdoğan in a high-profile meeting in February 2011. Among other things, the group demanded the ratification of the UN Convention for the Protection of All Persons from Enforced Disappearance and the establishment of a parliamentary truth commission on the disappeared.

The growing body of research on displacement in Turkey demonstrates the willingness of the displaced to share their stories with the general public and the government. Some form of truth-telling has been made possible through documentaries, books, and exhibitions. An official truth-seeking process endorsed by the state and attached to efforts to bring justice, however, is still lacking. The only government organ that has responded to IDPs' demands for truth so far has been the legislative branch. A parliamentary investigative commission, established in 1997 at the initiative of a few lawmakers, published a ground-breaking report the next year documenting the culpability of security forces in the unlawful evacuation of more than 3,000 settlements, the forceful eviction of more than 300,000 civilians, and the commitment of egregious human rights abuses during the state of emergency regime.<sup>34</sup> Though the parliamentary report could potentially have great political and symbolic

significance, it lacks teeth due to the institutional weakness of the legislative branch in Turkey, which does not have the power to issue binding recommendations. The report has fallen on deaf ears in the media, government, and society at large, and has remained shelved in Parliament ever since.

The sole “documentation” initiative of the executive branch was the 2006 survey that the government commissioned from Hacettepe University upon the demand of the special representative. Conducted with the aim of identifying the causes and consequences of displacement as well as the needs of the displaced, this study’s greatest contribution is its finding that more than one million people were displaced “for security reasons,” and that half of them were “given verbal notice” to leave their homes. Four years after the quantitative results of the survey were released, the findings of the study’s qualitative component, which was based on in-depth interviews with IDPs, have still not been disclosed to the public. It is more than likely that the narratives implicated the gendarmerie and village guards, and thus revealed state responsibility for displacement. The government’s failure to respond to calls for the release of the qualitative findings<sup>35</sup> indicates the absence of political will to “come to terms” with the past and to acknowledge the state’s role in the displacement of at least one million people.

While these official and unofficial initiatives have documented the truth in a way that precludes state claims to “not know” what has happened, they have failed to generate an acknowledgment of state responsibility.<sup>36</sup> The closest Turkey has ever come to the issuance of an “official public apology” was in 2005, when Prime Minister Erdoğan delivered a historic address to the Kurdish people during his visit to Diyarbakir. Stating that “the state has done wrongs in the past” and “a grand state is one which accepts its mistakes,” Erdoğan effectively accepted state responsibility, though he fell short of issuing a formal apology. A less public and generally unnoticed acknowledgment had already been made in the declarations of the Ministry of Foreign Affairs in friendly settlements reached with the displaced before the European Court of Human Rights (ECtHR). While the government continued to deny the existence of a policy of forced displacement, it did reach the point of accepting that some security forces had committed human rights abuses, though it stressed that these were isolated incidents.<sup>37</sup> The government’s decision to settle with the petitioners was based not on any political will to come to terms with the past, but rather on a cost-reductionist concern to avoid paying higher amounts of compensation in Strasbourg.

IDPs’ demands for criminal justice also remain unsatisfied.<sup>38</sup> Although both the displacement itself and the atrocities committed during displacement were predominantly the acts of state agents, none of the perpetrators have been held accountable, a fact that has been stressed time and again by the ECtHR and human rights organizations. While some of the abuses have been documented and their perpetrators named by the ECtHR, many remain undocumented, particularly since the vast majority of the displaced have been unable to apply to the Strasbourg court, and no official or civil-society-based domestic effort has been made to systematically document abuses or prosecute perpetrators. The only notable potential exception may be the ongoing *Temizoz* case, in which a colonel working for JITEM is being prosecuted in Diyarbakir on charges of establishing a terrorist network to commit summary executions and killings against Kurdish civilians in the small town of Cizre from 1992–1994. However, the reluctance of Turkish courts to hold state security officers accountable for crimes against civilians raises concerns that this case, too, will result in impunity.

## Guarantees of Nonrepetition

There is no question that Turkey has come a long way toward consolidating democracy and the rule of law in the past decade. The EU's political criteria for membership required the protection of minorities, enhancement of human rights, democratic and civilian oversight of the military, and comprehensive reform of the judicial system. In its effort to meet these conditions, the government adopted a series of constitutional and legal reforms, including some that aimed to meet the Kurds' demands for the protection of their civil, political, and cultural rights. In addition to the laws and policies specifically intended to alleviate the situation of the Kurdish displaced discussed earlier in this paper, important measures were adopted to ensure Kurds' equal treatment before the law. Most significantly, the state of emergency and state security courts were abolished; radio and television broadcasts in Kurdish by public and private media outlets commenced at the national and local levels; Kurdish language and literature departments were established at a few universities; and restrictions on political parties were eased, while the criteria for party dissolution were made more stringent.

However, while these reforms enabled Turkey to open its accession negotiations with the EU, they have not yet significantly changed the situation on the ground in the Kurdish region. The heavy penal courts that replaced the state of emergency courts are still vested with extraordinary powers; military courts remain operational and retain their jurisdiction over civilians; the 10 percent national electoral threshold is still in force and continues to exclude pro-Kurdish political parties from Parliament; the overly broad and repressive anti-terror laws are retained; the state preserves its extremely centralized structure; and Kurds do not have the right to learn in their mother tongue in schools. Currently, in a high-profile case, thousands of Kurdish politicians, activists, and human rights advocates are being prosecuted under the anti-terror law on the basis of their lawful political activities. Among the hundreds of defendants who have been in prison for two years pending trial are elected mayors of cities and towns in the Kurdish region.

The continuation of legal restrictions on the civil and political rights of Kurds and the denial of their cultural rights suggest that the root causes of the conflict between the PKK and the state are still present, though less severe. In the absence of legal and political assurances of nonrepetition, it is highly unlikely that the PKK will lay down its arms. Consequently, one cannot argue without hesitation that displacement in Turkey is exclusively a phenomenon of the past.

## The Compensation Law

Following the cessation of armed fighting and the initiation of the EU process in 1999, the Turkish government adopted poverty-alleviation programs across the country, including development programs specific to the war-torn Kurdish region. At the individual level, people living below the poverty level were granted free health care as well as cash assistance for the educational needs and medical care of their children. At the collective level, a massive irrigation and dam project for the southeast region was revitalized and in-kind aid was provided to IDPs who wanted to return to their villages. However, none of these programs were specifically designed for the displaced, though they

constitute a significant beneficiary group due to displacement-induced poverty and unemployment. In providing for “basic and urgent needs,” the development programs were perceived by the displaced and by the other beneficiaries, as Pablo de Greiff has argued happens generally, “as a matter of right and not as a response to their situation as a victim.”<sup>39</sup>

The only exception to this perception is the 2004 Compensation Law. However, while it was evident from the debates in Parliament that the law was to be adopted for the displaced,<sup>40</sup> its beneficiaries were not limited to the displaced. The government deliberately portrayed the law not as a reparation effort for IDPs, but rather as a compensation mechanism for all “victims of terrorism.” Anyone who incurred pecuniary losses arising from “terrorism” or the “fight against terrorism” is entitled to compensation under the law. Thus, the losses suffered by the displaced were not only individualized, but they were also de-ethnicized, ignoring the discriminatory targeting of an entire Kurdish population in a certain territory.

Turkey’s Compensation Law does not qualify as a reparations measure. First, as stated earlier, the law explicitly avoids the formal recognition of the victims of displacement. Second, it does not contain an acknowledgement of wrongdoing against the displaced. In basing the law not on the negligent responsibility of the state, but instead on the principle of strict liability derived from the concept of “no-fault responsibility”<sup>41</sup> under the constitution,<sup>42</sup> the government avoided the acknowledgement of an official policy of displacement and the establishment of a mechanism for justice. This is in contrast with the established case law of the ECtHR, which has time and again stressed in its judgments against Turkey that an effective legal remedy requires not only compensating victims’ losses, but also holding accountable the perpetrators who caused those losses.<sup>43</sup> Turkey’s attempt to “solve” the issue by paying compensation without providing justice is perceived by victims, again as de Greiff asserts is common elsewhere, “as an effort to buy their acquiescence”<sup>44</sup> or to pay them “blood money.”<sup>45</sup> Third, and relatedly, the law lacks a truth-telling aspect, since the truth would implicate state officials. The state’s determination to leave truth and justice out of the content and implementation of the law has left the compensation commissions no choice but to base their assessments on standard application forms that require IDPs to state only their economic losses, without implicating anyone as responsible. Finally, in defining as beneficiaries anyone who has suffered physical or economic harm during the armed conflict and in delinking compensation and displacement, the law also entitles those who had committed human rights abuses against the displaced to compensation, jeopardizing the law’s “external coherence.”<sup>46</sup> The “promotion” of the accused to “victim” status creates a tension between IDPs’ demands for compensation for their losses and for the prosecution of perpetrators.

At the same time, though, research shows that many of the village guards who became displaced took sides with the Turkish armed forces because they were compelled to do so, and some of them later refused to participate in the military operations staged against the PKK, resulting in their dismissal from the village guard force and eviction from their villages.<sup>47</sup> And yet, these former village guards are stigmatized by the rest of the displaced who refused from the outset to abide by the state’s pressure to join the village guard force at the cost of being displaced. This stigmatization, coupled with a wide belief in the privileged treatment of the former and current village guards under the Compensation Law, pits the displaced against each other and plays an extremely divisive role, further complicating peace efforts. To make matters worse, the law does not treat the combatants from the two sides of the

conflict equally. While village guards and security officers are entitled to receive compensation, PKK combatants as well as IDPs who have been convicted under the anti-terror law are not.

In reality, Turkey's Compensation Law was adopted not with the purpose of developing a reparations program for the displaced, but out of a political necessity arising from international law and politics. Faced with the imminent prospect of having to pay millions of euros in the 1,500 cases pending at the time before the ECtHR as well as pressure from the EU to expeditiously address the needs of the displaced, the Turkish government was obliged to develop a "domestic legal remedy" as a viable alternative to litigation at the ECtHR.<sup>48</sup> Pressed for time due to these externalities, the law was hastily adopted by Parliament in a late-night session, together with various other EU harmonization laws. The government did not consult with the displaced or their representatives prior to the enactment or even during the implementation of the Compensation Law. IDPs' hopes that the law would provide a forum to tell their stories and to set down the truth in official records were shattered due to the composition of the "damage assessment commissions" tasked with implementing the law. Six out of the seven members of these administrative commissions are public servants—representatives of the national government at the provincial level. This composition has intimidated the IDPs and deterred them from physically appearing before the commissions to speak about the abuses they suffered at the hands of security officers. Hence, the vast majority of IDPs filed their applications through legal counsel rather than individually. The application process is not conducive to a truth-telling environment: the displaced routinely fill out identical petitions, are required to quantify their losses in numbers, and are unable to narrate their "experiences of victimization."<sup>49</sup> Rather than being treated as equal parties in negotiations, the displaced are expected to "take or leave" the compensation amounts set by the commissions.<sup>50</sup> Consequently, IDPs view the administrative mechanism established under the law as an imposition against their will rather than a peaceful dispute-resolution mechanism, as the law explicitly states its purpose to be.<sup>51</sup>

Despite numerous calls from the opposition and Kurdish civil society, the government refused to expand the scope of the law to provide compensation for emotional pain and suffering, although this is a requirement under the established legal principles on compensation routinely applied by courts in Turkey as well as under the case law of the ECtHR.<sup>52</sup> The law only compensates bodily harm, loss of property, and loss of earnings from agriculture; it excludes mental harm, moral damage, lost opportunities, and the costs of medical, legal, social and other services, as well as post-displacement costs of living. It also lacks a gender perspective,<sup>53</sup> making it blind to the special needs of displaced women and the sexual crimes committed against them during the war.<sup>54</sup> Both the amounts of compensation for death and bodily harm, which are fixed in the law, and the amounts for loss of property and loss of earnings, which are determined by commissions, are extremely low and often symbolic compared to the level of destruction IDPs have suffered. The significant difference between the compensation amounts awarded by the ECtHR and by national courts in comparable cases perpetuates the frustration of IDPs.<sup>55</sup>

There is no doubt that an administrative program designed to compensate the economic losses of more than one million displaced faces unique challenges and may never be able to fully meet the expectations of victims. However, a "well-designed reparations program" can still be favorable to the displaced if it offers them advantages that courts lack, such as "faster results, lower costs, relaxed

standards of evidence, non-adversarial procedures, and virtual certainty that accompanies the administrative nature of a reparations program.”<sup>56</sup> In the Turkish compensation scheme for the displaced, none of these mitigating conditions are present. The evaluation process nearly takes as long as the judicial process, and compensation awards are paid with substantial delays (up to 18 months, even though the law stipulates a maximum of three months); the evidentiary bar is too high, particularly in provinces where commissions require applicants to prove that they were evicted by the gendarmerie; commissions are perceived by many applicants to be adversarial; and there is no guarantee that everyone will receive compensation. As of October 2010, 43 percent of the concluded applications had been rejected nationwide,<sup>57</sup> partly due to the applicants’ inability to produce documents as proof of their losses as well as their title to the lands they had lived on. The causes of this inability are partly political: in the face of the state’s continued refusal to acknowledge its culpability in displacement, it is impossible for the displaced to “prove” that they were forcefully displaced by the gendarmerie. But they are also legal: in a region where the state has never created a cadastre to establish legal title over lands, the displaced cannot “prove” that they indeed owned the lands for which they now claim compensation.<sup>58</sup>

## Turkey’s Compensation Law: A Successful Reparatory Scheme?

In general, the emphasis on past abuses can render a transitional justice approach to displacement, which in many cases is a continuing or a recurring phenomenon, quite difficult. The commonly asked question regarding the end of displacement has a critical significance for the design and implementation of reparations programs, since the amounts of compensation to be paid to the displaced are dependent on, among other things, the duration of displacement and the amount of the pecuniary losses and emotional harm suffered by the displaced. In the case of Turkey, the continuation of the armed conflict—which at times still causes new cases of displacement—and the IDPs’ inability to return make conventional transitional justice measures inapplicable.

Furthermore, the Compensation Law has not served a “catalyzing solidarity” function in Turkish society.<sup>59</sup> At one end of the spectrum, there is a high level of unawareness about the law among the general public. At the other, the displaced and the Kurdish political movement perceive the law as a government tactic to deceive the international community at worst, and a well-intentioned but poorly crafted and ultimately failed effort at best.<sup>60</sup> The rejection of 43 percent of the concluded applications, the rewarding of compensation to some of the perpetrators, as well as the difference in reparation amounts have created “a hierarchy of victims” and served a “deeply divisive” function among the Kurdish displaced population.<sup>61</sup> Motivated by pragmatic concerns, the government addressed the issue as a matter of technical regulation<sup>62</sup> instead of as a matter of transitional justice, as is most evident in the absence from the law of any acknowledgement of the wrong done to the displaced and recognition of victims. Instead of treating and presenting the law as a transitional justice mechanism and situating it within recent efforts to develop a political and democratic solution to the Kurdish question, the government managed to create a law that was acclaimed internationally but invisible at the national level.

A similar attitude has been observed in the Kurdish political movement, which chose to turn a blind eye to the Compensation Law, with the seeming intention of not providing legitimacy to a government initiative it considers to be motivated by pragmatic concerns rather than a genuine effort to restore truth and justice. With the exception of a few NGOs working on displacement, the Kurdish media, political parties, and civil society have by and large ignored the law, exacerbating its domestic invisibility. Although the Kurdish political movement has in recent years embraced the notion of transitional justice and advocated its various mechanisms—as is evident in its calls for the establishment of a parliamentary truth commission, the excavation of mass graves to identify the whereabouts of the disappeared, and the prosecution of perpetrators of human rights violations<sup>63</sup>—the issue of displacement and the plight of the displaced have been notably absent in its discourse and campaigns. This may be due to the fact that displacement was “just” one of many catastrophes that have befallen the Kurds in the past 30 years.<sup>64</sup> In addition, the continuation of the armed conflict as well as the political pressure and legal restrictions they still face—in other words, the urgency of the present—make it difficult for the Kurds concentrate their resources and energy on the past.

Transnational actors often play a positive role in forcing governments to come to terms with displacement within their borders. In the case of Turkey, the involvement of the international community finally brought to an end a policy of denial and produced a series of laws and policies to alleviate the losses of the displaced. However, there has been a significant change in the role played by the EU, the UN, and the Council of Europe since the Turkish government agreed to address the problem. Following the enactment of the Compensation Law, these institutions significantly toned down their criticisms and commended the government for the progress it has made. Indeed, in relative terms, the progress was remarkable. However, in absolute terms, the success of Turkey’s reparatory scheme for the displaced is quite questionable. The international community acted too quickly in jumping to positive conclusions. Motivated by a desire to ease its case load, the ECtHR concluded that Turkey’s Compensation Law provided an effective domestic remedy only 16 months after the law came into effect, when it had not yet begun to be implemented across the country. With this judgment, the court rejected the 1,500 pending cases, holding that IDPs were now required to first exhaust this new national remedy before they petitioned Strasbourg. In prematurely reaching a judgment about the Compensation Law—as opposed to waiting to see that the remedy was indeed effective—the ECtHR eliminated any incentive left on the part of the Turkish government to take further steps to address the needs of the displaced or to address the serious issues regarding the substance and implementation of the law.

One could argue that the implementation of the law is still subject to European supervision in cases where petitioners will apply to Strasbourg after having exhausted domestic remedies. However, the ECtHR’s recent inadmissibility decisions of July 8, 2011, showed that the road to Strasbourg is closed for Turkey’s IDPs. In four separate decisions issued on the same day, the court rejected around 200 petitions by IDPs for being “manifestly ill-founded.”<sup>65</sup> The reasons that the ECtHR put forth in rejecting the petitions are based on the same quantitative approach that the Turkish government has used in evaluating the success of the Compensation Law. The court pointed out that most of the applications to the compensation commissions across the country were resolved, and that more than one billion euros had been paid to more than 133,000 applicants. No attention was paid to the fact that this amounted to an average of only 7,500 euros per person, which falls far short of compensating

for the economic and other losses that IDPs have suffered for two decades, or that Turkey made no effort to hold the perpetrators of human rights violations accountable.

One can draw several lessons from the Turkish case. Most importantly, the adoption of a legal framework in the absence of a political solution to the conflict that gave rise to displacement in the first place undermines the legitimacy and effectiveness of the measures undertaken by the government. Where the displaced are part of a larger (ethnic) community that feels its survival as a group is at risk and is therefore in a relationship of resistance vis-à-vis the state, any laws and policies are implemented in an extremely politicized environment where the parties distrust and fear each other. Therefore, in certain types of these contexts, it is important that a political solution to the underlying conflict that gave rise to displacement precedes the legal measures adopted to alleviate the plight of the displaced. A further lesson is that in cases where pressure from the international community is the sole or principal reason that a government took steps to address the problems and needs of the displaced, it is crucial that some leverage be preserved to make national authorities feel that their actions are still being monitored. When the pressure is dropped, often so is the political will.

Certainly, even a malfunctioning reparations scheme could open the road to the emergence of a transitional justice movement and catalyze a truth-seeking process. In the case of Turkey, even the simple fact that around 300,000 claims have been made nationwide shows that the government figures on the number of displaced are wrong. The claims pertaining to deaths could potentially be an invaluable resource for the documentation and litigation efforts of human rights lawyers. A key obstacle, however, is the judiciary. The historical alliance of high courts with the regime and the judiciary's loyalty to official ideology continue to be the principal obstacles to justice in Turkey. In the absence of an impartial judiciary ready to prosecute the perpetrators and reveal the truth, the technical process established under the Compensation Law will never be translated into a political one.

## Notes

- <sup>1</sup> On August 15, 1984, the PKK conducted its first attacks against the Turkish armed forces in the towns of Eruh and Semdinli in southeast Turkey, starting an armed conflict that would last for decades.
- <sup>2</sup> On June 1, 2004, the PKK revoked the ceasefire it had announced in 1999.
- <sup>3</sup> The most recent ceasefire, declared in early 2011, will expired on June 15, 2011. The summer and fall of 2011 witnessed successive fatal military operations against PKK camps, as well as terrorist attacks by the PKK against Turkish civilians and police officers and their families stationed in the Kurdish region.
- <sup>4</sup> United Nations secretary-general, “The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies,” UN Doc. S/2004/616, 2004, 4.
- <sup>5</sup> Ibid.
- <sup>6</sup> Pablo de Greiff, “Theorizing Transitional Justice,” in Melissa Williams et al., ed., *NOMOS LI: Transitional Justice* (New York: New York University Press, forthcoming).
- <sup>7</sup> UN General Assembly, “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,” A/RES/60/147, March 21, 2006, Preamble.
- <sup>8</sup> UN, “Basic Principles,” 7–8.
- <sup>9</sup> Query presented by Mesut Deger, Diyarbakır MP from the People’s Republican Party, to the Ministries of Defense, Interior and Justice, January 29, 2003.
- <sup>10</sup> Of those individuals, 33,900 were reported killed during the fighting, the breakdown of which is as follows: 25,344 PKK militants, 3,541 security officers, and 5,105 civilians. The remaining 943 people were killed due to mine explosions or bombings, 572 of whom were civilians and the rest security personnel. Response of the Ministry of Defense, no. 1400-249, February 28, 2003.
- <sup>11</sup> The breakdown of this figure is as follows: 28,795 killed as a result of the fighting between the PKK and the army (23,743 PKK militants and 5,052 security officers); 4,486 during “operations and attacks against residential areas” (all civilians); and 472 as a result of mine explosions or bombings (all civilians, but during 1984–2002). Response of the Ministry of the Interior, no. B050TIB00000001/101, March 11, 2003.
- <sup>12</sup> Türkiye Büyük Millet Meclisi [Turkish Parliament], *TBMM Faili Meçhul Cinayetleri Arastırma Komisyonu Raporu* [The Report of the Turkish Grand National Assembly on the Investigation of Unresolved Murders], 1995. The parliamentary commission’s mandate was limited to unresolved political killings and did not extend to disappearances. Furthermore, the mandate was not temporally limited to the state of emergency; it began from as early as 1975 and did not extend beyond 1994.
- <sup>13</sup> Information provided by lawyer Mehmet Uçum, the coordinator of the commission.
- <sup>14</sup> This number refers to the sum of evacuated villages and hamlets that different state authorities have disclosed at different times. The State of Emergency Regional Governorship in 1997 acknowledged 905

villages and 2,523 hamlets; the Ministry of the Interior in 2006 acknowledged 945 villages and 2,021 hamlets; the Turkish Parliament's report in 1998 acknowledged 820 villages and 2,345 hamlets. Dilek Kurban et al., *Coming to Terms with Forced Migration: Post-Displacement Restitution of Citizenship Rights in Turkey* (Istanbul: TESEV Publications, 2007) (English translation), 83 and 147.

- <sup>15</sup> The study shows that 80 percent of the displaced were from rural areas and the remaining 20 percent from urban centers. The 14 provinces refer to those provinces governed by the state of emergency regime in eastern and southeastern Turkey. Hacettepe Üniversitesi Nüfus Etütleri Enstitüsü [Hacettepe University Institute of Population Studies], *Türkiye’de Göç ve Yerinden Olmuş Nüfus Arştırması* [Research on Migration and Displaced Persons in Turkey] (Ankara: Hacettepe Üniversitesi, 2006), at p. 61.
- <sup>16</sup> For a review of these ECtHR judgments, see Dilek Kurban, “Human Rights Watch, Kurdish Human Rights Project and the European Court of Human Rights on Internal Displacement in Turkey,” in Kurban et al., *Coming to Terms*, 119–144.
- <sup>17</sup> Türkiye Büyük Millet Meclisi [Turkish Parliament], *Doğu ve Güneydoğu Anadolu’da Bosaltılan Yerleşim Birimleri Nedeniyle Göç Eden Yurttaşlarımızın Sorunlarının Arştırılarak Alınması Gereken Tedbirlerin Tespit Edilmesi Amacıyla Kurulan Meclis Arştırma Komisyonu* [Report by the Parliament Research Commission Formed with the Objective of Researching the Problems of Citizens in Eastern and Southeastern Anatolia Who Migrated Because Their Places of Settlement Were Evacuated, and of Establishing the Necessary Measures] (Ankara: TBMM Tutanak Dergisi, 1998). The parliamentary report found the displacement of civilians and ensuring atrocities to be in violation of a number of constitutional rights, including the rights to equality before the law, property, liberty, privacy and the protection of family life, education, and compensation for the deprivation of private property.
- <sup>18</sup> Joost Jongerden, *The Settlement Issue in Turkey and the Kurds: An Analysis of Spatial Policies, Modernity and War* (Leiden: Koninklijke Brill, 2007); Kurban et al., *Coming to Terms*.
- <sup>19</sup> The “field domination doctrine,” developed by the military in the early 1990s and put into practice in 1993, sought “the production of a new (contracted rural and urban) war space.” Jongerden, *The Settlement Issue*, 67.
- <sup>20</sup> This aspect of displacement in Turkey resembles the use of displacement “as a weapon of war” against civilians in Timor Leste. Roger Duthie, “Transitional Justice and Displacement,” *International Journal of Transitional Justice* 5, no. 2 (2011): 245.
- <sup>21</sup> A close read shows that even the extremely carefully written Hacettepe study, which refrains from using the words “Kurds,” “Kurdish,” “displaced,” “village evacuation,” or any other words that could suggest the ethnic identity of the displaced, the root causes of the conflict, or state responsibility, shows that half of those “who migrated for security reasons” were given “verbal notice,” without specifying what such notice entailed or who gave it. Hacettepe, *Research on Migration*, 78.
- <sup>22</sup> Findings of a recently completed research by Dilek Kurban and Mesut Yegen show that those villagers who were obliged to join the guards but refused to fight later on were also subsequently penalized by the army and forced to leave their villages. Dilek Kurban and Mesut Yegen, *Adaletin Kıyısında: ‘Zorunlu’ Göç Sonrasında Devlet ve Kürtler/5233 Sayılı Tazminat Yasası’nın bir Değerlendirmesi—Van Örneği* [On the Verge of Justice: The State and the Kurds in the Aftermath of Forced Migration/An Assessment of the Compensation Law—the Case of Van] (Istanbul: TESEV, 2011).
- <sup>23</sup> Jongerden, *The Settlement Issue*; Kurban et al., *Coming to Terms*.
- <sup>24</sup> Turkish Parliament, *Report by the Parliament Research Commission*.
- <sup>25</sup> Francis Deng, keynote speech at “Internal Displacement in Turkey and Abroad: International Principles, Experiences and Policy Proposals,” TESEV, Istanbul, December 4–5, 2006.
- <sup>26</sup> For an overview of Deng’s recommendations and the measures adopted by the Turkish Government to fulfill these, see Dilek Kurban et al., *Overcoming a Legacy of Mistrust: Towards Reconciliation between the State and the Displaced. Update on the Implementation of the Recommendations Made by the UN Secretary-General’s Representative on Internally Displaced Persons Following His Visit to Turkey* (Istanbul and Geneva: TESEV& NRC/IDMC, 2006).

- <sup>27</sup> This shortcoming was noted in a joint TESEV/IDMC report assessing Turkey's progress in fulfilling Deng's recommendation, which put forth an additional recommendation to the Turkish government for the restoration of truth and reconciliation. See Kurban et al., *Overcoming a Legacy of Mistrust*.
- <sup>28</sup> Since the mid-1990s, IDPs had been seeking remedy in Strasbourg due to the unavailability of domestic legal remedies. The persistence of Turkish courts in the 1990s of declining judicial review of human rights violations committed by security forces had left IDPs no other option than directly applying to the ECtHR. In dozens of cases brought by the displaced, the Strasbourg court issued judgments against Turkey. By the time of Deng's mission to Turkey, there were another 1,500 cases pending before the ECtHR, most if not all of which would likely have resulted in judgments against the Turkish government had the court not rejected the pending cases after Turkey's passage of the Compensation Law (see below).
- <sup>29</sup> Council of Ministers, "Measures on the Issue of IDPs and the Return to Villages and Rehabilitation Project," Decision of Principle, August 17, 2005.
- <sup>30</sup> The full title of the law is "Law on the Compensation of Losses Arising from Terrorism and the Fight against Terrorism," Law No. 5233, Official Gazette No. 25535, July 27, 2004, enacted July 17, 2004.
- <sup>31</sup> The obstacles to the return of the IDPs are well documented. See generally Kurban et al., *Coming to Terms*; Hacettepe, *Research On Migration*; Turkish Parliament, *Report by the Parliament Research Commission*.
- <sup>32</sup> Established by the family members of the disappeared, including the displaced, the group takes its name from the silent sit-ins it has organized at a public square in the centre of Istanbul every Saturday since 1995. The demonstrations came to a halt in the mid-1990s due to excessive use of force by the police and remained out of public sight until the early 2000s. The movement has recently acquired legal status under the rubric of the "Association of Solidarity and Assistance for the Families of Missing Persons."
- <sup>33</sup> The families of the disappeared have pointed out that the excavations are not being carried out in accordance with international standards and demand the adoption of measures to ensure the safe removal of the bones.
- <sup>34</sup> Turkish Parliament, *Report by the Parliament Research Commission*.
- <sup>35</sup> Dilek Kurban, "Raporun Söylemedigi" [What the Report Leaves Unsaid], *Radikal* (Istanbul), December 31, 2006.
- <sup>36</sup> This is reminiscent of the gap between knowledge and acknowledgment emphasized by Thomas Nagel. Lawrence Weschler, afterword to *State Crimes: Punishment or Pardon* (Washington, D.C.: Aspen Institute, 1989).
- <sup>37</sup> For an analysis of these friendly settlement declarations, see Kurban, "Human Rights Watch."
- <sup>38</sup> For examples of research documenting IDPs' demands for justice, see generally Kurban et al., *Coming to Terms*.
- <sup>39</sup> Pablo de Greiff, "Justice and Reparations," in Pablo de Greiff, ed., *The Handbook of Reparations* (New York: Oxford University Press, 2006), 470.
- <sup>40</sup> The statements made at the internal affairs commission and subsequently at the general assembly by members of the governing party as well as the opposition clearly show that both the legislative and the executive were perfectly aware of the real purpose of the law to be the payment of compensation to the displaced. Kurban and Yegen, *On the Verge of Justice*.
- <sup>41</sup> "Strict liability" is a standard for liability, civil or criminal, that holds a person legally accountable for the damage and loss he or she has caused by his or her actions or omissions. The person is legally responsible irrespective of his or her culpability (fault).
- <sup>42</sup> The law makes a reference to the constitutional doctrine of "social risk based on the objective responsibility of the state." "Law on Compensation," 2004.
- <sup>43</sup> On the other hand, it is notable that the ECtHR itself contradicted its jurisprudence by ignoring that Turkey's Compensation Law lacks a justice element and finding it to constitute an adequate domestic remedy for the purposes of compensating the losses of the displaced. *Içyer v. Turkey* (dec.), No. 18888/02, ECHR 2006-I.

- <sup>44</sup> De Greiff, “Theorizing Transitional Justice.”
- <sup>45</sup> Naomi Roht-Arriaza, “The New Landscape of Transitional Justice,” in *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice*, ed. Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge: Cambridge University Press, 2006), 8.
- <sup>46</sup> “External coherence” is defined by Pablo de Greiff as “the requirement that . . . reparations efforts be designed in such a way as to bear a close relationship with other transitional mechanisms, i.e. minimally, with criminal justice, truth telling, and institutional reform.” Pablo de Greiff, “Repairing the Past: Compensation for Victims of Human Rights Violations,” in Pablo de Greiff, ed., *The Handbook of Reparations* (New York: Oxford University Press, 2006), 11.
- <sup>47</sup> Kurban and Yegen, *On the Verge of Justice*.
- <sup>48</sup> That the principal purpose of the law was to appease the EU and the ECtHR is evident both from the parliamentary debates and also from the text of the law itself. The preamble refers to Turkey’s commitment to the EU in its National Program in 2004 to adopt a compensation law. It also states that its aim is “to compensate quickly and via friendly settlement people who incurred damages as a result of terrorism, or during the fight against terrorism, or from measures taken to fight against terrorism, without their having to apply to legal remedies, and to ensure that only those applications that are not resolved through friendly settlements apply to the European Court of Human Rights and to prevent the use of compensation as a means of unjust enrichment” (author’s translation).
- <sup>49</sup> De Greiff, “Justice and Reparations,” 459.
- <sup>50</sup> While those whose applications are rejected or who refuse to settle with the state have the right to go to court, taking this road requires them to wait for an additional 6–8 years without any assurance that the outcome of the legal process will be any different.
- <sup>51</sup> The preamble states among the law’s purposes to be “bolstering trust toward the state, rapprochement between the state and its citizens, and contributing to peace” (author’s translation).
- <sup>52</sup> Since the Compensation Law established an administrative mechanism as an alternative to courts, the commissions are not formally bound by following the general principles of compensation under domestic law.
- <sup>53</sup> For a study which had pointed out to the gender-blindness of the compensation law early on, see Derya Demirler and Veysel Essiz, “Zorunlu Göç Deneyimini Kadınlarda Dinlemek: Bir İmkan ve İmkansızlık olarak Dil” [Listening to the Experience of Forced Migration from Women: Language as an Opportunity and an Obstacle], in Nil Mutluer, ed., *Cinsiyet Halleri: Türkiye’de Toplumsal Cinsiyetin Kesisim Sınırları* (Istanbul: Varlık, 2008), 165–180.
- <sup>54</sup> This blindness is also shared by the displaced community and the Kurdish political movement at large. While stories of rape and forced prostitution during and after displacement are heard sporadically, it is extremely difficult to document these crimes because victims are unwilling to speak out due to the stigma attached to sexual offences against women in the traditional, religious, and patriarchal Kurdish society. The only civil society organization working on crimes committed against Kurdish women—both displaced and otherwise—during the armed conflict is the Legal Aid Office for Victims of Sexual Harassment and Rape under Detention. Established in 1997 by the feminist lawyer Eren Keskin, the bureau provides legal assistance to all women, irrespective of their ethnic origin, who have been subject to sexual harassment and rape while under detention. The annual reports of the bureau, which defines the rape of women by security officers as an instrument of war and a state policy in the Kurdish region, show that the victims are predominantly Kurdish women. For more on Keskin and the project, see [http://www.erenkeskinedestek.org/en\\_campaign.php](http://www.erenkeskinedestek.org/en_campaign.php).
- <sup>55</sup> Under national law, courts take multiple factors into account when determining the amounts of compensation to be paid for death and bodily injury. Among these are the age, socioeconomic status, education, profession, and employment of the individual for whom compensation is sought. The compensation amounts awarded to displacement victims by the ECtHR also vary from case to case, depending on the harm suffered by plaintiffs. Yet, the following ranges can be cited as examples of

awards concluded by the court on the basis of the principle of equity: 1) houses and other external structures: 8,000–10,000 euros; 2) other goods and property: 6,000–10,000 euros; 3) loss of income: 6,000–9,000 euros; and 4) expenses for alternative accommodation: 6,000–6,500 euros. Kurban, “Human Rights Watch,” 131–132.

<sup>56</sup> De Greiff, “Justice and Reparations,” 459.

<sup>57</sup> According to the Ministry of the Interior, as of October 2010, out of the 358,854 applications to the Compensation Law, 257,309 were concluded (72 percent). Of these, 111,841 (43 percent) were rejected while the remaining 145,468 (57 percent) resulted in the awarding of compensation to the applicants. Interview with Ali Fidan, General Directorate of Provincial Administration, Ministry of the Interior, December 5, 2010.

<sup>58</sup> In the past few years, the state has finally started cadastry work in the region (creating an official register of the quantity, value, and ownership of land), long after the Compensation Law was enacted and damage assessment had already been completed in many of the applications. This has created a number of complications in the determination of land ownership for IDPs, particularly since cadastry work has often produced different quantitative results than the assessment of the compensation commissions.

<sup>59</sup> De Greiff, “Justice and Reparations,” 465.

<sup>60</sup> Those who believe the law to be a positive and well-intentioned effort still criticize the government for the absence of an independent and effective implementation mechanism, lack of an administrative procedure to review the decisions of the compensation commissions, failure to compensate emotional pain and suffering, imposition of a high evidentiary burden on the displaced, and the exclusion of those who were convicted under anti-terror law from the scope of the law.

<sup>61</sup> De Greiff makes the point that this can happen in general, not specifically in this case. “Justice and Reparations,” 458.

<sup>62</sup> For a critique of the government’s regulatory approach to displacement, see Bilgin Ayata and Deniz Yüксеker, “A Belated Awakening: National and International Responses to the Internal Displacement of Kurds in Turkey,” *New Perspectives on Turkey* 32 (2005): 5–42.

<sup>63</sup> The Kurdish political movement has repeatedly voiced these demands over the past couple of years at various fora and through various actors. Most notably, PKK leader Abdullah Öcalan has on several occasions demanded the establishment of a parliamentary truth commission to investigate the crimes and atrocities committed by both the state and the PKK. The pro-Kurdish Peace and Democracy Party (*Barış ve Demokrasi Partisi* or BDP) has also been quite vocal on this issue. For the news coverage of a meeting between the BDP leader and the Saturday Mothers, see “Pro-Kurdish party hopes to shed light on cases of missing people,” *Hürriyet Daily News* (Istanbul), February 23, 2011, <http://www.hurriyetdailynews.com/n.php?n=bdp-sheds-hope-on-missing-person-cases-2011-02-23>.

<sup>64</sup> As stated earlier, gross human rights violations such as forced disappearances, summary executions and torture were committed against Kurdish civilians in the state of emergency region.

<sup>65</sup> ECtHR, *Akbayır and Others v. Turkey*, No. 30415/08; ECtHR, *Fidanten and Others v. Turkey*, No. 27501/06; ECtHR, *Bingölbali and 54 Other Applications v. Turkey*, No. 18443/08; *Bogus and 91 Other Applications v. Turkey*, No. 54788/091, all issued on July 8, 2011. The petitions represented four separate groups of cases, each raising different issues. The first group concerned individuals who had accepted friendly settlements but whose compensations were paid with 6–15 months of delay, resulting in up to a 7 percent depreciation of the initial value, and who were not then given payments for default interest. The second group consisted of those who claimed that their applications were rejected unfairly by the commissions, that their emotional pain and suffering were not compensated, or that their pecuniary losses were incorrectly assessed. In the third group were individuals who were not granted legal aid to bring a court action. The fourth group was comprised of those who claimed they had missed the statutory deadline for appealing against the commissions’ decisions because they had not been provided with correct information by the authorities.