



# **THE PROBLEM OF INTERNAL DISPLACEMENT IN TURKEY: ASSESSMENT AND POLICY PROPOSALS**

***TESEV Working and Monitoring Group on the Post-Displacement Restitution of  
Citizenship Rights and Social Rehabilitation***

**Associate Prof. A Tamer Aker (psychiatrist, Kocaeli University\*)**

**Assistant Prof. Betül Çelik (political scientist, Sabancı University\*)**

**Dilek Kurban, Juris Doctor (lawyer, TESEV\*)**

**Associate Prof. Turgay Ünalan (demographer, Hacettepe University\*)**

**Assistant Prof. H. Deniz Yükseker (sociologist, Koç University\*)**

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**Assistants: Öznur Acıbe, Derya Demirler, Harun Ercan, Sefika Kumral**

\* The views expressed in this report are those of authors and do not reflect the views of neither TESEV nor the institutional affiliations of those authors.

**Turkish Economic and Social Studies Foundation (TESEV)**

Bankalar Caddesi, Minerva Han, No. 2/3, Karaköy, 34420 İstanbul

Tel: +90.212.292.89.03 Fax: +90.212.292.90.46 [www.tesev.org.tr](http://www.tesev.org.tr) [info@tesev.org.tr](mailto:info@tesev.org.tr)

## **From “Return to the Villages” to Restitution of Citizenship Rights ...**

The resolution of the “village guards” question and the “return to village” of persons displaced during the armed conflict in East and Southeast Anatolia is clearly among the most pressing issues that Turkey will encounter in the near future. The European Union’s (EU) Progress Report dated October 6, 2004 contains a section entitled “Economic and Social Rights” which addresses the situation in East and Southeast Anatolia and notes the improvements concerning security and fundamental rights; however, the report also describes the situation of internally displaced persons as “still critical.” The steps the government have taken so far to solve the problem are limited to the “Return to Villages and Rehabilitation Project” which intends to secure the economic infrastructure for return, and the “Law on Compensation of Losses Arising from Acts of Terror and the Measures Taken to Fight Against Terror” (Law no. 5233), enacted by the Turkish Parliament in July 2004. However, it is generally felt that these measures do not suffice to solve the problem, and that the village guard system, the landmines, the region’s economic under-development, the danger of renewed armed conflict, and other factors present obstacles to return.

TESEV—with its mission to support Turkey’s efforts towards democratization and EU membership—has decided to approach the problem from a different and more comprehensive perspective and to evaluate the problem and the solution efforts from a new vantage point. Although the efforts to overcome the obstacles to return to villages in the context of the EU membership are commendable, we believe that it is wrong to reduce the problem simply to one of “return to village” and to limit the geographic scope of the problem to the region of East and Southeast Anatolia. The topic goes beyond the “technical” measures that need to be implemented during the EU accession process, as it is one of a more profound, social nature. The armed conflict has not only resulted in all types of “pecuniary losses,” but also in the violation of citizenship rights of a number of citizens in this country, as expressed in the 1998 report of the Turkish Parliament’s Investigation Commission. At the same time, “the health” of not merely those left behind, but also of the entire society has been affected at a much more profound level.

With these ideas in mind, TESEV has decided to address the issue in a way that diverges from state-centered modes of thinking, which have been hardened and immobilized by the conflict, and that does not favor any kind of ideological position or camp; in a way that aims at the restitution of citizenship rights and social rehabilitation; and in a way that addresses the human dimension of the problem from multiple angles. This report has been put together by expert and academic members of the “TESEV Working and Monitoring Group on the Post-Displacement Restitution of Citizenship Rights and Social Rehabilitation.” It considers the problem from social, political, psychological, legal and other aspects, and it is the first product of a much broader study. Furthermore, the members of this group are co-authoring a book, containing a review and evaluation of international and national literatures, reports on fieldwork conducted in Diyarbakır, Batman, İstanbul and Hakkâri, as well as recommendations for solutions. This book will be published by TESEV within the next few months.

**Volkan Aytar, Dilek Kurban, Etyen Mahçupyan  
TESEV Democratization Program**

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# THE PROBLEM OF INTERNAL DISPLACEMENT IN TURKEY: ASSESSMENT AND POLICY PROPOSALS

## A. INTRODUCTION:

During the period of armed conflict between 1984 and 1999, there was a *process of forced displacement* in the eastern and southeastern regions of Turkey. Although much time has passed, the social, economic, political, legal, psychological and physical health problems caused by the internal displacement of hundreds of thousands of people have not yet been resolved.

The *Working and Monitoring Group on the Post-Displacement Restitution of Citizenship Rights and Social Rehabilitation*, established in November 2004 under the auspices of TESEV, has conducted several studies during the year 2005, with the aim of assessing the nature of the problem and recommending policies for solution. The goal of this report is to summarize the findings of these studies.<sup>1</sup>

Before delving into the findings of the TESEV study, it is necessary to situate this phenomenon in the proper historical and social context. Domestic migration is one of Turkey's most significant sociological phenomena since 1950s, when Turkey entered a period of rapid social transformation. While forced migration or internal displacement, as discussed in this report,<sup>2</sup> shares some characteristics with voluntary economic migration, its causes and results render it to be a very different social phenomenon. At the same time, the forced migration experienced in the eastern and southeastern regions within the last twenty years is not a singular event isolated from the social and historical realities surrounding it.

During the republican era, policies aimed at the forced internal displacement of Turkish citizens were implemented particularly and primarily in the eastern and southeastern regions. Mandatory resettlements which followed the revolts of the 1920s and 1930s and which were implemented within the framework of the 1934 Resettlement Law should be seen in this context. One should keep in mind, however, that the number of people displaced internally in the last twenty years far exceeds that in the earlier instances. Evidently, the vast majority of citizens displaced after 1984 were Muslim Kurds, although a limited number of evacuated villages were inhabited by Yezidis or Assyrian Christians. It should also be mentioned that many Kurds perceive the most recent wave of internal displacement as a continuation of earlier forced resettlement policies.

It is not a coincidence that internal displacement affects primarily the eastern and southeastern regions. Since the establishment of the Republic, the region—whose population

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<sup>1</sup> The Working and Monitoring Group on the Post-Displacement Restitution of Citizenship Rights and Social Rehabilitation, established under the auspices of TESEV's Democratization Program, has reviewed the relevant international and Turkish literatures, conducted fieldwork in Diyarbakır, Batman, İstanbul and Hakkâri, and prepared this report. The detailed findings and conclusions of this collaborative study will be published as a book by TESEV in the coming months and will be discussed at an international conference in 2006.

<sup>2</sup> In this report, we use the terms “internal displacement” and “forced migration” interchangeably. Although internal displacement is the internationally recognized term, this phenomenon has been known as forced migration (*zorunlu göç*) in the Turkish public opinion.

is predominantly Kurdish—has experienced continuing political, socio-economic and cultural problems, making it the socially most volatile region of Turkey. The main problems are the following: unbalanced and unjust land distribution, tribal structure, stagnant economy, inadequate infrastructure in economy, education and healthcare, the state's preference to prioritize its military presence rather than investing in economic and social services, and the long-standing denial of different identities, including Kurdish identity. These problems have been further exacerbated by the armed PKK movement emerging in the wake of the coup on September 12, 1980 and the security forces' fight against the PKK within the framework of the state of emergency declared in 1987. Under the emergency rule, the evacuation of many rural areas and the forced migration of entire groups of people not only failed to solve the existing issues, but also transferred them from villages to cities and produced new problems. Therefore, **one cannot conceive of the phenomenon of internal displacement as independent from the historical, political, ethnic, and social context of the eastern and southeastern regions, from the armed conflict that has continued since 1984, and from the Kurdish question.** The lack of trust between the state and the citizens, fed by the state's sustainment of its presence in the region “from a distance” and primarily through military measures, has been exacerbated by the problem of internal displacement.

Based on these observations, the TESEV Working and Monitoring Group's goal is to recommend durable and sustainable policies for solving the problem of internal displacement. However, we should first emphasize that **internal displacement is the most sustained and widespread human rights violation that has occurred during the last twenty years in Turkey.** According to the 1998 report of the Turkish Parliament's Investigation Commission,<sup>3</sup> the evacuation of villages and the forced migration of people violate the following constitutional rights of individuals: the right to protect and develop one's life (Article 17), the sanctity of private and family life (Article 20), the sanctity of domicile (Article 21), the right to property (Article 35), the principle of the protection of fundamental rights and freedoms (Article 40), the right to education (Article 42) and the regulations concerning government's expropriation of private property (Article 46). The Parliamentary Report also emphasizes that these policies violate the relevant provisions of the Universal Declaration of Human Rights and the European Convention on Human Rights (ECHR). In fact, in its decisions regarding internal displacement in Turkey, the European Court of Human Rights (ECtHR) has ruled that the following articles of the ECHR have been violated: the respect for private and family life (Article 8), the right not to be subjected to torture or to inhuman or degrading treatment or punishment (Article 3), access to an effective remedy before a national authority in case of a violation of rights and freedoms (Article 13), the right to life as protected by law (Article 2), and entitlement to the peaceful enjoyment of possessions (Article 1 of Protocol no. 1).

On the other hand, internal displacement not only poses a national problem, but it is also an issue of international dimensions, because the internally displaced may seek political asylum in many instances where they cross state borders. In fact, during the armed conflict of the 1990s, an estimated 12,000 persons fled over the border into Iraq. Of these, as many as 9,000 have settled in the Makhmour Refugee Camp; from among this group, around 2,600 returned to Turkey in subsequent years. On the other hand, many individuals among the displaced group have migrated to European Union (EU) countries as asylum-seekers.

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<sup>3</sup> The original title of the report is “Report of the Parliamentary Investigation Commission Established with the Aim to Investigate the Problems of our Citizens who migrated due to the Evacuation of Settlements in East and Southeast Anatolia and to Assess the Measures Need to be Taken.” In the following, we will refer to it as the “Parliamentary Report.”

Therefore, forced migration has contributed to the emergence of a Kurdish diaspora in Europe.

## **B. THE PROBLEM OF INTERNAL DISPLACEMENT**

### **(I) Definition**

When addressing post-displacement restitution of citizenship rights in Turkey, we first have to put forth a definition as to who constitutes the group whose rights have been violated – a definition that is inclusive and in line with international law.

The United Nations’ “Guiding Principles on Internal Displacement” (GPID) includes an internationally recognized definition formulated in line with refugee and human rights law as well as humanitarian law. This definition describes internally displaced persons (IDPs) as **“persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border.”**

In Turkey, there is no official definition introduced or used on this issue by the involved authorities. However, we can obtain clues about how official institutions describe the issue by looking at various government documents —such as the above-mentioned Parliamentary Report, the “Return to Villages and Rehabilitation Project” (RVRP), and “Law on Compensation of Losses Arising from Acts of Terror and the Measures Taken to Fight Against Terror” (Law no. 5233). According to the Parliamentary Report, the reasons for migration were the following: (a) people leaving their villages because of the collapse of animal husbandry and agriculture as a result of the ban on the unrestricted use of pastures and military operations/armed clashes; because of PKK pressure on villages in which there were village guards; and because of the intensification of military operations in villages which were under the suspicion of security forces because of their refusal to become village guards; (b) the PKK’s evacuation of certain villages and hamlets whose inhabitants accepted to become village guards; (c) the security forces’ evacuation of villages whose inhabitants refused to become village guards, whose security could not be provided or which were thought to aid the PKK.<sup>4</sup>

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<sup>4</sup> **Temporary village guards** (*geçici köy korucusu*) are civilians recruited from among the village population to “guard” their villages against the PKK; in exchange for their services, they receive arms and a salary from the government and take part in military operations together with the security personnel. The position of temporary village guards was created on 26 March 1985 through a clause added by Law no. 3175 to the 1924 Village Law (Law no. 442). They are hired pursuant to the decision of the cabinet of ministers, upon the request of the Minister of Interior Affairs. Currently, this practice is in effect in 22 provinces. According to Abdulkadir Aksu, the Minister for Interior Affairs, there are currently 57,757 temporary village guards in the region. The hiring of these guards has come to a halt in accordance with a governmental decree in 1998. In addition, there are also **voluntary village guards** (*gönüllü köy korucusu*), namely civilians who volunteer to become village guards with the stated purpose to protect themselves and their families against the PKK. While they are provided arms by the government, they do not receive a salary and are not authorized to take part in military operations. The legal basis of this position is also Law no. 442. Voluntary village guards are hired by sub-provincial governors. According to the information provided by Aksu, there were 12,279 voluntary village guards in the region as of 30 November 2003.

However, the Parliamentary Report does not mention forced migration from provincial and district centers. During the 1990s, intense forced migration occurred in several sub-provincial centers (for example, Lice, Kulp, Cizre) and even provincial centers (for example, Şırnak) in Southeast Anatolia, because of the security forces' operations and armed clashes. Therefore, the picture presented in the Parliamentary Report is deficient in that it only includes forced migration from rural settlements but not from town and city centers, although it is in general in accord with the definition of internal displacement as first outlined in the GPID in 1998. It should be emphasized that the GPID's definition is not limited to people who had to leave their villages, but applies to anybody who were forced or obliged to flee or leave their "places of habitual residence."

Furthermore, as we will discuss below, in both the Parliamentary Report and the statements made by the Ministry of Internal Affairs in recent years, the number of people whose villages were evacuated only includes causes (b) and (c) above. Similarly, the wording of the damages to be compensated as "arising from acts of terror or from measures taken to fight against terror" in Law no. 5233 excludes those who fall under cause (a). This discrimination among individuals who have suffered similar damages not only contradicts the definition in the GPID, but also violates the principle of equality protected under Article 10 of the Turkish Constitution and Article 14 of the ECHR.

The TESEV Working and Monitoring Group's fieldwork<sup>5</sup> in **Diyarbakır, Batman, İstanbul** and **Hakkâri** demonstrates that *all* three causes of forced migration mentioned in the Parliamentary Report are significant. The majority of the household representatives we interviewed in the above-mentioned four provincial centers, in certain townships of Batman and Hakkâri, and in several previously evacuated villages of Batman, told us that security forces had evacuated their villages entirely either without giving a reason or because they refused to become village guards. Some of them said that they were caught between PKK members who came to their villages to ask for food and the security forces who insisted that they did not help the PKK; hence, they left their villages, because they feared for their safety. Several interviewees pointed out that, although their villages were not completely evacuated, they were caught between fire during armed clashes; that several houses were demolished or burnt during these incidents; and that some families left their villages out of fear for their lives. Several interviewees said that the security forces or the PKK claimed that they supported the other side and targeted their families by inflicting injuries and beatings, by opening gunfire on their house, or through arson; therefore, they had been compelled to flee their villages. Several others said that, although they had not been directly exposed to danger and their own villages had not been evacuated, they had migrated to provincial or district centers because they had not been able to till their fields or graze their flocks in a situation where the villages surrounding theirs had been evacuated and the armed conflict continued.

**As can be inferred from these eyewitness accounts and other information obtained, internal displacement in Turkey is a much more widespread and large-scale phenomenon than merely the evacuation of a limited number of villages and hamlets. Considering the extensive scale of internal displacement, the numbers published by official institutions are arguably rather low.** However, we need to point out that in the category of IDPs we do not include persons who experienced forced resettlement in the last

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<sup>5</sup> During our fieldwork in 2005, members of the TESEV Research and Monitoring Group conducted interviews with governors, IDPs, local government officials, members of the bar association, attorneys, representatives of relevant NGOs and governmental organizations, and journalists. The approximately 60 IDPs interviewed included persons from different gender and age groups and different regions. However, we did not employ random sampling and therefore cannot make statistical generalizations about the entire displaced population.

twenty years in the eastern and southeastern regions due to natural disasters, such as earthquakes and floods, or due to dam projects, since these groups' basic needs, such as shelter and food, have been addressed over time. Therefore, when used in the context of Turkey, the term "internal displacement" refers to the forced displacement since 1984, only in East and Southeast Anatolia, and not in relation to natural disasters.<sup>6</sup>

## (2) *The Quantitative Dimension*

The Parliamentary Report points out that, according to the State of Emergency Regional Governorship, 905 villages and 2,523 hamlets were evacuated as of 1997 in the provinces under emergency rule, in their adjacent areas as well as in several surrounding provinces. In this report, the number of forced migrants is given as 378,335. However, a document presented to the parliament by the Minister of Internal Affairs on August 8, 2005 gives the figures of evacuated villages and hamlets as 939 and 2,019, respectively, and their total population as 355,803 persons. These numbers are apparently calculated based on the petitions made to the RVRP.

On the other hand, international organizations and domestic and foreign NGOs put the figure of IDPs in Turkey at between one and four million. Most of these estimates are not supported by specific data; rather, they are used to indicate the extent of the population affected by the armed clashes and security problems in the region during the last twenty years.

In fact, the available information is not sufficient to determine the number of IDPs. According to the 1990 general population census, 540,821 persons migrated from the RVRP provinces to other provinces in the period between 1985 and 1990. According to the 2000 general population census, 628,470 persons migrated in the period between 1995 and 2000. Information on migration between 1990 and 1995 is not available, because the census interval has been increased to 10 years. According to the 2000 census, the ratio of persons born in RVRP provinces but residing in other provinces at the time of the census was 30 percent (i.e. 2,819,749) out of the total population born in the RVRP provinces (i.e. 9,323,430). These numbers reflect all types of migration and do not include returnees. It is not possible to establish a relationship between these numbers and data concerning the causes of migration. Moreover, we know that some of the forced displacement took place within the same provinces, from rural areas towards urban centers. Based on the numbers of the 1985 and 2000 censuses, we can observe that the urban population in the RVRP provinces has increased by a total of 1.5 million as a result of births in the cities, migration from other provinces, and migration motivated by other causes. Therefore, **the number of three to four million, as suggested by international organizations and NGOs, is a rather high estimate.**

## **C. POLICIES CONCERNING INTERNALLY DISPLACED PERSONS**

The GPID states that solutions to the problem of internal displacement require officials to make efforts towards facilitating IDPs' (i) return to places of habitual residence, or (ii) settlement in another region of the country, and in either case (iii) reintegration into society. This principle was also emphasized by the ECtHR in its decision in the case of *Doğan and Others v. Turkey*. Furthermore, the GPID points out that the following conditions need to be

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<sup>6</sup> In fact, the GPID definition also includes groups who are compelled to leave their places of residence because of natural disasters or development projects (e.g. dams). The problems of this group of IDPs are beyond the scope of this report, since—although problematic in many respects—established practices of compensation, housing projects, and expropriation have existed in such circumstances in Turkey for a long time.

met: IDPs should be able to make a conscious and voluntary decision on return or resettlement, and return should be “in safety and dignity”; in this process, IDPs should not be discriminated; they should receive assistance to recover their property, or, if that is not possible, compensation; and international organizations should be allowed to participate in this process.

The situation of IDPs in Turkey needs to be evaluated in the context of these principles. Approaching the problem within this perspective, this report will examine the shortcomings of the state’s efforts in facilitating return, the obstacles before successful return, the problems of IDPs who prefer to stay in cities, problems in the letter and the implementation of Law no. 5233, and the issue of reconciliation.

### **(I) Return**

The only step taken so far to facilitate the IDPs’ return to their original places of residence is the RVRP, begun in 1994. This project—which first included the twelve provinces of Batman, Bingöl, Bitlis, Diyarbakır, Elazığ, Hakkâri, Mardin, Muş, Siirt, Şırnak, Tunceli, and Van—was later extended to include Adiyaman and Ağrı as well. The RVRP tackled the following tasks in these fourteen provinces: resettlement of those who wished to return to their own villages or to other available areas; the building of the necessary social and economic infrastructure; facilitating sustainable living conditions during re-settlement; the rebuilding and revival of the disrupted rural life; the development of a more balanced settlement plan in rural areas; a more rational distribution of government investments and services; and supporting the development of “central villages” (*merkez köy*). In 2000, the RVRP’s administration passed from the General Directorate of Rural Services, which had operated the project between 1994 and 1999, to the Ministry of Internal Affairs and the relevant governorships, intending to enlarge the project’s scope and to make its implementation more practical.

According to last statistics given by the Ministry of Internal Affairs, approximately one third of the 355,803 IDPs, i.e. 125,539 persons, have returned to their villages under the auspices of the RVRP as of summer 2005. Yet, the findings of the TESEV Working and Monitoring Group’s fieldwork in three provinces in the region show that the RVRP is in some respects problematic, that there still exist some critical obstacles preventing return, that serious problems are encountered in some villages where there has been return, and, therefore, that returns might not be sustainable.

Let us first consider the problems related to the RVRP:

- The most significant point of criticism concerns practices pertaining to the RVRP. Namely, **the implementation of the project is not sufficiently transparent, and the authority to allocate payments rests with the governorships (*valilik*) and sub-provincial governorships (*kaymakamlık*)**. Thus, it is stated that there is an inconsistency in the implementation of the RVRP in different provinces, and that sometimes resources have been used for different expenses unrelated to the needs of the families wishing to return.
- Another vital problem consists of **IDPs not being able to return to their own villages, but being settled in a different rural area in the same region**. In several of the region’s provinces, some families have been resettled in places other than their

own villages or hamlets, through central village or housing projects. Some IDPs we interviewed in Istanbul claimed that the governorships of Tunceli and Van proposed to their families to settle in places other than their original places of residence under the auspices of the RVRP, but that they have lost the opportunity to benefit from the RVRP because they refused to do so. Given the social and cultural structure in the region, animosities between groups which emerged in the course of the armed conflict, and the disintegration of social relationships, many families clearly will not want to live in centralized settlements.<sup>7</sup> Moreover, individuals have the right to want to return to their original homes. Therefore, one needs to pay attention to ensure that the IDPs' treatment is in accord with the GPID, that **the return to the habitual places of residence or settlement elsewhere is voluntary and that assistance is not made contingent on certain conditions.**

- Another important issue is **the fact that the RVRP, by virtue of its name, is limited to return to “the village.”** As indicated above, the GPID's definition of IDPs and its articles concerning return are not limited to rural areas, but more generally refer to “places of habitual residence” of individuals or groups. Therefore, **aid for return should not be restricted to villages.**

In addition to the problems arising from the RVRP's practices, there are other critical obstacles to return. Among these problems, we can list the following: **the inadequate infrastructure in the villages and the lack of government assistance; the collapse of animal husbandry and agriculture due to armed conflict; and the dire economic condition of those who wish to return.** For example, one of the biggest economic obstacles to return in Batman's townships of Sason and Kozluk, where tobacco planting constitutes the major source of income, is the cancellation of IDPs' tobacco “stubs” (selling licenses) and the low quotas for tobacco purchases by the government. Although local officials have lobbied the government on numerous occasions, the quota (i.e., the maximum amount of tobacco that the government would purchase from a grower) has not been raised; this results in great economic losses for the IDPs. Similarly, in Diyarbakir the most important obstacles for the returnees attempting to re-establish animal husbandry and agricultural production is the fact that fields and orchards have been destroyed, trees have been cut or burnt, and pastures have not been in use. In Hakkâri, which does not have the natural resources necessary for agriculture, the biggest economic obstacle to return is the virtual disappearance of small animal husbandry, which constituted a large source of export before forced migration.

Another obstacle for those who now live in the region's district and provincial centers or in large cities in West Anatolia and who wish to return is that they cannot meet the financial cost of return. Even if the RVRP gives aid to the most destitute in the form of a limited amount of construction materials or a few animals, these IDPs cannot afford the expenses related to moving, building a house and re-establishing agricultural production. The inadequate infrastructure, a most pressing problem for the returnees, shows itself in the lack of electricity, water, sewage systems and healthcare services in the villages. The RVRP needs to address these shortcomings.

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<sup>7</sup> The policy of building “central villages” (*merkez köy*), “centers of attraction” (*cazibe merkezi*) and “village townships” (*köy-kent*) for purposes of centralizing rural settlements and/or public services in rural areas have existed in Turkey for some time. However, before implementing similar policies in the eastern and southeastern regions, one needs to consider the cultural and social conditions as well as the security situation in the region.

On the other hand, those who have settled in Europe and the refugees who fled to Iraq should also be able to benefit from the RVRP if they return to Turkey. It should be kept in mind that the fate of the refugees in Iraq's Makhmour Camp will be determined through an agreement between the two countries, under the supervision of the United Nations High Commissioner for Refugees.

However, when discussing problems related to return, we also have to define what the term “return” really means. For people who have been uprooted from their living spaces against their wishes abruptly and in a traumatic manner and who have lived in urban centers for years, return can mean different things. For some, return means to spend the rest of their lives in the village; for others, to sow and harvest their own fields during the summer season; for a third group, to hold funerals and weddings in the village. In acknowledging these different meanings of “return,” ***the right to return must be recognized to begin with***. The first step in solving the problem is to restitute this citizenship right, regardless of how or whether it is used. **The state should secure the material conditions for the exercise of the right to return and should do so in a sustainable manner.** As indicated in the Parliamentary Report and the ECtHR’s decisions, compelling people to migrate means violating their fundamental constitutional rights as well as universal human rights. Therefore, the restitution of IDPs’ citizenship rights necessitates that they are given the opportunity to re-establish symbolic and material ties with their homeland, regardless of whether they wish to live in their villages permanently.<sup>8</sup>

Just as return carries different meanings for different individuals, the IDPs’ tendencies toward return are also diversified based on demographic, geographic and socio-economic factors. Based on the findings of our fieldwork, we can in sum make the following observations:

- Families who stay in the district and provincial centers of East and Southeast Anatolia are more likely to return to their villages, when compared to families living in metropolises in the west of the country.
- In many families, the decision about whether to return will be made on the basis of the balance of power between different generations and genders within the household.
- While families who have found employment and thus have become integrated into the urban economy are less eager to return, families who have not been able to economically and socially adapt to city life may aspire to return to their villages.
- The household’s income providers or school-age children can be expected to remain in the cities, whereas the elderly and those members familiar with agricultural activity in a family might permanently return to the village.

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<sup>8</sup> When looking into rural-urban migration that has occurred in other regions of Turkey during the last fifty years, one may claim that the majority of these migrants have been integrated into cities and will not return, and thus that the out-migration from the Southeast displays similar characteristics. However, one needs to emphasize that families who migrated from other regions to cities in the west of the country still maintain strong ties with their homeland – both economic ties through the agricultural activities of relatives who stayed behind and symbolic ties through visiting their villages for weddings, funerals, holidays and on other occasions. IDPs should have the same rights and opportunities.

- Some families who have returned to villages with all of their members may continue to pursue income-generating strategies based on the seasonal labor migration of their younger members.
- Especially some families who live in provincial and district centers in the East and Southeast might visit their villages only during the summer months to sow and harvest their fields and to pick fruit.

**The concept of return includes aspects much broader than the “physical” return of IDPs to their villages; it does not have only economic, but also social, political, psychological and cultural dimensions.** Within this context, solutions including all aspects of economic **restructuring** (the economic development of regions that have experienced armed clashes and the building of the infrastructure necessary for return), **rehabilitation** (the return to “normalcy,” the establishment of a social state based on the rule of law based on human rights, the revival of social life and social ties, and the social reintegration of the ex-combatants and village guards), and **reconciliation** (overcoming the traumas of armed conflict, sustaining the durability of peace, and facilitating dialogue between armed factions) must be developed. But before these goals can be achieved, armed clashes should come to an end and disarmament must be achieved.

Indeed, IDPs most often mention **security concerns** as the reason for not being able to return in spite of their wish to do so. Almost all interviewees in the four provincial centers and in some townships of Batman and Hakkâri indicated that they cannot consider a return to the village before security and peace are guaranteed. They fear that they would be compelled to flee again due to military operations, armed clashes, harassment by the PKK or pressure from the state to become village guards. Those who cannot return are not the only ones to harbor this fear. Interviewees in several villages in Batman where the return process has gradually started said that they wanted to stay in their villages, but that they feared having to leave again if armed clashes revived. **Clearly, now that clashes appear to be renewed, the possibility of a new wave of forced migration cannot be discounted.** In fact, some IDPs we interviewed in Hakkâri who had spent the last two summer seasons in their villages, said that they had to leave their villages again because in the last few months their tents had been set on fire.

Another significant security-related obstacle to return is the **village guard system**. In order to facilitate peace and security, **both PKK militants and village guards must be reintegrated into society**. A central policy needs to be outlined to guarantee their disarmament and, unless they have a criminal record, to remove policies that restrict their employment. However, neither PKK militants nor village guards should be employed in fields such as education and security. Leaving the initiative concerning village guards to local institutions, as well as developing faulty employment policies increase social tensions and lead to new problems. Also, conflicts between village guards and villagers, village guards and combatants, and combatants and villagers need to be resolved. In addition, village guards must be provided with social security coverage in order to prevent them from becoming re-involved in armed clashes and from abusing the power that stems from their positions for corrupt or violent purposes. In addition to centralized policies on these matters, **NGOs should also play an important role in facilitating reconciliation.**

Although their exact numbers are unknown, **landmines**, as pointed out by some NGOs, also present a significant obstacle to return and threaten public health. Landmines—which occasionally cause death, injuries and disabilities—have great impact not only on the

lives of returnees, but also on the decisions of IDPs who consider returning. The risk of landmines makes it difficult even to evaluate the security conditions in the region. **Armed forces need to clear landmines with the necessary technological means.**

While the lifting of the state of emergency has facilitated return, the traces of this period have not disappeared from this region. **The worst consequence of emergency rule is the lack of trust between the state and the region's population, and the fact that IDPs are no longer able to feel themselves as "citizens of the state."** Previous policies (especially ones disallowing return to certain regions for security reasons) and the insufficient and badly conceived government aid have fed such feelings. This mistrust leads government officials to perceive citizens as potential PKK supporters. A concrete indicator of this perception is the behavior of the security personnel who accompanied us during a visit to a resettled village in Batman "to ensure our own security" and who noted the names of interviewed villagers and recorded the village on video tape. This feeling of mistrust is not unilateral. The most victimized group, caught between the PKK and government forces, believes that the state treats them as "step children." Because of their perception that the RVRP benefits and the compensation given under Law no. 5233 primarily go to the village guards, IDPs, who already have problems with village guards, tend to think that "the state does not protect" them. The recently renewed clashes also contribute to this mistrust. However, **a sense of mutual trust needs to be established in order to render solutions durable and sustainable**, especially at a time when the state's policies should not be limited to facilitating return.

East and Southeast Anatolia have Turkey's worst standards of public health. **Health conditions—which were already deplorable before the displacement—have taken a turn for the worse after the rapid influx of migrants into the provincial centers, such as Diyarbakır, Batman, Hakkâri and Van, because of the weak healthcare system and urban infrastructure in cities.** The representatives of the healthcare sector, whom we interviewed in Batman and Diyarbakır, pointed out that epidemic diseases—such as typhoid, cholera, and gastro-intestinal infections—reached serious proportions in the middle of the 1990s, and that infant mortality has generally increased in the region. The lack of public healthcare services in the region is likely to make itself felt during the process of return. The poverty and social and cultural under-development of the region has also prevented the just distribution of health services in the country overall. Access to healthcare is marked by great injustice, and this injustice puts the region's inhabitants into the position of the most disadvantaged citizens of the country. Although many interviewees had serious and numerous health problems, either resources for solving these problems are very limited, or IDPs do not have access to these resources since they do not have social security. Particularly in the case of mental health problems, they either remain inactive, or turn to traditional healing methods and healers. Given the violence and armed conflict in the region and the trauma experienced by IDPs, we can foresee that the present mental health problems will have lasting consequences for a significant segment of the region's population for many years to come.

The above-mentioned perceptions of mistrust and exclusion even further alienate citizens from the state's healthcare institutions. This situation is most pronounced in persons with mental health problems. Such persons do not want to tell their experiences and the effects of these experiences to an unfamiliar person, not even to a doctor or a psychologist. "An environment ripe with suspicion and mistrust" only aggravates the problem further. The region's traditional patriarchal family structure makes it especially difficult for women to express their mental health problems. This leads to somatic complaints, such as chronic headaches and other types of pain. Children's problems, such as bed-wetting, are ignored

because of “lack of awareness” and socio-economic difficulties. The fact that men can no longer secure the family’s income after migration destroys traditional gender roles and leads to conflicts between men and women. Women and girls begin to experience psychological problems, because they are under increasing pressure, on one hand, to contribute to the family’s income, while, on the other hand, their partners, fathers and brothers expect them to follow traditional rules of conduct. Two other significant problems observed in the region’s population are lack of confidence and passivity.

When one considers the scale of the region’s physical and mental health problems in the context of forced migration and return and takes into account the number of affected persons, it becomes apparent that **the problem carries the characteristics of a “disaster.”** The fundamental characteristic of disasters or “emergency situations” is the emergence of a sudden and unexpected imbalance between the needs of affected persons, on one hand and the human resources and capacity of the healthcare sector, on the other. The extent to which the needs can be met is directly related to the type and scale of the emergency situation, the health indicators under normal circumstances, healthcare resources, and other health problems that may develop simultaneously with the disaster. The lack of a support network and of security, necessary for providing healthcare services, also negatively influences efforts to meet the needs. Unfortunately, all these negative conditions are present in the region.

## **(2) Problems of IDPs in Urban Areas**

In 2002, Francis Deng, the then Special Representative of the UN General Secretary on Internally Displaced Persons, visited Turkey. In his ensuing report, he acknowledged that the RVRP is a positive development, but warned that the government focuses only on return to the villages and neglects the issues of urban IDPs. Walter Kälin, who succeeded Deng last year, also voiced concern to the TESEV Working and Monitoring Group in a meeting last May that the government does not pay attention to IDPs living in cities. On the other hand, the European Commission, which has addressed internal displacement in its recent Progress Reports over the last few years, also exclusively addresses the return aspect of the problem. In spite of the government’s claim that a significant number of IDPs has returned, most IDPs still live in urban centers in the region or in the western part of the country. Some of these do not consider returning to their villages; another group is unable to return although they wish to do so; a third group attempts to build a new life based on living partially in the village and partially in the city. **Therefore, policies concerning IDPs should not exclusively focus on return. The urban problems of individuals who have not yet been able to return, as well as of those who probably will never return, also need to be addressed.**

**The most fundamental and common problems among the IDPs we interviewed in Batman, Diyarbakır, İstanbul, and Hakkâri were unemployment and poverty.** In Diyarbakır, Hakkâri, and Batman—where the problem is much heavily felt—a majority of the adult male population is unemployed. Most of those who have some form of work do not have a stable source of income. In İstanbul, we have observed a spatial differentiation in terms of income earning activities. While IDP households living in the industrial areas on the city’s periphery try to hold on to İstanbul’s economy by having several family members work in workshops, families in the old neighborhoods in the city center live under much worse conditions. In the latter case, women, youth, and children contribute to the family income by working in the informal economy. Of a large majority of the displaced families we have interviewed, not a single household member has social security.

In this context, we also need to examine the issue of **child labor**. A recent parliamentary report on “street children” mentions migration and “terror” among the primary causes for the increasing exploitation of child labor. Whereas the issue of children working on the streets of Batman, Diyarbakır, Hakkâri, and Istanbul, which is mentioned in this report, is much more widely known because of the public reaction, policy makers neglect the issue of children working in less visible places. Thus, while one of the most important sources of income for displaced families living in Istanbul’s old central neighborhoods is sending children onto the street to sell packages of tissue, children of families living in industrial areas are forced to work in textile workshops from a young age.

The most concrete result of the exploitation of child labor caused by internal displacement is that **children cannot exercise their right to education and other children’s rights**. In our study of IDPs in four urban centers, we have observed that families who were suddenly removed from their places of habitual residence cannot afford to send their children to school, although they wish to do so, because of their dire economic conditions. Moreover, since many of the schools in rural areas were closed in the 1990s, many have never attended school at the time of displacement. In our conversations with young IDPs in Istanbul, the most prominent demand we heard was access to education. Without a doubt, the group most disadvantaged in terms of education consists of women and girls.

There are further problems regarding children working in workshops, and especially those working on the street: they are faced with **very serious threats such as substance abuse, physical and sexual exploitation, socialization into criminal activity, and mental and physical health problems**. But this is not the only problem. Unfortunately, government officials and the media sometimes draw connections between delinquent and addicted children and migration from the Southeast. The TESEV Working and Monitoring Group **would like to warn that unfairly targeting young urban IDPs when searching for explanations for increasing crime rates may also constitute a serious threat to the restitution of reconciliation**.

**Poverty and problems related to it—such as informal labor under dangerous working conditions, lack of access to social security, and housing problems—also trigger mental and other health problems.** Most of the families whom we visited lived in unhealthy, inadequate, overcrowded and much too small living spaces. These living conditions facilitate the outbreak of disease and make recovery difficult. Malnutrition primarily shows itself in the height and weight of children. **Urban IDPs do not have adequate access to public health institutions and services.** Most of them are forced to pay for visits to private clinics, since they do not have social security. Government healthcare clinics in many neighborhoods of Istanbul with the highest influx of migrants are insufficient. In brief, although IDPs have increased healthcare needs, these needs cannot be met for different reasons.

IDPs’ mental health problems have reached significant proportions. Compared to the general urban population, IDPs have a higher prevalence of post-traumatic stress disorder (PTSD), depression, somatization, grief reactions, intense anxiety, and hopelessness. Our own observations and other studies show that these mental health problems are related to the following factors: the migrants’ experiences of threats to their life; trauma; loss of employment; worsening economic conditions; the break-up of social life; forced migration; being forced to live under deplorable conditions after migration; and the loss of a social support system. IDPs develop behaviors marked by lack of confidence, hopelessness, anger, suspicion, shyness and introversion.

We should not forget that these mental health problems are likely to continue for years, may negatively affect productivity at work, may affect interpersonal relations and family structures, and may lead to various other problems, such as incidences of violence and substance abuse.

## **D. LAW NO. 5233 AND ITS IMPLEMENTATION**

In his 2002 report where he called on the government to remove the obstacles to return to the villages, Francis Deng emphasized the importance of compensating IDPs for their losses. Enacted in response to this call, which was also reiterated in the European Commission's Progress Reports, Law no. 5233 came into effect on July 27, 2004, and its implementing regulation on October 20, 2004.

**Without a doubt, Law no. 5233 is a positive first step on the way to restitute the rights violated in the context of forced migration. Certainly, the implementation of the law carries great importance for Turkey's membership to the EU and for cases pending before the ECtHR. In fact, Walter Kälin has also underscored in the press release published after his visit to Ankara that the law's implementation in the near future is of great significance. However, an approach that only focuses on the problems in the law's implementation runs the danger of neglecting the inadequacies and problems embedded in the letter of the law. Whereas, to secure the goals indicated in the law's statement of reason – namely, the removal of an obstacle to Turkey's EU membership, a reduction in the number of cases brought to the ECtHR and the achievement of reconciliation and rapprochement between the state and citizens –, not only should problems in implementation be overcome, but amendments should also be made in the law.**

### ***(1) Problems in the Letter of the Law***

The stated purpose of the law is to secure compensation for losses “arising from acts of terror or from measures taken to fight against terror.”<sup>9</sup> This definition is extremely positive in that it guarantees compensation, regardless of the actors who have caused the damage. Thus, the law encompasses victims who were forced to migrate, either by the PKK for having become village guards, or by the security forces for refusing to become village guards. However, the GPID's definition of displacement includes not only victims who were “forced” to migrate, but also victims who were “obliged” to migrate due to the negative consequences of armed conflict. Yet, the causal link established between losses on the one hand and the activities of the PKK or the security forces on the other leaves persons belonging to the latter category outside the scope of the law. Similarly, the initiation of the law's scope from 1987—the year that the government announced emergency rule and recognized the right of individual petition to the ECtHR—results in the non-compensation of losses sustained between 1984, the year when the armed clashes started, and 1987. **These two shortcomings in the scope of the law create discrimination unfounded on any objective criteria among IDPs who have suffered similar losses. On the other hand, it is also unclear whether individuals who have left the country following displacement will be able to benefit from this law. These persons constitute a significant potential group of victims and need to be informed about the law and provided with the requisite conditions to be able to apply to it.**

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<sup>9</sup> Law no. 5233, article I.

The law compensates pecuniary damage inflicted not only on property, but also on life and body of the person. However, during our fieldwork, it became evident that **the scope of the law is insufficiently, sometimes even incorrectly or incompletely, understood**. Many victims believe that the law covers only village evacuations and does not compensate death and injury. The expression “arising from acts of terror” in the law’s title can frighten many victims. Scared of being considered by the state as terrorists if they file a petition, victims may perceive petitioning not as a legitimate means of claiming their rights, but as lodging a complaint against the state.

The law does not require the proof of any fault on the part of the administration, but rests on the “doctrine of social risk based on the objective responsibility of the state.” However, in order for justice to be achieved, for society to confront the truth and for the state to “reconcile” with the victims by restituting their rights, it is essential that those responsible for violations are identified and brought before the court. We observed in Batman that particularly some families whose relatives have disappeared or have been killed by unidentified perpetrators did not consider the compensation as adequate but favored instead the idea of going to court in order to find the perpetrators. Similarly, an attorney we interviewed in Hakkâri indicated that such families were heavily on the side of bringing their cases to the ECtHR. **The fact that some victims consider going through a lengthy and difficult judicial process demonstrates that the law falls short of meeting the expectations of the victims and facilitating reconciliation.**

Given the length of time that has passed over the events, it may not be possible to punish the perpetrators. However, at the very least, it should be possible to place on official record the events of a period of illegality and to allow the truth to come to light. However, the law does not serve this purpose. Many NGOs and attorneys who represent victims perceive the law as a step intending to appease the EU and the ECtHR. And victims, most of whom are not fully informed about the petitioning procedure and their rights under the law, harbor mistrust towards the state and think that “nothing good will come from it.” This mistrust leads victims to recourse to NGOs. The belief that the compensation commissions—which predominantly consist of public officials—are biased reinforces this tendency and creates a **dual mechanism of justice**.<sup>10</sup> While the village guards and their families petition to the governorships, the victims seek justice with the help of NGOs. Moreover, while victims tell their stories to NGOs and attorneys in details, they often may not want to put them on record in their petitions for fear of retaliation. Thus, an important opportunity is being lost to identify the perpetrators of human rights violations that have occurred during forced migration and to imprint into the society’s collective memory the extralegal practices that have taken place under emergency rule.

Another inadequacy of the law lies in the non-provision of **compensation for pain and suffering**. However, many IDPs we interviewed expect that there is also a legal remedy for their suffering. Moreover, in having paid compensation for pain and suffering to several IDPs who have gone to the ECtHR but not granting the same right to those who file petitions

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<sup>10</sup> Law no. 5233 stipulates that newly established commissions process the petitions, evaluate the damages, and draft an agreement specifying the compensation payments or in-kind compensation. The commissions are established in provinces on the basis of demand. The commissions consist of six state employees and one non-governmental representative. The state employees are a deputy governor who serves as the chairman and five experts from ministries of finance, public works and housing, agriculture and rural affairs, health, and industry and commerce. The only non-governmental representative in the commissions is an attorney appointed by the local bar association.

under Law no. 5233, the state once again discriminates between IDPs who have experienced similar grievances. **Compensation for pain and suffering—which would suggest the state’s acknowledgment of the trauma that the IDPs experienced—carries great significance in facilitating the victims’ belief in justice and achieving reconciliation.** Such a provision would also serve the law’s stated purpose of reducing the number of cases brought before the ECtHR. Compensation for pain and suffering is also necessary to compensate the losses suffered by a significant number of IDPs who did not own land, but yet have been uprooted from the lands they cultivated and used. In a similar manner, non-pecuniary damages could, to an extent, remedy grievances in cases where possessory rights over the land can not be proven.

The law provides an extremely low amount of pecuniary damages for death and bodily harm. All the attorneys and victims, and some of the public officials we interviewed underscored that particularly the damages of 14 billion TL provided for loss of life “can not be the worth of human life.” Providing a predetermined, fixed amount of compensation for death and bodily harm also contradicts the general principles of law of damages. Furthermore, the fact that the amount of damages provided under Law no. 5233 is less than that given to IDPs who apply to the ECtHR leaves the commissions in a paradoxical situation: while the law’s text does not give them discretionary power in this matter, the Ministry of Foreign Affairs instructs the commissions to be flexible in awarding damages. Therefore, it is imperative that either the commissions are allowed to determine damages on a case-by-case basis, taking into account the subjective condition of each victim and the nature of the damage, or damages are increased to morally appropriate amounts.

The law does not make compensation for damage to property and for damage resulting from inability to access property contingent on victims’ return. Therefore, Law no. 5233 is actually more progressive than the GPID, which only guarantees compensation in case of return. However, in **prioritizing in-kind compensation for these losses, the law indirectly makes compensation conditional on return.** As Kälin also pointed out during our interview, this aspect contradicts the principle of voluntary return as outlined in the GPID. Several of the victims we interviewed in Batman, Diyarbakır, and İstanbul stated that they are planning to utilize their compensation to buy a house or to set up a business in their new place of residence. This incongruence between the law’s provision and the victims’ expectations indicates that problems can arise in the implementation of this aspect of the law.

## **(2) Problems in the Implementation of the Law**

Based on our studies and observations, we have assessed that the problems in the implementation of the law have three fundamental causes:

- 1)** While some commissions are well-meaning and perseverant, they do not have much room to maneuver in implementing the law, due to the law’s shortcomings and the limited discretionary power granted to them particularly in regard to the amount of damages.
- 2)** While others may have the best intentions, they are not immune to the public official mentality. Thus, not wanting to take risks, they are waiting for a clear political message from the government in order to improve and expedite the law’s implementation.

- 3) Others hold prejudice against victims whom they perceive as opportunists who want to abuse the law and/or are PKK collaborators.**

Even if the recommended changes to the law may remove the first cause, they will not suffice to overcome the problems in the law's implementation. Problems resulting from the second and third causes can be solved by resorting to the following measures: **the government needs to develop a clear and binding political position on the law; send to the commissions an “explanatory note” discussing each and every article of the law in order to guarantee unity in implementation; and inform and educate the commissions about the purpose and content of the law, the GPID and the case law of the ECtHR.** We will illustrate the necessity of these measures with a few examples we have encountered in our research.

The law excludes from its scope “the losses resulting from” the acts of terror of individuals convicted under the Anti-Terror Law.<sup>11</sup> This may lead to two significant problems in implementation: First, it may be difficult to determine which losses were inflicted on these individuals by their own acts of terror or commissions may hold prejudices against these persons. Secondly, in light of the allegations that security forces have intentionally framed certain incidents as armed clashes during the emergency rule, it is possible that the property rights of innocent people will be violated. In fact, these problems in implementation have already started to emerge: Some of the rather high number of inadmissibility decisions nationwide is based on this article. According to attorneys monitoring the law's implementation in Diyarbakır, commissions deny compensation to persons with a previous conviction for terrorism without evaluating whether the losses of these individuals resulted from their own acts. That this practice contradicting the purpose of the law takes place in Diyarbakır, which is generally considered a relatively successful case of implementation, is disconcerting in that it demonstrates the extent to which prejudices are prevalent in the commissions. In this respect, it is all the more important to emphasize in an explanatory note that **individuals convicted of terrorism should be compensated for losses that did not rise from the acts they were prosecuted for.**

The above-mentioned prejudices can also work in the opposite way. We have been told by an NGO in Batman of allegations that commissions tend to award compensation more readily to village guards. **Based on our observations, the view that village guards receive privileged treatment in the implementation of the law is also widespread among victims.** We were not able to verify these claims, because the official documents we obtained from the governorships do not provide a breakdown of concluded petitions according to their applicants. However, even the existence of such a perception is a significant obstacle in establishing a relationship of trust between the state and the citizen. In fact, one interviewed public official pointed out that it is only natural for him to prioritize the petitions of village guards who have rendered a service to the state. Similarly, an attorney serving at a commission said that, although the civilian IDPs' petitions are missing many documents, the village guards' petition files are conspicuously complete.

At this point, we would like to emphasize the importance of **setting up a higher administrative body which would report to the Government and re-examine the inadmissibility decisions**, which now have reached an alarmingly high number nationwide. Provided that its evaluation of petition files is limited within a reasonable timeframe, such a body would exert a positive pressure on resistant commissions and guarantee the supervision

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<sup>11</sup> Law no. 5233, article (II)(A)(2)(a).

of commissions without obstructing the law's implementation. Furthermore, it should be taken into account that the commissions can operate with the mentality that victims will not be able to go to court anyway; in this respect, an exceptional legal arrangement for Law no. 5233 **exempting IDPs from legal fees in cases they bring to administrative courts** would create positive pressure on the commissions.

The biggest source of problems in the law's implementation is the **burden of proof**. Given the possibility of the law's abuse and the fact that this has already occurred in some cases, the proof of claims doubtlessly carries great significance. However, this can be accomplished without putting a heavy burden of proof on the victims. In this context, a vital and appropriate measure, recently taken with an amendment to the implementing regulation,<sup>12</sup> consists of allowing victims to prove their losses by means of any kind of information or document available to them. Yet, so far this change has had little impact on the law's implementation. According to representatives of Diyarbakır Bar Association, while in Diyarbakır victims were given the opportunity to prove their losses with the help of witnesses and documents available to them even under the old regulation which imposed a heavy burden of proof, the commissions in Şırnak and Mardin still request extremely detailed information and documentation from victims even after the amendments made to the regulation. This duality shows to what extent the commissions' good will is critical in the law's implementation. Requiring victims to provide documentation that actually does not exist or is almost impossible to obtain—such as police report, court-supervised probates or title deeds—makes the law practically inaccessible to victims. Adhering to the regular legal process in proof of losses resulting from unlawful practices under emergency rule also contradicts the ECtHR's judgment in *Doğan and Others v. Turkey* that under such circumstances, the burden of proof rests not with the plaintiff, but the state. At this point, the previously mentioned urgent need for drafting explanatory notes and training the commission members becomes once more evident.

In relation to the principle that the burden of proof rests with the state, we also need to mention the question of proving village evacuations. The impossibility of proving village evacuations, most of which have been undertaken by the state, with the help of regular documentation has so far resulted in a mixed record in implementation. While the commissions in Batman, Diyarbakır, and Van tend to postpone evaluating petitions regarding village evacuations, those in Hakkâri peremptorily rule such applications inadmissible without an evaluation. Another point we need to underscore in this context relates to the proof of the ownership of immovable property. Because cadastral surveys and land registry exist only sporadically in the region, particularly in mountainous agricultural fields, many families' land ownership is based on usufructuary rights. Even though the regulation does not require a title deed to document land ownership, it is particularly important for officials to deal with this matter in a sensitive manner, because the very process of displacement makes the proof of usufructuary rights difficult. The ECtHR's decision in the case of *Doğan and Others v. Turkey* serves as a precedent in this matter as well.

Another extremely problematic area in the law's implementation is the process of **damage assessment**. The regulation does not require the conduct of fact-finding missions; therefore, sometimes even in necessary cases damage assessment missions may not be conducted. For example, although a large number of petitions require fact-finding in Şırnak—one of the provinces hardest-hit with displacement and with highest number of petitions to

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<sup>12</sup> The amendment to the regulation was made pursuant to the cabinet's decision no. 9329, and came into on September 15, 2005 upon being published in the official gazette.

commissions—, so far not a single mission has been made towards that purpose. That commissions have not begun the damage assessment process in many provinces has different reasons: The practical impossibility of conducting fact-finding missions due to the recently accelerated armed clashes; the prioritization of “easier” cases due to the difficulty and sometimes impossibility of the assessment of damages to immovable and movable property; and the hesitation of risk-averse commissions to deal with petitions requiring fact-finding missions absent clear instructions from Ankara because of the possibility that such petitions will result in high damages. Even though the regulation permits damage assessment where necessary, it does not prescribe a procedure. This allows for **inconsistencies in implementation between the provinces where such assessment has started**. For instance, in Batman fact-finding missions are only conducted when all commission members are present, while in Diyarbakır the task has been transferred to sub-provincial governors (*kaymakam*). In Siirt, these missions are conducted by experts under the guidance of a commission member. This inconsistency in implementation is troubling in several respects. The practice in Batman slows down the evaluation of petitions. In fact, as of the end of June, only one collective fact-finding mission for 40 petitions has taken place in Batman, none of which has been brought to a conclusion. This delay is reason for concern, since 4,981 of the total of 5,847 petitions in Batman require damage assessment. The practice in Diyarbakır is also problematic in that it allows persons without sufficient knowledge of the law to assess losses and determine the amount of compensation. In light of these two factors, the practice in Siirt comes across as the most favorable under the present conditions in terms of handling the petitions quickly, in accordance with the law and under the supervision of the commissions.

At this point, we would like to address the composition of the commissions. **Commissions are primarily composed of public officials**, and this has thrown a negative light on their impartiality and independence in the eyes of the victims. This composition also results in **arbitrariness in implementation and inconsistencies between the provinces**, by making the commissions’ performance contingent on the individual attitudes of governors and their deputies. During our research in Batman and Diyarbakır, we observed that thanks to the goodwill of the governors and their deputies, commissions operate in a swift, coordinated and fair manner within the constraints of the law. By contrast, we have been told that the commissions in Mardin and Şırnak rule most of the petitions inadmissible and work very slowly. Hakkâri, one of our fieldwork sites, is another troubling example in this respect. As of the end of September 2005, 783 of 1,043 concluded petitions have been found inadmissible. While most of these rejected petitions consist of those filed by security personnel and village guards who have earlier received compensation through other legal avenues,<sup>13</sup> it is disconcerting that 285 of them —many of which are related to village evacuations—have been found inadmissible for “lack of information and document.” Whereas, the fair compensation of losses is only feasible with the help of a competent and independent group of experts who are able to evaluate any type of losses caused by forced migration. All interviewed public officials, attorneys, NGOs, and victims shared the opinion that the composition of these commissions needs to be changed. We believe that a restructuring of the commissions to include village headmen (*muhtar*), agricultural and civil engineers, representatives of municipalities affected by migration, human rights lawyers and NGOs working on migration would guarantee the legitimacy of the commissions and the IDPs’ trust in the judicial process. Furthermore, the presence in the commissions of a lawyer with an expertise on public law to represent the state would relieve risk-averse commission members by helping them feel the support of the state. Such a composition would also facilitate the

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<sup>13</sup> Law no. 5233, article (II)(A)(2)(a) (excluding from the scope of the law losses for which compensation has previously been paid through other legal means).

ECtHR, which is currently monitoring the implementation of the law, to come to the conclusion that damage assessment commissions constitute an effective and fair domestic legal remedy in Turkey.

Without a doubt, for the commissions to be able to work in an effective, quick, and fair manner, they need to be provided with the appropriate working conditions and the necessary resources. In this respect, we have found great inadequacies. Commission members provide this service to the public in addition to their main duties and without receiving any financial compensation. This not only slows the work pace, but also makes the commissions' performance contingent on the goodwill and personal sense of responsibility of their members. Also, attorneys serving at the commissions suffer an additional grievance, because, unlike the rest of the members who are all civil servants, they do not have a regular income. However, when a commission fulfills the function of a court of law, it should not have to depend on the self-sacrifice and personal sense of responsibility of its members. The absence of any funds allocated to the commissions, and the lack of personnel and technical equipment also slow down their performance. Even in Batman—which we have concluded to be a relatively good case in the implementation of the law—, only 328 out of a total of 5,847 petitions have been brought to a conclusion as of July 28, 2005. In other words, not even 10% of the total petitions could be brought to a conclusion within ten months. The situation in Diyarbakır gives even greater reason for concern. As of July 8, 2005, only 369 out of a total of 18,240 petitions, i.e. a mere 2%, could be finalized. Moreover, petitions are still being filed with the commissions. When we consider that most of the petitions that have resulted in a decision so far are “easy” cases that do not require damage assessment, and that the committees will not be able to rule on the petitions involving damage to moveable and immovable property due to the armed clashes, the approaching winter and the uncertainty of the damage assessment procedure, it is clearly impossible for the commissions to process the pending petitions in the two-year period required under the law.<sup>14</sup> Therefore, two more vital amendments need to be made in the law: Instead of pressuring the commissions to process petitions as quickly as possible, **the government needs to extend the two-year period in order to allow due process of law. Furthermore, given that petitions continue to be filed regardless of the already expired July 2005 deadline, the application deadline needs to be extended by another year.**

## **E. POLICY PROPOSALS TOWARDS PEACE AND RECONCILIATION**

Internal displacement is the most sustained human rights violation affecting the largest group of citizens in Turkey during the last twenty years. It has caused great social, economic, legal, and psychological damages. Yet, in spite of its gravity, the issue has not yet been resolved. Policies for a durable solution need to consider the issue from all of these aspects. The TESEV Research and Monitoring Group believe that the following aspects of the problem warrant a closer investigation in order to find a solution: return, socio-economic development, education of stakeholders, the restitution of citizenship rights, social health and psycho-social rehabilitation, and reconciliation.

### **(1) Return**

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<sup>14</sup> The law requires each application to be brought to a decision within two years.

**Viable policies have to ensure that as many IDPs as possible can exercise *the right to return*.** For this purpose, it is particularly imperative that the RVRP is implemented effectively and fairly. The expenditures made within the scope of the RVRP should be limited to ensuring the IDPs' return to the areas of their choice in the manner they wish. Village guards and security personnel who are not IDPs should be prevented from benefiting from the RVRP. However, landless villagers, new households which have emerged through marriage within extended families, and girls will probably not be able to benefit from the RVRP or the Law no. 5233. Considering the nature of land ownership in the region and the prevalent family structure, this group evidently is of noteworthy size. Therefore, in order to facilitate return, **the state needs to formulate a much more comprehensive local rural development program than the RVRP.** Towards removing the obstacles to development and alleviating rural poverty, local actors in the public, private, and civil sectors need to be included in the process of identifying the characteristics, potential, problems and needs of the region. On the other hand, steps should also be taken to enable the IDPs outside the country to exercise their right to return.

## **(2) Socio-Economic Development**

However, the solution of the problem of internal displacement can not be limited to policies facilitating return. "Return to village" takes the center stage both in the Government's current policies and the assessments of the European Commission in its Progress Reports. However, a great majority of IDPs currently live, and will continue to live, in cities. Therefore, urban IDPs need to be taken into account when developing policies toward a solution.

In brief, **there is an urgent need for additional socio-economic measures.** These social policies should be planned separately for those who wish to return, for those who wish to stay in provincial or district centers within the region, and for those who will continue to live in cities outside the region, including Istanbul. **The main axes of these policies should consist of education and creation of employment opportunities by encouraging investments towards increasing the level of employment and revitalizing agricultural economy.** In addition to providing primary education to school-age children, literacy courses need to be offered widely especially to women and girls where they can also acquire income-generating skills. These courses should be planned in a coordinated, culturally sensitive and long term manner and should address social needs.

## **(3) Assessment of the Problem and the Education of Stakeholders**

The increased dialogue with international organizations has compelled the government to commission the Institute of Demographic Studies at Hacettepe University (HÜNEE) to conduct a field study on IDPs. The results of the "Study on Migration and the Displaced Population in Turkey" are expected to be made public in the early months of 2006.<sup>15</sup> The

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<sup>15</sup> This study collects (1) basic information about the entire population which has migrated from provinces within the RVRP; (2) demographic and socio-economic information on the displaced population; and (3) detailed information on the population which has been compelled to leave their villages/places of residence within the last twenty years or so because of armed clashes in the region (the latter group is included in the definition of the displaced population, but constitutes a sub-group). For this sub-group, researchers collect both qualitative and quantitative data about IDPs that have returned as well as those who have not returned and continue to live in cities. The project will also produce new information (numerical, geographic, demographic and socio-economic

number of similar studies elsewhere in the world to collect data on IDPs is very low because in most cases, the root cause of internal displacement is of a political nature; governments are often parties to the conflict; and therefore the problem carries great political sensitivity. **Many interpret this study as an attempt to showcase the government's decisiveness to resolve the issue in response to the EU's pressure during the accession process and the ECtHR's judgments against Turkey.** One can expect that the results of this study will be more readily acceptable compared to those of earlier studies conducted by several NGOs and public bodies, and that the study will contribute to the formulation of policies and plans that can be adopted and implemented by all parties. However, it is evident that the Government **should not wait for the release of the results of this study before developing new policies and programs or revising the existing ones. Instead, it needs to take immediate steps towards remedying grievances—which have already continued for too many years— in the shortest time possible.**

At a training held during Walter Kälin's visit to Ankara, officials from the Norwegian Refugee Council informed vice governors of the region's provinces and experts from other public organizations about the GPID. Similar training should also be extended to persons providing services for IDPs. **A long term education and information campaign for public officials, NGOs, the general population, and the victims should be launched in places directly or indirectly affected by migration. Towards that end, guidelines which are based on the GPID and which take into account the conditions in Turkey should be prepared in a fashion similar to the Istanbul Protocol, which is a guideline on torture victims.**

In the meantime, the pending establishment of a separate governmental unit on the IDPs, which emerged as a result of the government's dialogue with international organizations, would greatly contribute to the solution of the IDPs' problems.

#### **(4) Compensation and the Restitution of Citizenship Rights**

Without a doubt, Law no. 5233, which is by far the most important step the Government has taken towards solving the IDPs' problems, is a very important milestone. However, in spite of the well-intentioned approach of some officials, such as the governor of Batman who sees the law as "a means to reconcile the state with the citizens," the law is still far from reaching the goals outlined in its statement of reason, i.e. "to strengthen trust in the state," "to enhance good relations between citizens and the state," and "to contribute to reconciliation." The law can only reach these goals if it can be internalized by public and security officials and if it gains the citizens' trust. However, all of this can only be achieved primarily if the Government and the Prime Minister himself would emphasize that the law's purpose is to compensate for the wrongdoings of the state, that victims have the *right* to petition, and that the law is meant "for the state to win over the citizens." **The government's public demonstration of its firm support for the law would contribute greatly to both solving the problems in the law's implementation and to enabling victims to believe in the Government's sincerity about the true purpose of the law.**

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characteristics) about internal migration movements within Turkey in the last twenty years by conducting a new analysis of already-existing data. The project will also produce an estimate of the number of IDPs who have migrated during that time period.

Certain changes need to be made in the letter of the law which, in its present state, fails to achieve the aims outlined in its statement of reason. **Foremost, in order to reconcile the law with the GPID's definition of forced migration, its scope needs to be extended to 1984, and the following phrase needs to be added to the text of its Articles I and II: "or suffered due to the armed conflict."**<sup>16</sup> Also, **the law needs to provide compensation for pain and suffering in order for** victims to feel that "justice has been served." The damages awarded for bodily and psychological harm should either be determined by the commissions on a case-by-case basis or, the fixed amounts provided by the law should be increased. Compensation for damage to property should not be contingent on return; and victims who do not want to return to their villages should not be obliged to accept in-kind damages. Moreover, victims residing outside the country should be informed about the law and be given the opportunity to benefit from it.

However, the Government's demonstration of its resolve to stand behind the law and the amendments it may make in the law would not be enough to overcome the current problems in implementation. First, towards rendering the commissions more democratic and accessible, their current composition which undermines their impartiality and independence should be changed by including NGOs and experts who are capable of evaluating the problem of forced migration comprehensively. This would ensure the victims' trust and belief in the process, and increase the commissions' chances for becoming an effective domestic legal remedy in the eyes of the ECtHR. Moreover, towards achieving unity in the law's implementation and overcoming the bureaucratic resistance observed in many provinces, commission members should be trained about the GPID, the ECtHR case-law, and Law no. 5233 to equip them with the necessary sensitivity to evaluate all petitions equally without discriminating between village guards and civilians. To the same end, **an explanatory note discussing the purpose and the content of each and every article of the law should be sent to the commissions in the shortest time possible.** Furthermore, a circular should be sent to commissions instructing them to implement the September 15, 2005 amendment to the regulation alleviating the victims' high evidentiary burden of proof. In the same vein, the government should **create a higher administrative body** that will re-consider inadmissibility decisions and function as a type of appeals court, and it should consider a legal arrangement specific to this law by providing applicants an **exemption from legal fees at administrative court hearings** in order to enable them to exercise their right to go to court instead of receiving compensation from the commissions. Undertaking these five steps would contribute greatly to overcoming the resistance of prejudiced commissions, relieving risk-averse commission members by helping them feel government support behind them, and ensuring progress in the implementation of the law. The presence in the commissions of a lawyer specialized on public law as a representative of the public could be yet another step towards the same goal.

Moreover, in order to speed up the petition evaluation process, it is imperative that the number of commissions is increased, that the commissions are given a professional character, and that their financial, logistic and staffing needs are met. However, concluding the petitions as soon as possible should not be the only goal. While expeditious implementation is undoubtedly of great concern, it is even more important to handle the petitions in a just manner. For this reason, we suggest that **extending the two-year petition evaluation period to a more realistic timeframe** would, taken together with all the other steps we have proposed earlier, alleviate the political pressure on the commissions. Furthermore, given that

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<sup>16</sup> Currently, the purpose and the scope of the law are stated to cover losses "arising from acts of terror or from measures taken to fight against terror." Law no. 5233, articles I and II.

petitions are still being filed, **the deadline—which has expired in July 2005—should be extended by one year**. Providing advance budgetary payments to the commissions would also ensure that they can pay compensation for concluded petitions without delay and therefore that the victims feel justice has been served.

### **(5) Health and Psycho-Social Rehabilitation**

Migration is a common life experience in Turkey, an experience that is a significant part of the country's culture, and one that also creates different psycho-social problems. Displacement is, additionally, a traumatic process, socially as well as psychologically. Individuals forced to be displaced or migrate may have been exposed to traumatic events, such as armed conflict, torture, physical or sexual violence, rape, death threats, or the loss of loved ones. These types of experiences naturally have many different consequences—such as loss of income, economic uncertainty, inadequate healthcare and education, the inability to meet the most basic human needs, and the break-up and disintegration of social structures. Shared social, economic, and cultural networks begin to dissolve, and the support that individuals can receive from these networks also diminishes. In addition to the traumatic and painful experiences of the past, displacement may also facilitate the entrenchment of negative feelings towards the future —such as uncertainty, hopelessness, loss of confidence, isolation, and doubt. This situation can lead to the establishment of even more distrustful, doubtful or hopeless relations and the production of such policies.

From the perspective of its consequences, forced migration is actually a type of disaster. It is also a public health problem. Therefore, **there is a need for sustainable and durable programs and practices involving not only healthcare, but also other disciplines and sectors towards developing solutions for psycho-social and health problems in the next decades**. IDPs' problems should be approached in a community based way. It is vital to create a common ground where the state, NGOs, victims, and the general population can work together. Data collection and expansive fieldwork are necessary in order to formulate more realistic policies concerning the region. These studies need the support of the government and NGOs. It is necessary to develop the capacities of migration-receiving and migration-generating places to provide training, information and facilities in healthcare and psychiatry. It is necessary to expand this to each and every discipline. For example, healthcare professionals should receive information and training about internal displacement and its related problems, towards developing the capacity in the region. **The government should ensure that IDPs have access to healthcare. Without a doubt, social security is one of the most important tools to accomplish this.**

**Increasing in the number of community centers in the region and facilitating them to work in a coordinated manner** should be on the top of the list of what needs to be done in the shortest term. It is vital that these centers establish close relations with local partnerships. While these centers may initially be run by NGOs, one should ensure that they work in a more organized manner through the cooperation of NGOs and the state. While these types of centers may offer psychological counseling to individuals, they should also be envisioned as public places where courses and similar various activities are organized. The community centers should also meet the region's needs by dealing with much neglected issues such as addiction, street children and women's problems. It is necessary to cooperate with academics in order to prepare medical examination and information forms in Kurdish towards overcoming the language barrier especially in the field of mental health.

In the long term, the government should implement healthcare programs which are more just, which take into account the increasing needs of the region which do not straiten the population and the healthcare professionals, and which bring together the coordinated efforts of different disciplines. **If there is need to declare a state of emergency again, it should be in the field of healthcare and socio-economic policies.**

#### **(6) Social Rehabilitation and Reconciliation**

In the previous sections, we have addressed the concrete steps needed in the areas of return to villages, socio-economic development, education of stakeholders, compensation and healthcare. However, **these policies might not be durable or even possible to implement, if the security situation in the region deteriorates or if the fighting starts again.**

Therefore, towards finding a permanent and sustainable solution to the problem of internal displacement in Turkey, social rehabilitation and reconciliation are a must. **In this context, it is important that the security situation in the region improves, and that combatants and village guards are disarmed and reintegrated into society. Furthermore, it is vital to reestablish a relationship of trust between citizens and the state in the region.**

Approaching the problem of internal displacement from the perspective of social rehabilitation and reconciliation, we first need to develop an accurate and fair definition of the displaced. A proper definition of the problem would facilitate the self-awareness of individuals and communities, and enable them to know their citizenship rights and “who” they are. **In this respect, considering internal displacement as separate from the overall issue commonly known as “the Kurdish question,” which has economic and cultural as well as political and social dimensions, would fail to formulate sound long-term policies.** Obviously, a **comprehensive approach** would have positive implications for social rehabilitation and policy-making. The state has the foremost responsibility in admitting and acknowledging internal displacement. This responsibility can be fulfilled in many ways — legally, economically, socially— and can help individuals or groups to feel that “justice has been served.” Such an acknowledgment would facilitate a resolution of the armed conflict.

**Social rehabilitation** is by no means limited to the above-mentioned security or political dimensions. In this context, we would like to emphasize that the Turkish Republic is a social state governed by the rule of law and that the Turkish constitution contains the principle of “social risk.” In attempting to deal with the problems resulting from their sudden and traumatic displacement, IDPs have for years been unable to find an authority to turn to, apart from social support networks, such as family and relatives. Many families continue to struggle to live a dignified life in their new places of residence, in spite of all material difficulties. However, the traditional social support networks, which have already worn thin as a result of neo-liberal economic policies, can no longer carry the burden of forced migration. **Therefore, it is obvious that the phenomenon of displacement feeds into several negative outcomes --which also have other socio-economic causes --, such as increasing crime rate in cities, substance abuse, exploitation of child labor, sexual violence, and violence against women.** The TESEV Research and Monitoring Group would like to remind that, **since Turkey is a social state based on the rule of law, the main responsibility in preventing these social problems and rehabilitating individuals and groups exposed to these problems belongs to the state.** In order to achieve social rehabilitation, the problems arising in the wake of displacement need to be solved before they become permanent. In this context, responsibility also largely falls on society in general,

which until today has by and large been indifferent or insensitive towards the phenomenon of forced migration.

Furthermore, we would also like to underscore the role of the NGOs in developing permanent and sustainable solutions to the problem of internal displacement in Turkey and the need to incorporate, through NGOs, the victims into the process of both conflict resolution and reconciliation. NGOs are also important actors in re-framing the problem, in securing reconciliation between local administrations and governmental agencies, and in directly representing individuals affected by internal displacement. **Clearly, the most effective efforts in creating the conditions necessary for return can only emerge out of the collaboration of the state, the victims, the general population of the region, NGOs and international organizations in a common and participatory ground.**

Although no conflict fully resembles another, the best solution mechanisms can be produced through looking into best practices, but first and foremost through exploring the sources of the conflict. In this respect, in order to achieve durable return, there is first a need for workshops and meetings to discuss the nature of the problem. **In producing projects towards a solution, a road map should be produced through the collective effort of all stakeholders and the international organizations with an expertise on the issue (such as the UN).**

Finally, there is no doubt that, large-scale funding is necessary to implement all the solutions recommended in this report, and that the government will experience serious financial difficulties, even if it is determined to solve the problem. Nevertheless, if projects are developed under the guidelines of the recommendations outlined in this report, funding issues could be resolved to a great extent over time, with the contribution of international organizations and NGOs.

## **APPENDIX:**

### **THE PROBLEM OF INTERNAL DISPLACEMENT IN TURKEY: POLICY PROPOSALS**

#### **A. Definition and Statistics**

- The definition of internal displacement which informs Law no. 5233, the Return to Villages and Rehabilitation Project (RVRP), and other policies needs to be brought into conformity with the United Nation's Guiding Principles on Internal Displacement (GPID).
- The figures of internally displaced persons (IDPs) cited in official documents and statements should be clarified and brought into conformity with each other.
- A large-scale study is necessary to assess the locations, problems, and needs of IDPs as defined by the GPID.

#### **B. Practices Concerning IDPs**

- The prime minister and state officials should emphasize the problem's multifarious nature and their will to solve the problem.
- IDPs should be guaranteed that they can make an informed and voluntary decision about whether to (1) return to their original place of residence; (2) stay where they presently are; or (3) resettle in another part of the country.
- In order to facilitate such a choice, socio-economic measures should be taken in addition to Law no. 5233 and the RVRP.
- Social policies should be developed separately for the above-mentioned three groups, particularly keeping in mind the special needs of women and children, who have been the biggest victims of internal displacement.
- The state should acknowledge physical and psychological healthcare needs caused by forced migration and should ensure the NGOs' more active involvement in this field.

#### **C. How to Ensure Return to the Habitual Places of Residence**

- The state needs to acknowledge that people have a *right* to return to their places of residence, and it has to ensure that all IDPs can exercise this right.
- Return to places of habitual residence should not only mean return to *villages*.
- Aid under the RVRP should be given to all IDPs without conditions and in a way that completely covers their losses.

- Economic policies for infrastructure, agriculture, and animal husbandry need to be developed and implemented swiftly in order to ensure return. Policy-makers should take measures to alleviate poverty.
- In order to facilitate IDPs' return in peace and safety, steps should be taken for solving the animosities among combatants, village guards and villagers once armed clashes cease.
- The village guard system must be abolished.
- In order to establish mutual trust between citizens and state, the RVRP's aid should be accessible to all victims, without discriminating between village guards and civilians.
- Concerning the return to the villages, the state should collaborate with NGOs and international organizations.
- The state should increase its support to improve returnees' access to healthcare.
- In case IDPs currently residing outside the country want to return to Turkey, they should be able to receive aid from the RVRP.

#### **D. Urban Problems**

- The state should acknowledge the existence of IDPs living in cities.
- The state needs to develop policies that would create employment opportunities for urban IDPs and which would facilitate their integration into urban social life. In this context, funds should be set aside to meet the educational needs of women and working children.
- The state needs to develop special policies to solve the IDPs' physical and psychological health problems.
- The state should increase its support to improve urban IDPs' access to healthcare.
- Effective and productive communication between the state and IDPs needs to be established.

#### **E. The Solution of the Problems in the Content and Implementation of Law no. 5233**

##### **I. Recommendations for Publicizing the Law**

- The government should stand behind the law and inform the public about its significance and purpose by means of mass communication.
- In order to calm the fear and mistrust of citizens hesitant to file petitions, the state should ensure the citizens they feel that the state stands behind them. Any attempt to hinder citizens from filing petitions should be prevented.

- The Prime Minister and state officials should emphasize that filing a petition under the law is a basic *right*.
- The Prime Minister and state officials should emphasize that the law serves the purpose of reconciliation by compensating for past human rights violations.
- In order to inform all victims about the law's content and the petition filing process, a large-scale information campaign should be launched with the contribution of local administrations, NGOs, bar associations, and the government.
- In order to ensure that displaced persons outside the country can also benefit from these communication campaigns, these persons should be informed and provided with the necessary conditions to file petitions.

## **II. Recommendations Concerning the Content of the Law**

- In order to harmonize the law with the GPID and thus to achieve its inclusion of all victims within its scope, the following changes need to be made:
  - The term “or suffered due to the armed conflict” needs to be added to Articles I and II of the law.
  - The scope of the law should be extended to start from 1984.
  - The petition deadline should be extended by one year.
- Compensation for pain and suffering should be provided.
- The compensation paid for death, bodily harm, and disability should either be allowed to be determined by commissions in the light of the incident's and the victims' circumstances, or should be increased to a morally appropriate and just amount.
- The compensation for damages to immovable property should not be made contingent on return, as this contradicts the GPID's principle of voluntary choice; therefore, in-kind compensation should not be given priority.
- The present two-year period for evaluating petitions should be extended to a more realistic timeframe, considering the difficulties in the law's implementation.

## **III. Recommendations Concerning the Implementation of the Law**

- In order to ensure consistency in the law's implementation, to break the commissions' resistance, and to show that the government firmly stands behind the law, the following measures should be taken:
  - An “explanatory note” discussing each and every article of the law should be prepared and sent to all commissions.
  - The commission members should be widely informed and educated on Law no. 5233, the GPID, and the jurisprudence of the ECtHR.

- By way of a circular, the commissions should be instructed to implement the recent amendment in the regulation, which alleviates the victims' heavy burden of proof.
  - A higher administrative body needs to be established in order to re-evaluate the decisions of inadmissibility made by the commissions; the evaluation process should be limited to a time-period of two to three months.
  - A special legal arrangement specific to this law should ensure that victims who exercise their right to bring their cases to an administrative court can do so free of legal fees.
- In order to speed up the petition evaluation process, the following steps should be taken:
  - The commissions should be given a professional structure. Accordingly, their members should not take on any responsibilities other than serving on these commissions during their appointment, and should receive a salary in return for their services.
  - The number of commissions should be increased.
  - An operational fund should be set aside for each commission.
  - The commissions should receive adequate technical equipment, personnel, and office space.
  - Sufficient amount of allowance should be set aside in order to pay the compensations awarded by the commissions.
  - Advance allowances should be made to the commissions so that they can immediately disburse compensation for concluded petitions.
- To ensure the citizens' belief and trust in the due course of law, the following steps need to be taken:
  - The commissions which are currently dominated by public officials should be restructured to reflect a balance between NGOs and public officials. For this purpose, the following persons should be included in the committees:
    - village headmen (*muhtar*)
    - legal experts from human rights NGOs
    - representatives of NGOs working on migration issues
    - officials of municipalities affected by migration
  - Furthermore, the inclusion in the commissions of a lawyer specialized in public law as a representative of the public would serve to alleviate the fears of commission members who do not want to take risks.
  - There should be no discrimination between village guards and civilians in the process of evaluating petitions.

- Commissions should not be able to receive information from the gendarmerie, either directly or indirectly, when procuring documentation and information.