IMPLEMENTATION of LAW NO. 5233

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FOREWORD

In the recent period of armed conflict in Turkey, between two and half and three million people have been forced to leave their homes and move elsewhere. A systematic and realistic approach has not been developed by the authorities to define and solve this problem so far. Under the influence of ongoing and finalized cases in the European Court of Human Rights over internal displacement, and as Turkey took the issue of internally displaced persons (IDPs) into its program as a consequence of the accession to the EU, Turkish Parliament passed the Law number 5233 on 'Compensation of Losses Resulting from Terrorist Acts and Measures Taken against Terrorism."

TOHAV's WORK on the ISSUE of INTERNAL DISPLACEMENT

Foundation for Society and Legal Studies (TOHAV) has always considered the issue of internal displacement as its field of interest and worked on the issue. The foundation has been in cooperation with non-governmental organizations working on the issue and in particular with Social Solidarity and Culture Association of Immigrants (GÖÇ-DER). Moreover, through its Legal Services TOHAV carried the applications of IDPs to the European Court of Human Rights, providing IDPs with written and face to face advice.

TOHAV continues monitoring the issue actively.

FOUNDATION's WORK in the PREPARATION PROCESS of the LAW

LAW NUMBER 5233 and TOHAV's WORK

PREPARATION PROCESS of the LAW and ADVOCACY

As the government took the issue on its agenda, TOHAV launched a study on the draft Law Number 5233 on "Compensation of Losses Resulting from Terrorist Acts and Measures Taken against Terrorism" proposed by the government. TOHAV published a report

on May 2004 expressing its opinion and recommendations on the draft law number 5233 on "Compensation of Losses Resulting from Terrorist Acts and Measures Taken against Terrorism". TOHAV sent the report to the related authorities. The report consisted of observations, criticisms, and recommendations. As the draft became a law, we observed that some of our suggestions had been taken into consideration by the lawmakers.

LAW, IMPLEMENTATION and LEGAL ASSISTANCE

The draft has become a law with defects despite criticism and recommendations from NGOs working in the field. The complicated structure of the law, its failure in providing supporting legal mechanisms for IDPs, and the economic hardships of IDPs led to the need for providing legal assistance.

TOHAV's legal service thus launched to offer legal assistance in the frame of Law number 5233, and set up a commission of volunteering legal professionals after the law and its implementing regulation were passed.

This commission has held meetings with internally displaced people who lived in various districts of Istanbul including Bahçelievler, Okmeydaný and Sultanbeyli. Internally displaced people were informed verbally at the meetings on the content of the law, application procedures and possible outcomes.

Appointments were made with the IDPs who wanted to receive legal assistance at one to one meetings. Around 400 IDPs have been met and informed about the law. 255 victims have been provided with written information. As part of this work, a form was prepared to determine the course of events leading to damages, date, location, type and amount of damages. Applications were made to the Damage Assessment Commissions on behalf of 255 IDPs.

Applications were submitted in a total of 14 cities; 35 applications in Bitlis, 56 in Mardin, 44 in Diyarbakýr, 24 in Siirt, 24 in Tunceli, 26 in Batman, 27 in Muþ, 10 in Van, 4 in Þýrnak, 3 in Bingöl, 1 in Elazýð, and 1 in Erzurum. Legal commission monitors and follows legal proceedings. The commission manages the correspondence with Damage Assessment Commissions about the applications.

MONITORING and REPORTING

TOHAV actively monitors the effectiveness of the implementation of the law, if the law remedies the grievances and possible shortcomings.

A report was prepared in December 2004 on the implementing regulation of number 5233, and another one in March 2005 on the working procedures of Damage Assessment Commissions and the problems of practice.

TOHAV's Legal Service commission visited the cities of Diyarbakýr, Batman, Siirt, Bitlis, Mardin and Elazýð between 29 August and 5 September 2005 to identify in the field the working procedures of the Assessment Commissions, current implementation, the state of current applications and the problems of implementation. TOHAV commission met with Damage Assessment Commission staff, related NGO representatives, representatives of Bar Associations, lawyers and the IDPs. Conclusions of these meetings; information, observations and assessments in September 2005 were compiled in a report and was published for public opinion.

The foundation constantly followed and worked on the implementation process and the problems experienced in practice. The foundation has published its criticism and recommendations about the law and the regulation. TOHAV held a public meeting evaluating the Law Numbered 5233 and the decision of the European Court

of Human Rights (ECtHR) following ECtHR's pilot decision in Aydýn Ýçyer/Turkey case. Representatives of Diyarbakýr Bar Association, Aðrý Bar Association, GÖÇ-DER and Human Rights Association (HRA) attended the meeting.

Lawyers and members of the Foundation have visited the Assessment Commissions at various times to monitor the processes. TOHAV has continued providing practical legal assistance to the IDPs.

31 May 2008 was the deadline for applying for compensation under the law. After that date, a field research was conducted in two pilot regions Van and Batman. Damage Assessment Commissions in Siirt, Mardin and Diyarbakýr were visited to determine the latest state of the implementation.

TOHAV continues with the work of providing legal assistance, consultancy and monitoring stated above.

The ISSUE of INTERNAL DISPLACEMENT in TURKEY

The issue of internal displacement in the country has become a problem in the last thirty years. Its framework as an aspect of human rights law has not been fully established because it is a relatively recent issue.

United Nations Guiding Principles (UN-GP) on internal displacement defined what is being displaced in the country and the basic principles of a solution. However, these principles are proving inadequate in contributing to the solution of internal displacement, which is a comprehensive problem.

UN-GP is not a binding legal document or covenant. Unlike European Convention of Human Rights (ECHR), it does not have a

judicial power and sanctions. However, the GP are in harmony with international human rights law stated under the rights of third generation and the principles are grounded on international documents on human rights.

In 1987, a state of emergency (OHAL) was declared in initially five cities, which became nine with a decision of the Cabinet as the conflict was scaled up. Security forces evacuated residential areas from 1990 onwards based on OHAL law. Over 2 million people have been forced to leave their homes in 3.400 settlements (villages or hamlets) as a result.

The issue of internal displacement is one of the problems, which has left its mark on the last twenty years in Turkey. The climate of conflict that began in 1984 and the declaration of State of Emergency in 1987 led to the beginning of the problem of internal displacement of people, and it escalated until mid 1990s.

Millions of people have had to leave their traditional habitats due to the climate of conflict in Turkey in the last twenty years. Numerous Constitutional rights including the rights of property, privacy of residence and family life, protection from torture and mistreatment, and right to travel of these displaced people have been violated. People who had to migrate to cities leaving behind all their assets and properties have become poorer, and they were deprived of basic provisions such as housing, clean water, food, health and education.

Authorities denied the issue of internal displacement and displaced people for years showing no interest in their problems. However, as a result of the efforts of displaced people seeking justice at international level, applications to ECtHR, and the efforts of national and international rights organizations the issue has gained recognition. ECtHR took the case of Doðan/Turkey as a pilot case

as the number of applications increased. Following Doðan/Turkey decision the government took steps and made the Law Num.5233 on "Compensation of Losses Resulting from Terrorist Acts and Measures Taken against Terrorism" and its implementing regulation with the same name and number. The law was made in 2004 and the application period was extended twice ending on 31 May 2008. During the period while the law was in force, article 17 of the Regulation Number 5233 was amended. The amendment stated that instead of applicants collecting documents Assessment Commissions could ask legal, administrative and military authorities to provide documents.

Turkish Government then asked ECtHR to make a decision of rejection for similar applications on the grounds of having established a new and effective internal legal provision. Upon Turkey's demand, ECtHR decided to have the ongoing Ýçyer/Turkey case as a pilot case. In January 2006, ECtHR announced its ruling in this case. With this verdict, additional protocol 1 stated that cases about property rights were to be directed to internal judicial processes.

Briefly, the issue of internal displacement is one of the main problems that have been on the agenda of Turkey in the last twenty years. From 1999 onwards recognition of Turkey's candidacy to EU and finally UN General Secretary and Special Representative of Internally Displaced People Francis Deng's report of his visit to Turkey in 2001, made visible the issue of internal displacement of people to an extent, which was impossible to deny. Again in March 2002 Parliamentary Assembly of Council of Europe (PACE) report included calls to Turkey to "lift State of Emergency-OHAL", "abolish the system of village guards which cause serious concern in terms of human rights", "allow people to return home", and "compensate people who were displaced".[1] European Union mentions

1- Parliamentary Assembly's humanitarian advice on the internally displaced Kurdish population in Turkey 1563 (2002)

"supporting and accelerating the return of displaced people to their homes" in its 2003 dated Accession Partnership Document's political criteria section. 2004 Periodical Report on the Progress of Turkey towards Accession mentioned the issue. The report stated that the issue of displaced people preserved its importance and most IDPs lived under difficult conditions.

Obviously, the issue of internal displacement remains to be a comprehensive problem that directly affects millions of people, waiting for a permanent solution, becoming more complicated and serious every day with its political, social, psychological and educational consequences.

The authorities could no longer deny the existence of the problem and began producing a number of projects. They began with the project of "centrally located villages" (village-city) which focused on getting people to return, and continued with The Return to Village and Rehabilitation Project (RVRP). In addition to these projects, the government points to the 2004 dated Law Num. 5233 on "*Compensation of Losses Resulting from Terrorist Acts and Measures Taken against Terrorism*" as the key to the solution of the problem.

The process of internal displacement has been acknowledged and defined by the authorities only recently. The Return to Village and Rehabilitation Project (RVRP) comprises the expression "being forced to leave home region", and the Law number 5233 says "people who suffered damages because of terrorism or fight against terrorism". These are still definitions even if limited.

It is impossible to solve such a complicated and comprehensive issue with compensation, ignoring the reasons of the problem, without defining the reasons. Non-governmental organizations and

lawyers and the Foundation have expressed these view while the law was a draft. May 2004 dated report by TOHAV, which was sent to the lawmakers and all related actors, comprised a detailed assessment of the law.

OUR OPINION AND RECOMMENDATIONS ON THE DRAFT LAW ON COMPENSATION OF LOSSES RESULTING FROM TERRORIST ACTS AND MEASURES TAKEN AGAINST TERRORISM

A-) INTRODUCTION:

Turkey committed to making legal arrangements to "compensate losses resulting from terrorism and the fight against terrorism" as part of its long term priorities in "The National Program" prepared in the frame of Accession Partnership Document.

European Council Parliamentarian Assembly (PACE) report entitled "***Humanitarian Conditions of Displaced Kurdish Population in Turkey***" published in March 2002 included calls for Turkey to "allow humanitarian organizations to enter the region", "end State of Emergency-OHAL", "abolish village guarding system which causes great concerns in terms of human rights", "allow returns", "end practices such as getting people who want to return to sign petitions stating 'we evacuated our village because of PKK pressure and terror'" and ***"compensate the material losses of displaced people"***. According to the report, PACE made some requirements from Turkey. Some of them can be listed as; having participation of the representatives of displaced people in the preparation of projects for returns to villages; taking measures to help displaced people who want to live in other parts of Turkey to integrate into daily life and redress their losses.

Cabinet decision dated 23 June 2003 and numbered 2003/5930, published in the Official Gazette issue 24 July 2003 and number 25178, on "Implementation, Coordination and Monitoring of The National Program of Turkey for Undertaking Acquis Communautaire" anticipated the entering into force of the Law on Compensating the Losses Resulting from Terrorism and the Fight against Terrorism in 2004.

As a consequence of the work on the issue, a draft was prepared by Ministry of Justice in January 2003 and was sent to Prime Ministry, regarding the compensation of the losses of those who suffered from terrorism or anti-terror measures between 19 July 1987 and 30 November 2002, an intense period of conflict, without the need for victims to take legal steps and instead by way of out of court settlement.

We believe that this first draft prepared in the frame of EU harmonization process had been kept in the office of the Prime Minister for some time for consultations. However, the opinion and recommendations of Bar Associations and Non-governmental organizations were not taken into consideration. The only difference was that the provisional article 1, which stated, "the law would be applied until 10 years before the date the law entered into force" was removed from the later version of the draft. The government submitted the draft to the chairing office of the Parliament and it was anticipated to become law by 2004.

B-) GENERAL EVALUATION:

As the martial law was ended in the cities of Diyarbakýr, Bingöl, Hakkari, Mardin and Siirt on 19 July 1987, the decree law num.285 established the State of Emergency Governorship in the cities of Bingöl, Diyarbakýr, Elazýð, Hakkari, Mardin, Siirt, Tunceli and Van, opening a period of state of emergency in these cities.

The cities of Adýyaman, Bitlis and Muþ were identified as contiguous cities by the same decree, approved by Prime Ministry. As Batman and Þýrnak acquired the status of city on ***6 May 1990***, the number of cities under the State of Emergency Governorship rose to 13. The city of Bitlis was included in the region on ***19 March 1994*** while Elazýð was made a contiguous city. On ***19 July 1995*** this time, Adýyaman a contiguous city was omitted from the list of contiguous cities. On ***30 November 1996***, Elazýð was omitted from the list of contiguous cities, while Mardin was included.

Turkish Grand National Assembly (TGNA) decision date 2 October 1997 and number 515 ended the State of Emergency in Batman, Bingöl and Bitlis from ***6 October 1997*** onwards; these cities were put on the list of contiguous cities under the approval of the Prime Ministry.

On ***30 November 1999*** Siirt was omitted from the list of contiguous cities, on ***30 July 2000*** Van was taken out of the region of State of Emergency-OHAL and was made a contiguous city. On ***30 July 2002***, Hakkari and Tunceli were declared contiguous cities. TGNA on 19 June 2002 and assembly number 115 and on the 10 June 2002 request of the cabinet, extended the State of Emergency for the last time for another four months from 30 July 2002 onwards in the cities of Diyarbakýr, and Þýrnak.

During the term of State of Emergency which entered into force by the decree law number 285 on 10 July 1987 and ended on 30 November 2002 "low intensity conflict" occurred as acknowledged by the authorities. During this period, citizens residing in the region applied to ECtHR for violations of rights (life, property, prevention of torture). A series of cases of internal displacement have been recorded internationally by ECtHR rulings.

According to the information by Human Rights Foundation of Turkey (THIV) in the same period, 1.258 people were executed without trial, 1672 people were victims of political murders with unknown perpetrators, 518 people were killed in detention or prison, 216 disappeared and 552 people died due to landmine or bomb explosions.

The Select Committee of TGNA on Evacuated Villages in the South East and the Problem of Immigration set up in 1997 gives the number of evacuated or destroyed settlements (villages or hamlets) in the region as around 3.428.

Over 2 million people in around 3400 settlements were forced to leave their living environments in the South East of Turkey because of the village evacuations and internal displacement that intensified in early 1990s and continued.

C-) A REVIEW OF THE DRAFT LAW:

ARTICLE 1-) Article 1 of the draft law entitled the objective says, "The objective of this law is to lay down the principles and procedures for the compensation of material damages suffered by persons due to terrorist acts or activities undertaken during the fight against terror in the cities where State of Emergency was implemented and between the dates of 19.07.1987 and 30.11.2002." Its scope is very limited.

Article one stated that only the damages in the cities where State of Emergency was declared would be compensated. We believe that the draft cannot fulfil its purpose. It should cover the ***contiguous cities*** as well. Besides, there are cities outside the State of Emergency-OHAL region where damages occurred resulting from conflict and OHAL. The law should be extended to include those cities.

Article 1 of the draft is in contradiction with the preamble of the law. The preamble reads, "In principle legal liability of the authorities is based on the rule of fault, as an exception some damages which the administration is obliged to prevent but failed should be compensated without the rule of fault or causality. This principle of social risk which is based on an understanding of objective responsibility is also acknowledged by scientific principles and case laws." Despite this statement, the first article seeking a strong tie of causality is against the principle of strict liability of administrative law. Under the principle of strict liability, which is explained by the rules of fairness of law, equality before public burdens and equal opportunities, the administration is obliged to compensate the damages of individuals resulting from administrative procedures and processes even if the authorities do not have a fault of service. Adversities created by a climate of conflict might cause individuals to suffer damages without direct causality and that brings forward the legal liability of the authorities.

Hence it should be added to the presently narrowly defined article ***"(   )*** to lay down the principles and procedures for the compensation of material damages suffered by persons due to terrorist acts or activities undertaken during the fight against terror ***or the State of Emergency and the climate of conflict in the cities where State of Emergency was not declared and in contiguous cities"***.

ARTICLE 2-) First paragraph of article 2, entitled the scope says, "This law regulates the principles and procedures regarding the compensation - by way of friendly settlement - of material damages suffered by natural persons and legal entities of private law in the cities where State of Security was declared between 19/7/1987 and 30/11/2002, as a result of the acts falling under Articles 1, 3 and 4 of the Anti Terror Law no 3713 or due to the activities conducted under the fight against terrorism."

Proposal that we put forward for the first article of the draft law applies to this paragraph as well. This paragraph should be amended as the above article 1.

Paragraph 2 of article 2 of the draft lists the exceptions and this maybe one of the strongest sections of the whole draft. The list of exceptions would lead to leaving the losses on the sufferers. Let us examine the exceptions:

a-) Damages compensated by the state by way of awarding land or houses or in any other way.

This exception does not conform to the rule of fairness. It has been observed in the implementation so far that donation of few bags of cement, bricks or other goods cannot be accepted as compensation of damages. Excluding the IDPs does not serve reinforcing the good relations between the state and citizens. Thus instead of exclusion, such awards should be ***DEDUCTED***.

b) The damages compensated due to a court decision or in accordance with Articles 30-31 of the Code no 4353 dated 8/1/1943, Concerning The Service of Finance Proxy Head Law Counsellor and Cases l Public Directorate, Prosecution of Government Trials Procedures and Changes on Central and Town Staff;

Instead of exclusion, such payments should be ***DEDUCTED***.

c) The damages compensated in accordance with the final judgment of the ECtHR taken in line with Article 41 of the Convention for the Protection of Human Rights and Fundamental Freedoms for violation of the articles of the convention or its additional protocols or the damages paid in

accordance with the provisions of the Convention by way of friendly settlement;

Instead of excluding this clause, it should be amended as to ***DEDUCT*** damages paid in accordance with the final judgment of ECtHR or by way of friendly settlement.

d) Damages that occurred due to reasons other than terrorism, such as economic and social reasons, and the damages that occurred due to displacement of persons on their own will,

Exclusion of damages due to economic and social reasons causes concern. Since citizens who have had economic or social hardships, due to adversities resulting from the climate of conflict had to leave their homes and immigrated to neighbouring towns or cities. For example, it is unfair to exclude the IDPs who had to leave their homes because of the ban on using mountain pastures.

TGNA Select Committee on Evacuated Villages in the South East and the Problem of Immigration report noted the number of evacuated or destroyed settlement units (village or hamlet) as 3428. The number of displaced is anticipated to be over 2 million. However, Home Ministry and State of Emergency Governor's office does not accept that figure. Exclusion of "the losses which occur due to displacement of persons on their own will" is open to abuse. Because when people whose villages were set fire, destroyed or evacuated apply to provincial administration offices or governor's offices to return to their homes under The Return to Village and Rehabilitation Project, they are asked to fill in printed standard forms. Applications of those who refuse to indicate on the form that they are willingly giving up all of their compensation claims or tick the option "I left the village on my

own will" are not accepted and their returns are not facilitated. Thus excluding the victims who had to sign the forms to be able to return to their home would cause injustice and fail to serve the purpose.

Hence, clause (d) of paragraph 2 of article 2 should be removed from the law completely.

e) Damages occurred due to deliberate acts of the persons themselves,

f) Damages suffered by persons who have been convicted of crimes under articles 1, 3 and 4 of the Anti Terror Law 3713;

Damages suffered by people who have been convicted under articles 1, 3 and 4 of Num.3713 Anti Terror Law have been excluded from the law and the draft says "no procedures in accordance with this law shall be initiated for those who have a criminal investigation pending against them, concerning offences indicated in the (f) clause of the second paragraph, until the investigation is concluded".

This provision is against the principle of "equality before law" of article 10 of the Constitution. Moreover, article 2/2-e excluding the damages due to deliberate acts of the persons themselves serves the same purpose. Thus, this clause should be completely removed from the draft.

The first objection would be that if there is damage, ***"it should be compensated in a way conforming to the 'rule of fairness'. Damages of persons who committed these crimes cannot be less than the damages of those who did not commit these crimes. Moreover, the violation is the same for both persons. Consequently, damages of both should be compensated.***

Otherwise, the law will not reach its purpose and good relationships between the state and citizens will not be established as indicated in the preamble of the draft.

For this reason, we believe that the clause ***"f" should be completely removed from the draft.***

ARTICLE 4-) Article 4 of the draft states "On the proposal of the Ministry and in the cities set under the scope of this law by the Cabinet, Damage Assessment Commissions shall be set up under the chairing of a deputy governor appointed by the governor, and the commissions shall be comprised of the representatives of the Ministries of Finance, Public Works and Settlement, Agriculture, and Industry. Depending on the intensity of workload more than one commission may be set up in the same city."

Article 1 and 2 of the draft entitled the objective and the scope stated that the law would be applied in the cities where State of Emergency was declared, while this article means that Damage Assessment Commissions will be set up in cities other than the ones under State of Emergency. As commented about articles 1 and 2, it should cover the contiguous cities and the cities where there is no State of Emergency but suffer damages due to the climate of conflict and the State of Emergency. Most importantly, it has not been specified where people could apply for the setting up of the commission in cities where such commissions have not been set up. In order for these shortcomings not to generate chaos, these points ought to be corrected.

Members of Damage Assessment Commissions are determined based on the rule of central government. A commission set up under the supervision of the governor cannot make impartial and objective decisions.

First, the absence of Bar Associations in Damage Assessment Commissions is a significant flaw. Besides, we believe that non-governmental organizations (Foundation for Society and Legal Studies-TOHAV, Human Rights Foundation of Turkey-TÝHV, The Association for Human Rights and Solidarity for Oppressed People-MAZLUM-DER, and Social Solidarity and Culture Association of Immigrants -GÖÇ-DER) that have experiences and conducted scientific studies on the issue should be included in the Commissions.

The law asks these commissions to assess damage and prepare a draft deed of settlement. Hence, these commissions will have to make decisions regarding law of compensation, law of liabilities etc. ***For this reason, we believe that Bar Associations, which are professional organizations that act like public bodies and never compromise the superiority of law and human rights, and other non-governmental organizations should be included in the commissions.***

ARTICLE 6-) Paragraph 2 of article 6 states "The commission has to finalize every application in six months as of the day the application is made. This period may be extended for three months if deemed necessary by the governor."

This term of six months is too long. If the application leads to a disagreement and the applicant initiates internal legal procedure, and if that is rejected and if the applicant then heads to ECtHR, it is obvious that the period of six months would cause additional grievances. Thus we are in the opinion that the paragraph should be amended as ***"( ) has to finalize every application in three months as of the day the application is made. This period may be extended for one month if deemed necessary by the governor."***

Moreover, we think that the section that existed in the former draft "***The application which is made within the period for filing a suit shall seize periods of filing suit in accordance with the general provisions until the final decision is notified to the concerned party***" should be added to this draft.

ARTICLE 7-) Article 7 listed the damages to be compensated under three clauses. In addition to those, our suggestion for article 1 of the draft ***(damages resulting from the climate of conflict)*** should be added here.

ARTICLE 8-) Article 8 states "The damages mentioned in article 7 shall be determined -in accordance with the economic conditions of the day and the principle of fairness - by the commission directly or by way of appointing an expert, based on the declaration of the applicant and by taking into account the information and documents provided by the judicial, administrative and military offices that explain how the incident occurred and the precautions taken by the applicant."

It is stated that the declaration of the applicant, documents provided by judicial, administrative and military offices would be taken into consideration while assessing the damage. However sometimes depending on the type of events, Bar Associations and various non-governmental organizations prepare reports on events as well. Thus, we believe that the sentence ***"( ) documents and information at the professional organizations and non-governmental organizations "*** should be added to this article.

The draft says "the precautions taken by the sufferer" are taken into consideration while assessing the damage. We think that this sentence ***(precautions taken by the sufferer)*** should be removed from the draft. This sentence is in contradiction with the principle of ***"social risk"*** mentioned in the general preamble. For strict liability

means liability completely free of any fault. This liability arises because of the more dangerous activities of the authorities. Thus if the damage was going to occur whether or not the sufferer took precaution and there is damage then the administration ought to compensate that damage. Moreover, as it is stated in the preamble, persons who suffer damages suffer as members of the society not because of their own faults or actions.

Thus, we are in the opinion that the part "precautions taken by the sufferer" should be completely removed from the law.

ARTICLE 12-) Paragraph 2 of article 12 says, "The right owner has to appear to sign the friendly settlement agreement or should send a representative within 20 days, otherwise this shall be interpreted as the rejection of the draft friendly settlement agreement." The period of 20 days is too short. ***We believe that this period should be amended as one month.***

Paragraph 4 of article 12 of the draft states "If the friendly settlement is not approved and if the conditions in the second paragraph is not approved a disagreement protocol will be prepared and a copy of it will be sent to the concerned person and the Ministry." A provision such as ***"If the right owner accepts the invitation but refuses the draft friendly settlement, a disagreement protocol will be prepared and only for one time sent to a commission of impartial experts for review"*** could be added to the article.

ARTICLE 13-) Paragraph one of article 13 states ***"After the signing of the friendly settlement agreement and upon the approval of the governor, the damage specified in the agreement shall be compensated -according to the type of payment- from an appropriation set aside from the Ministry's budget."*** This provision makes the payment of damages subject to the approval of the governor. This means that the governor would

have the right to veto the agreement. Besides, it has not been specified by when after the signing of the settlement the damage would be paid. We believe that this article should be amended as ***"Damages specified in the friendly settlement agreement shall be submitted to the approval of the governor in 15 days after the signing of the settlement, and it shall be compensated in 30 days after the approval by the governor-according to the type of payment- from an appropriation set aside from the Ministry's budget."***

Paragraph 3 of article 13 of the draft states ***"Concerning payments, the States' right to recourse against the responsible persons shall be reserved in accordance with the general provisions"***, while paragraph 5 of article 9 states ***"No recourse shall be made to the State for payments made by real persons or legal entities of private law to the applicants, due to the damages falling under this Law."***

Reserving the State's right to recourse against the responsible persons while not acknowledging real persons' and legal entities' right to recourse for payments to the applicants due to the damages falling under this Law will bring injustice and inequality. The state reserving its right to recourse against the responsible persons would lead to punishing the responsible persons again. That would cause new injustices. ***In the context of healing of the hurts and serving social peace this article should completely be removed from the draft.***

D-) CONCLUSION:

Turkey committed to making legal arrangements to "compensate damages resulting from terrorism and the fight against terrorism" as part of its long term priorities in "The National Program" prepared in the frame of Accession Partnership Document.

However, the draft does not have the quality to reinforce trust between citizens and the state and contribute significantly to social peace. Thus, it is necessary to review and enrich it in the light of the recommendations.

First, it needs to be emphasized that the victims of 'terrorism or the measures against terrorism' have suffered losses that cannot be cured or compensated by money. In order for the draft to serve its purpose and contribute to social peace,

1-) All damages ought to be compensated and that should be applied to all sufferers of terrorism or measures against terrorism without discrimination, and according to "the rules of fairness and justice",

2-) The idea that the draft is made to prevent the use of the compensation decisions of European Court of Human Rights as an instrument of unjust enrichment, should be given up and the amount of compensation should be determined at levels fit to human dignity.

3-) Bar Associations and related non-governmental organizations should be included in Damage Assessment Commissions,

4-) Damages of people who suffered losses because of terrorism or the measures taken against terrorism should be determined objectively and the amount of losses should be determined fairly.

With the concerns stated above we respectfully submit our opinion and recommendations on "The Draft Law on Compensating the Losses Resulting from Terrorism and Measures taken against Terror" to the considerations of the Cabinet,

Members of Turkish Grand National Assembly, Bar Associations, other Professional Organizations in the capacity of public body, press and media and supreme public opinion.

OUR ASSESMENT of LAW NUMBER 5233 and the REGULATION

We have published our opinion and recommendations on the draft law and submitted them to the Parliament. Some of the amendments made on the law and the regulation show that our opinion and recommendations were taken into consideration even if in a limited way.

The Foundation released an evaluation of the Law and the Regulation on 23 December 2004, after the law took effect, sharing its opinion with the public and national non-governmental organizations. This report pointed to the possible problems in the implementation process and emphasized that the law and the regulation needed to be interpreted flexibly and in favour of the victims.

The phenomena of forced internal migration and displacement, which concern millions of people in Turkey, are still affecting the economic and social life of the country without losing anything from the destruction it caused and despite the years. Although each step taken on this issue would make significant contributions to establishing social peace and democratization of Turkey, a systematic and realistic approach to solve the problem has not been adopted until now.

Finally, European Commission 2004 Report on Turkey's Progress noted again the measures needed to compensate the losses of displaced people resulting from terror and measures taken against terrorism, emphasizing the inadequacy of steps taken so far.

Turkey started dialogue with a number of international organizations including the Commission on the question of internally displaced persons. A Law on Compensation of Losses Resulting from Terrorist Acts was approved. Although work is underway to define a more systematic approach for the region, no integrated strategy with a view to reducing regional disparities and addressing economic, social and cultural needs of the local population has yet been adopted. The return of internally displaced persons in the Southeast has been limited and hampered by the village guard system and by lack of material support..."

In August 2004, law number 5233 "Compensation of Losses Resulting from Terrorist Acts and Measures Taken against Terrorism" and a regulation on the implementation of that law "Regulation on the Compensation of Losses Resulting from Terrorist Acts and Measures Taken against Terrorism" were approved. According to Number 5233 Law and its regulation the losses suffered because of "terrorist acts and measures against terrorism" between the dates of 07/19/1987 and 11/30/2002 shall be compensated through applications to the administration and without the need to apply to courts. It has been established that damage assessment commissions would be set up in cities and boroughs under provincial administrators or governors. A legal procedure has been established according to which following of an application to the commission, the commission shall assess the eligible applications and the losses shall be compensated with a friendly settlement.

The draft law prepared in the frame of harmonization with the European Union was kept waiting in the office of the Prime Ministry for taking criticisms and opinions, and TOHAV among other organizations submitted to the law-makers a report of opinion and recommendations on the draft law. Government's taking into consideration of the recommendations in part is a positive development. However not opening the draft to the contribution of related persons and organization in the process of its preparation is a point for criticism.

Law Number 5233 and its regulation state that all members of the Damage Assessment Commissions are to be determined centrally by the authorities. It will be difficult for a commission that is set up under the supervision of the governor to make objective decisions. We are concerned that a commission, which lacks the participation of representatives of NGOs and local organizations, may not be able to provide fair compensations.

The regulation notes that Damage Assessment Commission would require a medical report from the health board in cases of injury and disability, an incident report explaining the course of events leading to damages, a report of events explaining the damage to goods and properties, and documents proving the ownership of the goods and properties.

However, in the strong climate of State of Emergency, peasants do not have the chance to ask the authorities to provide report of events documenting their damages. They most probably do not have any official document or report. The burden of proof has to shift to the other party. That is a requirement of a law based on contemporary, universal human rights, and democracy. In fact, ECtHR decisions in

the cases of village evacuations state that the burden of proof needs to shift to the other party as appropriate in the circumstances. (Do an v Turkey)

A big part of peasants does not have title deeds for houses and fields because the land survey of related fields has not been done. Peasants are mostly possessors of the fields. The status of possessorship is a recognized phenomenon in the applications for property rights to the European Court of Human Rights. Thus, possessorship must be taken as basis. Otherwise, the scope of the law would be limited.

CONCLUSION

Unless the law and the regulation are interpreted flexibly, its scope of protection would be significantly narrowed down. That would be contrary to the purpose of the law. Again because most problems that maybe endured in terms of proving do not stem from the IDPs, putting burden of proof on the IDPs will not be fair and reasonable. The burden of proof should be on the other party.

TOHAV has always considered the issue of internal displacement in its field of interest and reflected its awareness of the issue through the work has done. Most recently, TOHAV released its opinion and recommendations on the draft Law number 5233 made as part of the process of harmonization with the EU. IDPs are provided with free legal assistance in the frame of this work.

A commission of volunteering lawyers were set up in Istanbul after the draft became a law. Initially meetings with IDPs were held to inform them, introducing the contents and

the scope of the law. The IDPs were informed that all kinds of legal assistance would be provided to them.

The commission will monitor the implementation phase and publish a report. 23 December 2004

TOHAV
Legal Assistance Service

OUR OPINIONS and CRITICISMS on The REGULATION NUMBER 5233 and the IMPLEMENTATION

In the same period, the implementation of the law has been observed on the ground and working methods of Damage Assessment Commissions were monitored. The results were released to public in March 2005. Thousands of applications were made in a short time after the law was made, but soon serious problems began appearing in implementation. An evaluation made at the time emphasized the flaws, which were also underlined by NGOs working in the field.

In August 2004, a law and a regulation were made for the compensation of losses of the people who were internally displaced during the State of Emergency- OHAL (between the dates of 19.07.1987 and 30.11.2002). From October onwards, thousands of applications were made to the Damage Assessment Commissions set up under the Law and its regulation.

TOHAV prepared a report containing its opinion and recommendations on the draft law, while it was in its draft stage and submitted it to the lawmakers. We can sum up our basic observations and criticism on the regulation and its implementation so far as below:

1- Law number 5233and its regulation for implementation carries that Damage Assessment Commissions would be set up based on central government. The commissions will be under the supervision of governors, hence it will be difficult for them to make objective decisions. We are concerned that commissions lacking the participation of NGOs and local organizations working on internal migration will not be able to demonstrate a practice of justice and equality.

2- The regulation notes that Damage Assessment Commission would require a medical report from the health board in cases of injury and disability, a record of the event, a record of the event explaining the damage to goods and properties in the case of damage to goods and properties, and documents proving the ownership of the goods and properties.

   However, in the heavy climate of State of Emergency, peasants do not have the chance to ask the authorities to provide record of events documenting their damages. They most probably do not have any official document or record on what happened to them. The burden of proof has to change -party-place. That is a requirement of a law based on contemporary, universal human rights, and democracy. In fact, ECtHR decisions in the cases of village evacuations carry that the burden of proof changes side-place in as appropriate with the circumstances. (Doðan v Turkey)

3- A big part of peasants do not have title deeds for houses and fields. Since land survey (cadastral) of the related fields have not been done. Peasants are mostly holders-possessors of the fields. The status of possesorship is a recognized phenomenon in the applications for property rights to the European Court of Human Rights. Thus, possesorship must be taken as basis. Otherwise, the scope of the law would be limited.

Unless the law and the regulation are interpreted flexibly, its scope of protection would be significantly narrowed down.

Problems in Implementation that we observed:

Above criticisms of the regulation are also the main topics under which the problems endured in the few months of implementation can be compiled.

1- The number of commissions set up as part of the governorships is proving to be insufficient. There is usually a single commission in cities. It has been observed that the only commission in the city has been inadequate in processing applications and the commissions are operating slowly.

3- Damage Assessment Commissions are under the control of the administration thus they cannot make independent decisions. As a result, attitudes of prejudice towards victims and protective of the state have been observed. Existence of retired police officers in some commissions in a way reflects what kind of attitudes may appear. The current structure and working method of the commissions and because of the absence of related NGO representatives and experts they are not able to make healthy decisions.

4- In practice, the applicants are overwhelmed with bureaucratic difficulties. The applicants end up spending days to obtain documents such as a copy of birth registry, criminal record, letter of administration etc. Again, the applicant has to open a case at Magistrates Court in order to get a letter of administration, running into additional costs.

5- Despite the fact that most villages have been destroyed by the security forces that is expressed by the victims constantly,

Damage Assessment Commissions' asking the victims to obtain official records of events from the authorities, (assuming the security forces, military units and village guards, who set fire and evacuate the villages would keep records of events) puts the applicants in an impossible situation. This generates the problem of finding evidence for the applicants. Besides gendarmerie and related security units either do not have such documents or have very few, and the documents they have are not adequate. Again, the security units refuse providing documents on the grounds that "it creates a security risk".

6- In implementation some commissions have asked the applicants to provide title deeds from peasants who resided on their land as possessors and do not have title deeds.

7- Commissions have in some occasions took the easy way and rejected the applications of people who did not have documents, instead of conducting research and investigation to determine if the losses had been suffered.

8- Documents are asked for proving that the peasants did not evacuate their village out of economic and arbitrary reasons.

9- In assessing the damages to the goods, today's price for a vehicle that was damaged twelve years ago is proposed without any interest.

10- Besides compensation for damages for pain and suffering has not been covered by the law and the regulation is a serious shortcoming.

CONCLUSION

It has been already clear from the implementation process that it is necessary to adapt a solution-orientated approach based on prioritizing the compensation of the losses of the victims, without overwhelming victims with bureaucratic procedures. It is necessary to give up demanding things that are impossible to obtain, and adapt a sincere, peaceful and positive approach instead. Otherwise, the losses may remain without compensation and that would mean that the law does not serve its purpose.

FIELD OBSERVATION REPORT ON THE IMPLEMENTATION ASPECT OF LAW NUMBER 5233 ON "COMPENSATION OF LOSSES RESULTING FROM TERRORIST ACTS OR MEASURES TAKEN AGAINST TERRORISM"

August 29 - September 5, 2005

The Foundation's work has focused on the implementation in this period. In August, legal professionals who are members of the Foundation visited regional Bar Associations, non-governmental organizations and Damage Assessment Commissions making objective observations, which were then compiled in a report and presented to public opinion.

GENERAL BACKGROUND

Due to intensifying conflicts in 1987, State of Emergency (OHAL) was declared initially in five cities in the South East of Turkey by governmental decree; the number of cities under OHAL rose to nine consequently. From early 1990s onwards, security forces evacuated settlements based on OHAL Law. Because of that policy, over 2 million people in around 3.400 settlements were forced to leave their living quarters against their will and choice.[2]

2- TGNA "Select Committee on Evacuated Villages in the South East and the Problem of Migration" 1997 report. The number of people who had to immigrate because of the evacuation of villages is over 3 million according to nongovernmental organisations such as TOHAV, T HV, HD, G ˙-DER.

European Court of Human Rights has determined in its numerous decisions the phenomenon of forced migration as violation of the articles of the convention.[3]

Parliamentary Assembly of European Council 2002 Recommendations[4] called on Turkey, "***to compensate the material losses of internally displaced people"***[5].

Upon such developments Turkish Grand National Assembly (TGNA) passed in August 2004 "The Law on Compensation of Losses Resulting from Terrorism and measures taken against Terrorist Acts" to compensate the damages suffered by displaced people.

While the law was still in its draft phase, along with regional Bar Associations, and related nongovernmental organizations, the Foundation for Society and Legal Studies (TOHAV) too submitted its criticism and opinion to the Parliament.[6] In fact, it has been observed later on that some of the criticism and opinion had been taken into consideration.

The regulation on the implementation of the law was issued by Home Ministry on 20 October 2004. TOHAV published a report of its opinion, criticisms and recommendations on possible problems that might arise in the implementation of the regulation.[7]

3- See Akd var v. Turkey (99/1995/605/693); Mente v. Turkey (23186/94) G ven v. Turkey, (31847/96); i v. Turkey (31849/96/); Do an v. Turkey (8803/02)

4- Recommendation 1563 of the European Council Parliamentary Assembly "Humanitarian situation of the displaced Kurdish population in Turkey" 18 September 2002 http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/Documents/AdoptedText/TA02/EREC1563.htm

5- According to the report, PACE recommended to Turkey to include the representatives of displaced people in the preparation processes of projects and programs about return to village, take measures to compensate the losses and integrate IDPs to daily life who wish to live in other parts of Turkey

6- "The Evaluation and Implementation Process Report of The Law on Compensation for Damages Arising from Terror and Combating Terror" On Grounds - TOHAV Report" http://www.tohav.org/zorunlugoc/Monitoring_Report_of_IDPs_in_Turkey.pdf

7- TOHAV report dated 22 March 2005 on "Comments and criticism on the regulation of the law number 5233 and its implementation"

Legal Assistance to IDPs provided by TOHAV

TOHAV since its foundation has considered the issue of forced migration among its topics of study. It has constantly publicized the issue, and provided legal assistance and advice to IDPs.

The current law does not include a mechanism of free legal assistance for IDPs, and the law has a complicated structure, added to that is the strict social and economic circumstances of the IDPs mean that in order to justly compensate the losses of IDPs it is indispensable to provide the IDPs with legal assistance.

Starting from this necessity, TOHAV with the voluntary support of its members launched free legal assistance to IDPs on the law number 5233 from December 2004 onwards. In the frame of this work and in collaboration with the Social Solidarity and Culture Association of Migrants (GÖÇ-DER) meetings to inform the IDPs were organized in various boroughs of Istanbul where IDPs live.

One to one meetings were held with 398 IDPs who applied to TOHAV. Consequently, the applications of 249 IDPs who are eligible were sent to the related governorships (Bitlis, Mardin, Diyarbakýr, Siirt, Tunceli, Batman, Muþ, Van, Þýrnak, Bingöl, Elazýð, and Erzurum).

Why was this report needed?

TOHAV as well as providing legal assistance also monitors the implementation aspect of the Law number 5233, the gap between the law and the implementation, and the problems of implementation.

As frequently expressed before, the current law and its regulation are far from providing fair and reasonable compensation. The problems of implementation are added to that raising concern.

With these in mind, TOHAV Legal Service visited between 29 August and 5 September 2005 the cities of Diyarbakýr, Batman, Siirt, Bitlis, Mardin and Elazýð in order to observe on the ground the method of work and manner of operation of Damage Assessment Commissions, current implementation level, situation of current applications and the problems of implementation. Meetings were organized with commission members, representatives of related nongovernmental organizations, representatives of Bar Associations, lawyers and the IDPs. This report comprises the information, conclusions, observations and evaluations resulting from those visits and meetings.

Observations on the Implementation

D YARBAKIR

In Diyarbakýr, two Damage Assessment Commissions have been set up under Diyarbakýr Provincial Administration in the frame of Law number 5233. It has been determined through the meetings that around 30.000 applications have been made. The commissions began processing the applications in early 2005. Borough administrations have allocated staff to quicken the work of the commissions in the city.

The members of Diyarbakýr Bar Association who have carried applications emphasized the following points at the meetings: During investigation on the location of the events, only notes are taken about the losses. The on-site investigations are not conducted in accordance with the procedure laid done by the law. Reports of on-site investigations include no information about the way the events occurred. Thus, how and why the damages come into being remains obscure. Lawyers who attend on-site investigation are only on the list of attendance, they cannot contribute to the report of investigation. That means the reports are prepared by the administration. Damages are not assessed objectively. Damage assessment

commissions do not include the loss of livestock declared in the applications; such loss is not compensated for under the pretext that it is impossible to assess the amount of losses. Monetary compensation claims are dominant among the applications. Lawyers believe that it is because the payment in kind is not specific and generates distrust in the applicants.

Despite significant differences between the amounts applicants demanded and the commission assessed, applicants have accepted the settlements due to their poor economic conditions.

Serious problems have arisen in the retrospective accounting of the products yielded from the fields. The administration presumes that in some cities the conflict ended for example from the year 2000 onwards, and that after this date there was no practical obstacle before returning to village thus the losses occurred after that date are not compensated for.

MARD N

In Mardin, around 14.000 applications have been submitted to the Damage Assessment Commission set up under Mardin Provincial Administration according to the Law number 5233. Although the deadline for applications was 27 July 2005, and a year has passed since most of the applications are still at the level of registration.

Moreover, a commission of investigation has not been set up in Mardin yet and no investigation work has been undertaken. The commission has only asked the security units for a list of villages evacuated for security reasons.

Damage Assessment Commissions classified the applications under the categories of death, injury, and material losses. Some applications regarding material losses have been rejected as ineligi-

ble by the commission. A number of applications, if limited, concerning losses related to death have been finalized.

The commission has not established a method about the claims of material losses (land, product, tree, animal, house, household goods etc.) therefore, such applications have not been examined yet.

Most of the applications in Mardin are for monetary compensation. No compensation in kind has been claimed since the law entered into force. No one has returned home in the frame of the law so far.

Although most villages in Mardin were evacuated for security reasons, no serious and systematic work on the issue has been conducted. Details of how the law would be implemented, the criteria by which the compensation amounts would be determined are still not clear.

BATMAN

According to the information by the commission, there are approximately 8.000 applications. Around 500 applications regarding the loss due to death have been finalized so far. 249 of these applications have been accepted and compensation payments have been made. Borough administrations too have employed staff to quicken the work of the commission.

It has been understood from the meetings with lawyers from Batman Bar Association and NGO executives that most of the applicants in Batman demand monetary compensation. In Heybeli and Balbaþý villages of Sason province, there are a limited number of applications claiming compensation in kind.

Batman Governorship has published a list of evacuated villages in Batman. However, the applicants and the lawyers have serious doubts about the sufficiency and reliability of the list. Lawyers

believe that the applicants from these villages should not be asked to submit an incident report.

Moreover, there is no systematic exploratory work in Batman. That results in delays in assessing damages and finalization of the applications.

Like in Diyarbakýr in Batman too there are problems in the retrospective calculation of products yielded from fields. In some cases, applicants' lawyers have been given letters by the administration that stated "... the village is empty... returns have been permitted since … date". Thus although the victims have not been able to return home, the commission does not include damages after the date when returns were permitted. Exemption of the damages after those dates result in serious right losses.

Until the amendment of article 17 of the regulation on 22.8.2005[8] IDPs and their lawyers were not entitled to have direct correspondence with military authorities. Correspondence was handled through district administration offices causing bureaucratic delays. The amendment partly eliminated the problem.

Damage Assessment Commission does not keep a report of the on-site investigation but only take notes. Because the commission does not keep a report on the scene of the incident, the course of events leading to losses are not established, and only the damages are determined.

Commissions do not conduct a systematic work to assess damages and to compensate them. Applicants prefer monetary compen-

8- Article 17 of the regulation amended on 22/8/2005: The applicant submits with an application letter, all kinds of information and documents that explain the course of events, and can be used in assessing the damages. In addition the commission if deems necessary can ask for all kinds of related documents and information that can be used in the assessment of the losses from judicial, administrative and military authorities.

sation to compensation in kind because of the security problems and the trauma they went through. They accept low amounts of compensations.

S RT

According to the information by the commission, there have been approximately 11.000 applications in Siirt. Compensation claims in 13 cases with losses concerning death have been accepted. 250 applications have been rejected due to ineligibility.

Despite the number of applicants, there is only one commission in Siirt and it is insufficient in registering, examining and assessing the applications. It is unrealistic to expect one commission to register, examine and conclude 11.000 applications. Although a decision was made to set up a second commission, there have not been any steps taken yet.

Due to the insufficiency of the commission and yet incompletion of registry work, no on-site investigation has been conducted. Applicants claim monetary compensation.

B TL S

Approximately 8500 applications have been made to two commissions in Bitlis. The commission have kept regular registry of the applications in this city however only 150 applications have been finalized so far.

Like other cities in Bitlis, the commissions do not conduct systematic investigation. The applicants in Bitlis prefer monetary compensation as well.

ELAZI—

One damage assessment commission has been set up in Elazýð. The commission has proved to be insufficient in assessing and final-

izing applications. It has been observed that the commission demonstrated a tendency of concluding the applications on paper. On-site investigations have not been properly conducted. In the case of some applications, nothing was done until months after the submission, except in the case of applications claiming losses due to death. In the boroughs of Palu and Arýcak, it has been observed that the applications of village guards have been prioritized and concluded. It has been observed that there were police officers among the commission staff. An office set up for this purpose under City's Provincial Administration is named "Terror Office".

GENERAL EVALUATION

TOHAV Legal Service during its visits in the cities of Diyarbakýr, Batman, Mardin, Siirt, Bitlis and Elazýð between the dates of 29 August and 5 September 2005 meeting lawyers, representatives of Bar Associations and NGOs and related commissions has observed the following points:

- Application deadline for the law ought to be extended. It is positive that the issue is planned to be taken on the Parliamentary agenda in the coming period. Amendment of article 17 of the regulation is another positive step.
- Current number of staff employed by damage assessment commissions is not enough to process the applications. That causes technical, administrative and bureaucratic delays.
- A comparison of the number of applications and the number of commissions in cities show that in some places one commission with its 3-4 staff has to process over ten thousand applications.
- Commission offices are based in the buildings of City Provincial Administration and the commissions are under the supervision of the administration. That is a negative psycho-

logical affect for the applicants, which in some cases led to non-application.

- The commissions are not independent, and their power of enforcement is limited. The heads of commissions are governors or deputy governors, who are under direct control of Home Ministry. Thus, commissions do not have a position to develop initiatives or make independent decisions.

- Local governments and nongovernmental organizations are not part of the commissions. It has been observed that there are police officers among commission staff.

- It has been found out that in the cities of Bitlis, Tunceli, Elazýð and Diyarbakýr on-site investigation could not be conducted in some villages due to security reasons.

- During on-site investigations, incidents disadvantageous to the applicants and the course of events leading to losses are not investigated. Only the amount of losses is estimated.

- The law does not cover damages for pain and suffering. That causes loss of rights particularly in cases of losses due to death.

- There is no standard measurement in calculating the losses except in losses due to death. That causes question marks over the issue of just and fair settlements, and opens the way for administrative arbitration.

RECOMENDATIONS

The law and its regulation in their current state of structure and operation are short of providing a comprehensive and just solution to the problem of migration. Nevertheless, the law has to be acknowledged as an important beginning. Under the frame of this

law in order to get satisfying and fair results, we are recommending the following points:

- Application period under the law needs to be extended for at least one year.
- Applications need to be finalized in shorter periods.
- The law should regulate compensation of the losses for pain and suffering and should allow the victims to make additional application for compensation of damages for pain and suffering.
- Fair compensation of losses should be secured in order to redress the losses.
- Standard measures should be determined for compensations.
- Investigations should be done properly, losses of the victims and the way the loss occurred should be recorded in detail.
- Technical staff, equipment and vehicle requirements of the commissions should be met.
- Local and nongovernmental organizations should take part in the commissions.
- Commissions should employ expert and qualified personnel instead of police officers.
- The fact that applicants have been traumatized has to be taken into account, and a proper approach should be adopted.
- Applicants should not be asked to provide documents that they cannot obtain.

LAW 5233 IS UNJUST

Internal displacement in Turkey continues to affect millions of people.

This problem was put on the agenda by the EU integration process, and the Turkish parliament responded by passing Law 5233 on Compensation of Damage Arising from Terror and the Fight with Terror as a key solution. Unfortunately, the law is failing to meet its own stated aim of achieving social peace and justice.

On 25 February 2006 a meeting was held at the headquarters of TOHAV (the Foundation for Social and Legal Studies) to discuss Law 5233 and the European Court of Human Rights (ECtHR) judgment in *Ayd n yer v Turkey*. Participating were TOHAV Director Sehnaz Turan; Meral Danýs Bestas , Board Member of Diyarbakir Bar; Mahmut Kaçan president of Agri Bar, Baki Boða, Board Member of the Istanbul Branch of the Human Rights Association, Jonathan Sugden of Human Rights Watch, Meryem Kavak of Goc-Der, and TOHAV members M. Selim Okçuoðlu, M. Ali Kahraman, Ýnan Akmeþe, Yaþar Aydýn, Hakan Gündüz as well as the lawyers M. Ali Kýrdök, Hasan Kemal Elban, Ayþe Bingöl and Hasip Kaplan.

The meeting reached the following conclusions:

Law 5233 is not effective in meeting the needs of Turkey s internally displaced.

- Obstacles and limitations in the law and associated regulations exclude a substantial number of victims from compensation. For example, village evacuations before 1987 are not covered by the law.

- The law does not provide mechanisms to tackle return issues such as lack of infrastructure, the village guard system, removal of mines etc.

- The law contains no provisions for non-pecuniary compensation contrary to established precedent at the ECtHR.

The structure and working methods of damage assessment commissions prevent them from providing just compensation.

- The number and nature of staff currently serving on commissions are insufficient to meet the volume of applications. For example, in several provinces a limited number of personnel are expected to process, within a reasonable period, tens of thousands of cases. Consequently, there have been no progress in many applications even after a year and a half.

- The commissions take an arbitrary approach to their assessment activities, and this has got worse sine the decision in *Ayd n yer v Turkey*.

- Commission activities are conducted in a partial manner. Victims and their legal counsel are completely excluded from the preparation stages.

- Commissions often take pains to seek out documents might be used against the victims, but fail to make similar efforts to procure documents that might support victims' claims.

- Investigations are prioritized on the basis of undisclosed principles. New applications may be dealt with, apparently arbitrarily, as a priority, while earlier applications are left on the shelf.

- Lawyers are prevented from examining the files; commissions do not reply to correspondence and requests by claimants or their legal counsel; victims who have appointed lawyers are encouraged to discharge them; applicants are induced to accept lower levels of compensation *on the basis of promises that the application will be dealt with quickly*.

- When commissions evaluate applications, they give priority to applications for compensation made by soldiers, police and village guards.

- The applications are processed by Provincial Special Administration units within the provincial governor's building. In some provinces, the offices of the damage assessment commissions are known as the "Terror Office." The fact that police officials previously employed in Anti-Terror Branches are now working as the secretariat of the commissions creates an atmosphere that undermines victims' confidence in the process.

- There are serious inconsistencies in the amounts of compensation proposed. For example, all trees are valued at a flat rate of 20 YTL (12 EUR) irrespective of the harvest they produce. A death is valued at 14,000 YTL (9,000 EUR) while compensation of 15,000 YTL (9,500 EUR) may be proposed for a tractor.

- In Diyarbakir province, proposed out-of-court settlements undercut the compensation figure calculated by the survey.

- No cross-province standards are applied in the calculation of compensation. For example, in Diyarbakir, the commissions offer 16,000 YTL (10,000 EUR) for a death, while in other provinces commissions offer 15,000 YTL (9,500 EUR).

- Surveys are carried out in a completely irregular manner. Surveys conduct no investigation into the original events or how they happened. Lawyers may not be informed that the survey is to be carried out.

- Commissions offer compensation that is not in keeping with established ECtHR precedents, and is quite low. For example, wounded victims are offered compensation between 4,000 YTL (2,500 EUR) and 1.500 YTL (1,000 EUR). In Hosgeldi village and an associated hamlet in Varto, Mus province, villagers whose houses were burned or destroyed, and who were not permitted to return to their homes for many years, were offered trifling sums such as 500 YTL (320 EUR) or 900 YTL (570 EUR).

- Arguments set out by victims are not addressed in rejected applications.

- Victims are required to present documents which it would be impossible for them to procure, such as gendarmes' incident reports for enforced village evacuations, or certificates that a particular piece of land was irrigated.

- Large sections of agricultural land are treated as state forest, and these fields and the potential produce thereof are excluded from calculations.

Out-of-court settlements are imposed on the injured parties

- Out-of-court settlements are prepared unilaterally by the commissions. Neither the victim nor their legal counsel participate in their preparation. Victims and their legal counsel have no opportunity to discuss the terms, and in some places are not allowed to suggest alternatives.

- The processed files are presented to the applicant or their legal counsel almost as a *fait accompli*. No alternative suggestions are accepted, and any alternative proposal is effectively regarded by the commission as a rejection, and the file is shelved.

The ECtHR s yer judgment does not absolve the government from its responsibility to pay compensation

In the Ýçyer judgment, the ECtHR ruled that Law 5233 was an effective remedy, and that applicants would therefore have to exhaust this new domestic route. In the press, this judgment was interpreted as relieving the Turkish government of a 20 billion Euros compensation bill, and Foreign Minister Abdullah Gül described it in similar terms.

Contrary to what the Foreign Minister claims, the European court's inadmissibility decision in *Ayd n yer v Turkey* does not exempt Turkey from paying compensation, because this was not a judgment about the merits of the case. In *Do an and others v Turkey* the European court looked into the merits of a group of victims in circumstances very similar to those of Aydýn Ýçyer and gave judgment that there had been a clear violation.

Consequently, the European court's judgment in *Ayd n yer v Turkey* is not a judgment that can be interpreted as releasing the

government from its responsibility to pay compensation to the victims of enforced internal displacement. The Ýçyer judgment merely changes the address of the body that is to decide the compensation. If the government does not show sufficient will to compensate victims for their losses, and if the irregularities of the Damage Assessment Commissions and the provincial governors continue, we may see many applications set once again before the ECtHR.

Recommendations

- The government should implement Law 5233 using the standards established by the ECtHR, and especially the ownership criteria indicated in *Do an and others v Turkey*.

- Necessary administrative and legal measures must be promptly taken to halt the arbitrary practices of the Damage Assessment Commissions established under Law 5233, which cannot be reconciled with the state's serious responsibilities in this matter. Otherwise, Law 5233 will inevitably prove ineffective and insufficient, and the consequence of this will be that large numbers of applicants apply to the European court.

- The government must show political will to ensure that the Damage Assessment Commissions operate in a more just, effective and transparent manner that is accessible for victims and their legal counsel.

- The requests of victims for compensation should not be perceived as unjustified to secure personal gain. Victims actually have quite realistic expectations in terms of justice and compensation. They should not be subject to excessive demands for proof and documentation.

- We therefore support the call made by the Special Representative of the U.N. Secretary General Walter Kälin in his September 7, 2005 report for the Turkish government to establish a compensation mechanism that will allow victims of enforced internal displacement to return to their villages in dignity to make a new life, or, if they do not wish to return to the village, to make a new start in the place in which they are currently living.

In conclusion; besides the concerns raised above, we the participants have decided to form a ***Civil Monitoring Committee*** of non-governmental civil society organizations to monitor the implementation of Law 5233. We invite the public, and especially all individuals and NGOs working in this area, to maintain vigilance concerning this issue.

A r Bar
Diyarbak r Bar
Foundation for Society and Legal Studies
G -Der Human Rights Association
Human Rights Watch

RESULTS OF THE FIELD RESEARCH CONDUCTED IN THE CITIES OF BATMAN and VAN

Since the passing of the law number 5233, the Foundation has insisted that the law was inadequate in providing a solution and the recommendations of Walter Kälin, UN Special Representative of the Secretary General on IDPs on 7 September 2005[9] for a minimal solution have been supported. Based on the recommendations there was a call on the government to open the way for reasonable compensations allowing those who are established as victims to be able to return and start a new life in a dignified way, or if they do not want to wish to return make a new start, where they wish.

Such systematic rights violations on mass scale and arising from the climate of armed conflict are naturally difficult to redress by a comprehensive program, which satisfies everyone. Main reasons of that difficulty are the big number of victims, destructive and irreversible losses experienced at individual and mass levels, and the creation of long-term adversities. However, the law number 5233 becoming an institution of compensation for a dignified return or a

9- Protection of and assistance to internally displaced persons Note by the Secretary-General The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter K lin, submitted in accordance with General Assembly resolution 58/177 and Commission on Human Rights resolution 2005/46; United Nations, General Assembly, 7 September 2005, UN Doc. A/60/338, s. 13, § 37.

new start will be a positive step even if limited. The institution of compensation has an important role in establishing social peace, and re-establishing the bond of citizenship. A compensation law has to bring concrete solutions to the losses and the problems arising from the losses.

That perspective was not reflected in the implementation process of the law number 5233. Studies of the law and its implementation conducted by Bar Associations and nongovernmental organizations have emphasized that. The commissions were criticized for being predominantly composed of public servants, not being independent and impartial. IDPs and the groups representing the IDPs have not been part of any stage of the implementation of the law number 5233. That strengthened the impression that the law is far from meeting the needs and expectations.

Research, practical legal assistance and advice work on the law number 5233 conducted by the Foundation for over four years has culminated in this report on a theoretical level. The deadline for applications to the law was 31 May 2008. The cities of Van and Batman were chosen as pilot cities after the end of the application period. Beginning from these two cities other cities with high number of applications Diyarbakýr, Mardin, Bitlis, and Siirt have been visited.

Regional Bar Associations, nongovernmental organizations, lawyers working in the field, and Damage Assessment Commissions have been visited. We have tried to find answers to the questions whether the law reached the objective expressed in the preamble, and whether the amount of compensations were enough for a new start or return.

Millions of people who were subjected to forced migration moved to various cities. Some of the immigrants settled in the west-

ern cities of Ýstanbul, Ýzmir, Adana and Mersin but most of them stayed in the regional cities of Diyarbakýr, Batman and Van. A recent study by GÖÇ-DER in Diyarbakýr has been published as a book. The city of Batman was picked because it was the main city in the region that received immigrants on mass scale, and where poverty levels were at their worst.

The city of Van was chosen because was identified as a pilot city by the government in the frame of The Return to Village and Rehabilitation Program and it is a regional centre receiving IDPs.

TYPES OF LEGAL ASSISTANCE PROVIDED TO VICTIMS UNDER LAW NUMBER 5233

It has been observed that the victims and their representatives perceive the law in its narrowest sense and as a law of compensation. GÖÇ-DER Batman branch reported at a meeting that around 1500 applications were made to the Association after the law 5233 entered into force despite the fact that the Association had not undertook any preparation, or activity to inform people, and that a commission of 12 lawyers assessed the applications.

Moreover, it has been found out that in Batman, Human Rights Association Batman Branch cooperated with GÖÇ-DER. The chair of Batman Human Rights Association expressed that they thought the social aspect of the law was important and they set up a joint commission, accepting over 150 applications concerning losses due to death. It has been learnt that a similar development had occurred in Diyarbakýr. Diyarbakýr HRA and Diyarbakýr GÖÇ-DER set up a joint commission to examine the applications made separately to the organizations. Diyarbakýr HRA reported that there were around 5.000 applications submitted to HRA and GÖÇ-DER together.

The chair of Batman Bar Association expressed that the Bar Association did not provide any legal assistance in the period when the law entered into force, and that applications were mainly made through Human Rights Association, GÖÇ-DER and private lawyers. The same was true about the Bar Association in Van.

It has been observed that the applications were made to lawyers directly or to Human Rights Association. The chair of Van Bar Association expressed that they initially set up a commission to provide legal assistance in coordination with GÖÇ-DER Van branch; however, the commission did not work well.

Human Rights Association Van branch reported that after the law took effect they received applications, provided legal assistance and advice, and that they directed people to lawyers for legal representation.

The chair of Van GÖÇ-DER expressed that approximately 2.700 people applied to them to receive legal assistance and advice about the law. Van GÖÇ-DER complained about the manipulations by the lawyers. GÖÇ-DER reported that the IDPs were told that the applications through GÖÇ-DER would be rejected and GÖÇ-DER believed that some lawyers had a role in spreading the rumours.

Finally an issue needs stressing is about the publicity of the law. It has been understood that an important section of victims were not aware of the law despite good willed efforts of nongovernmental organizations to inform people and that these people missed their chances of application since they missed the deadline.

PERCEPTION OF THE LAW AND ITS IMPLEMENTATION

IDPs and nongovernmental organizations have welcomed the

law number 5233 in its preparation stage with caution, but not with a negative attitude. The hope was that despite shortcomings it could be a reasonable first step in terms of social peace, restorative justice, and fair compensation in the circumstances of Turkey. On the other hand, the distrust generated on the part of the IDPs by the introduction of the law as "terror law" should be noted.

Batman GÖÇ-DER reported that a maximum of thirty percent of the families who were forced to migrate and moved to Batman applied to the law and the rest did not apply partly due to above-mentioned reason, lack of information and missing the deadline. It has been observed that some victims perceived the law merely as "an opportunity to make money". Although we have not had one to one meetings with the IDPs, our meetings with their representatives indicate that many of the IDPs perceived the law only in this way. Of course, the work and implementation of the commissions reinforced that impression. In conclusion, it can be said that both the official bureaucracy and the IDPs perceive the law similarly and as merely a tool of "paying-receiving compensation".

On the other hand, it has been understood that some lawyers acted against the ethics of their profession. Some applicants, representatives of organizations and lawyers we have met noted that some lawyers who carried the applications acted with wrong information. It has been emphasized that the applications were perceived as an opportunity of making money by some lawyers and actions contrary to the ethics and code of the profession of law were demonstrated. Executive members of Diyarbakýr, Batman, Van and Mardin Bar Associations whom we inquired about the claims expressed that they have not received any complaints, and did not launch any disciplinary process.

After the approval of the law number 5233, European Court of Human Rights has accepted the *yer/Turkey* case as a pilot case and

finalized it quickly. Thousands of similar cases were returned to the applicants and they were informed that they could apply to the commissions set up under the law number 5233. Although most of the Commissions had not been set up at the time, applications in one village of Diyarbakýr was picked as pilot practice and were finalized quickly which influenced the decision of the ECtHR. Proposed settlements for the said applications were not low and compensations were paid on time.

All representatives of organizations in the region and the representatives of IDPs we met in the region expressed that after Ýçyer/Turkey decision of ECtHR the implementation and the attitudes changed. The commissions began asking the applicants to submit all kinds of documents and information proving their losses. Batman Bar Association reported that especially in the case of villages that were not completely evacuated, strict burden of proof was put on the applicants, and that resulted not from the law but rather from the arbitrary attitudes of the commissions.

Lawyers expressed that the information or reports by the security forces were especially valued and if those sources claim that a particular village was not evacuated then the commission rejected the applications without the need for further inquiry. Again, it has been reported that the applicants were asked to prove that the villages were set fire on or forcefully evacuated. There are cadastral problems in many villages or hamlets thus during on-site investigations fields where the peasants had harvested for years are noted as public land and excluded from the assessment.

PARTIAL IMPROVEMENT IN THE LAW NUMBER 5233

An amendment dated 15/09/2005 in the regulation of law number 5233, opened the way for the commissions to access documents

and information. In fact, there was no obstacle for commissions under the governorships to obtain any documents before the amendment. However, in practice the commissions asked the applicants to obtain the documents to avoid extra workload. The new regulation states "the applicant will explain the way the incident occurred and submit all relevant information and documents to the commission to help the assessment of the loss and at the same time the commission is entitled to ask the administrative and military authorities for all necessary information and documents".

Under the new regulation, the applicant will explain the way the loss occurred in the application letter and submit related information and documents to the commission. However, the commission is entitled to ask all administrative, judicial and military institutions to provide relevant information and documents to determine whether the incident falls in the scope of the law, and assess the loss. Judicial, administrative and military authorities are obliged to provide all information and documents demanded by the commission.

Another consequence of the new regulation is that if the applicant does not have any document or information, the commission can ask the authorities to provide them. Therefore, the commissions will not reject applications because the applicant has insufficient information and documents.

However, it is not possible to say that this has been effectively implemented. The commissions are still asking the applicants to provide criminal records, title deeds etc. A Foreign Ministry directive to Damage Assessment Commissions reminded them the decisions of European Court of Human Rights and that the need for them to act reasonably. The directive was mainly interpreted as the need to take ECtHR compensation standards as a basis. However, the commissions failed to set an acceptable standard. The proposed amount for losses due to death is considered too low. It has been

observed that the commissions proposed low amounts for other kinds of losses too. For example, GÖÇ-DER Van branch reported that in a village in the district of Çatak, 200 YTL was proposed to an applicant while another applicant from the same village and with a similar kind of loss was proposed 60.000 YTL. Lawyers report similar cases in various cities. In the meanwhile, all organizational representatives and lawyers we have met expressed that they thought the extension of the application period twice was very positive. Lawyers expressed that the application period needs extending again since there are still IDPs who have not applied

IMPLEMENTATION PROBLEMS FOLLOWING THE APPLICATIONS

Thousands of applications were submitted as the law number 5233 took effect. However, it has been observed that numerous problems had been encountered with the submission of the applications. The commissions in the cities were not fully established, they had problems of place, staff etc. That resulted in the accumulation of thousands of files. The law said that the applications had to be made in a short time like six months. According to the law, the governor was entitled to extend it for three months in cases of necessity. However, we have been informed in the cities where we had meetings and in other cities that even 4 years after the date of application, the claims have not been settled.

Batman Bar Association reported that there had been a more systematic work in Batman comparing to other cities, however the applications have been finalized in far longer periods than the law anticipated and both the commissions and the applicants came to accept it despite the law. Mardin Bar Association reported that the commissions in Mardin were among the slowest operating ones. It has been expressed that the commissions in Mardin have been insufficient in finalizing the applications. Another question is about the

finalized applications. It has been observed that the applicants who signed a friendly settlement could not get their payments despite very long periods. The reason for that was lack of funds. That causes a secondary grievance. It has been observed that some lawyers took legal action against the governorships for the collection of debts.

In the meanwhile, all lawyers and NGO representatives we have met expressed that the IDPs are still being asked for criminal record, birth registry, document of possession, etc. and that prolongs the processes significantly.

Under the law number 5233, the city and borough commissions conduct investigation in the location where loss occurred. It has been understood that the investigation procedures are perfunctory and the similar in all the cities. Batman Human Rights Association reported that the personnel of the borough commissions who conduct investigations in Batman are public employees who have lived in the region for a long time; hence, they did not have many problems. HRA expressed that for the same reason they did not receive many claims of rights violations during investigations. What was noticeable there was that the compensation amounts assessed based on the documents and reports of the commission staff were considered too much and reduced by the city commission. The reduction was not based on any claim of inaccurate investigation but only the arbitration that the amount was too much. Otherwise, the investigation would have to be repeated.

Batman Bar Association expressed that a 1952-dated map was used in investigations and consequently many fields are excluded from private ownership. Bar Association complains that the lawyers have almost no function in investigations. Even the expert reports are not communicated to the lawyers.

Lawyers in Batman expressed that in cases of loss due to death and injury the applicants do not suffer problems about proving the incident. However whether the incidents are to be considered in the scope of the law or not has become an issue. Almost all of such incidents where the losses occur had been reported to judicial organs. Therefore, there is no problem in finding evidence. However, the commissions implement a rule, accordingly, they consider an incident in the scope of the law only if the judicial organs accepted the incident as an act of terrorism. Problems endured especially in the cases of murders by unknown perpetrators. Consequently, hesitations arise if the incident was a terrorist action and if it falls in the scope of the law. In such cases, the commissions sometimes have interpreted the situation against the applicant and rejected the claims.

Deputy Chair of Mardin Bar Association lawyer M. Beþir Ayanoðlu reported that the commissions in Mardin excluded the period of 1999-2001 from the assessment of losses due to drought. Lawyer Ayanoðlu complained that the commission experts were not independent, they almost had a mentality of bargaining, and the standards had not been fully established.

The chair of Van Bar Association noted that the dates given by gendarmerie for the evacuation of villages instead of the real dates are accepted as data. Gendarmerie report determined the case. Again, in some cases, the district elections board reported having ballot boxes in some villages or smaller settlements, which had been evacuated, and people only went there at the time of the elections to use their vote. However, the assessment commissions excluded those settlements from the list of evacuated villages or hamlets on the grounds of the existence of a polling station during elections. It has been reported that the exploratory work conducted by sub-commissions in the boroughs or districts are performed perfunctorily, for example without actually going out to the fields or places and

mostly deciding over a map. Lawyers we met in Mardin told us for example there was a standard list for fruit trees and decisions were made on that basis, and the commissions created difficulties concerning evidence in the assessment of damages to moveable goods and livestock.

FAIR COMPENSATION

One of the most serious criticisms about the implementation of the law number 5233 is the low level of compensations paid to the IDPs. All NGOs and lawyers we have consulted on the issue expressed that the amounts proposed on the friendly settlements were far from covering the losses of the IDPs. It is necessary to note that some of the recommendations are not reasonable. For example the commissions accepts that the losses of the applicant is under the scope of the law number 5233 but proposes 200 YTL for an applicant who has lived far from his home for years, not being able to attend his fields etc. Lawyers we met in Van said that the average proposal in settlements was below 10.000 YTL. Considering that the time span of internal displacement is over 10 years it is clear that the amount is far from compensating the losses. It has been expressed that the use of one standard for the cases of losses due to death and injury is contrary to the law of compensations since each case needs specific assessment.

Another problematic implementation is the exclusion from the scope of law number 5233 of the losses of products from fields where peasants do not have title deeds. Peasants cultivated the fields for years and they cannot claim the losses of not attending the fields for years because they do not hold titles. Lawyers we met in Batman conveyed the existence of a directive that intervened in the prices of losses the experts assess in investigations, there are items not included in the directive and the prices are kept quite low. It has been reported that in Van, most villages have not had cadastral

work, and a system of possessorship applied. Since Commission staff used registries from 1940s, many fields were treated as feeding grounds. Using out of date records in investigations lead to serious violations of property rights.

Another issue reported by lawyers and NGO representatives we met is that although applicants find the proposed amounts too low they still have to accept them. In this context, it has been conveyed that some lawyers force their clients to accept the settlements despite low amounts and some even sign the settlements themselves without consulting the clients. It has been noted that friendly settlements signed under such circumstances do not have the value of friendly settlement. It has been observed that in the case the settlement is refused judicial steps of opening a case is deterrent for the applicants because of time and fees. Batman GÖÇ-DER reported that most of the applicants have signed the settlements due to necessities, and in a way, a culture of charity has been established. Batman Bar Association too expressed that because of the length of judicial and ECtHR processes the IDPs are forced to sign the proposed settlements and they did not have an equal alternative. Therefore, it is only possible to talk about an out of court/peaceful settlement as a formality here. Similar remarks were made by Diyarbakýr and Mardin Bar Associations and lawyers who are members of these associations.

RETURNS AND AID IN KIND

The law number 5233 is considered by the government along with The Return to Village and Rehabilitation Project (RVRP). Government policy about the returns is reflected in the frame of RVRP. Government's statement that the two thirds of the IDPs have returned in the frame of RVRP has been thought to be unconvincing by most of the NGOs and lawyers we have met. In this context, it has been observed that the dominating concept of the law was not

focused on "the issue of returns". However, article 10 of the law regulates aid in kind hence it can be assumed that the law covers returns as well. All lawyers and organizations we have met in the framework of this study expressed that almost no aid in kind has been provided under law number 5233. It has been observed that even if the applicant intends to return to his village s/he prefers monetary compensation. It is thought that this is because of the uncertainty if the aid in kind would be sufficient, and the fact that monetary aid is more practical and functional, and both the applicants and the commissions have an attitude of accepting monetary aids as the main type. Lawyers we met conveyed that the aid in kind offered to IDPs as part of RVRP previously was deducted from the compensation proposed to the same applicant under the law 5233. Moreover, the monetary aid offered to the applicant who wants to return is mostly insufficient for providing a base for settling. Thus, it has been observed that an attitude encouraging the IDPs to return does not exist.

On the other hand, it has been noted that "Support to Project for Developing the Program for Internally Displaced People" by United Nations with the cooperation of Turkey too has some serious problems despite some positive examples. GÖÇ-DER Van Branch complained that none of the initiatives they took as part of the Project was accepted, and that the government undertook projects by using wrong organizations. Human Rights Association Van branch commenting on Van Action Plan, implemented as a model, said that in Özalp and Çatak districts the models of centrally located villages (village-city) did not work, livestock breeding could not be performed, people are forced to live on top of one another in small spaces, the infrastructure was broken down and people began leaving. It has been noted that the only positive practice in that context was the building of a clinic and a school.

Apart from the above, it is necessary to point out that the climate of armed conflict has escalated recently in the region. All persons

and organizations we have met expressed that the biggest obstacle before returns was the security concerns and the conflict has assumed a tendency of escalating. They reminded that unless the conflicts were ended no permanent development could be made. Other problems mentioned were lack of infrastructure, lack of guarantees for sustaining an economic standard after returns and the inadequacy of other public services.

It has been observed that the conflicts have escalated including the cities where we conducted the research. In this context, other problems preventing returns such as Village Guards System, Prohibition of the use of Mountain Pasture, Landmines are considered as the indication that there has not been any change in the climate to make returns possible. All lawyers and representatives of nongovernmental organizations we have met in Batman and Van reported that the system of village guards and confrontations continued in the countryside, there were military operations and under the circumstances, talking about returns was not possible. It has been reported that returns would be possible after the creation of a climate of non-conflict and through encouraging livestock production; but there had not been any moves towards that direction, and there was no guarantee that the IDPs would not experience the same traumas if they return, and that alone constituted an obstacle before returns.

DEMAND OF RESTORATIVE JUSTICE

The main point made in answering the question 'to which extent the law number 5233 can contribute to social peace?' was that the instrument of "paying compensation" was very important but it was not enough on its own. This was the common view of all the organizations and persons we met. According to United Nations International Human Rights law and The Guiding Principles of the Right to Compensation in Cases of Serious Violations of Law of

War, people who suffered similar losses are entitled to demand compensation of their losses. The compensation is divided into the categories of replacement, compensation of losses, mental or physical rehabilitation, and restoration of social status. The law number 5233 seems to aim compensation of losses only. Besides, it has been implemented as a tool of compensation excluding damages for pain and suffering, and has many defects as noted before. We are in a situation where the law did not even fulfil its limited purpose. The general preamble states " *Compensation of the losses of persons whether they result from the actions of terrorist organizations or the measures taken by the State in the fight against terrorism; compensation of these losses on the said principles, will consolidate citizens trust in the State; improve the relations between the state and citizens, contribute greatly to the fight against terrorism and social peace. It has been shared by all sections of the society that extraordinary successes of Turkish Armed Forces and the security forces in the fight against terrorism need to be reinforced by social and economic measures (http://www.tbmm.gov.tr/sirasayi/donem22/yil01/ss650m.htm).*"

From the point of the preamble, it is difficult to conclude that the government reached its target with the law number 5233 and its implementation. Bureaucratic issues have been the source of many of the problems in the implementation of the law. It is difficult to say that the commissions fully implemented the Home Ministry's directive sent to the governorships to secure proper functioning of the law. It is obvious that there is an issue of supervision here. In the end, the law has been implemented very poorly and that triggered a chain reaction affecting every stage all the way through.

As the Foundation for Society and Legal Studies (TOHAV), we have tried to express our opinion and criticisms by reports and public statements that we published at different stages. The statements and reports emphasized the positive sides of the law as well.

Nevertheless, one of the observations repeated at every stage of the law and its implementation is the need for a much more comprehensive and reasonable project or compensation program for "social peace". The law has been implemented solely for the "compensation of losses" and this happened with the contribution of the commission staff.

To the affect that there is not one single paragraph in the investigation or expert reports about the experiences of the victims or their stories of forced immigration. Thus focusing only on the compensation of losses that is simply one tool of a broader notion of compensation has not stood any chance of success. It was necessary to establish the conditions to realise the concept of "friendly/peaceful settlement" in the law number 5233. Under the circumstances, even for a victim who is pleased with the compensation s/he received -which is a very low percentage- the questions remains whether peace has been restored and the grievances has really been settled.

All persons and organizations, who accepted our request to meet, stated that the law in its current state could not be considered as a satisfying restorative mechanism. Examining the law and the implementation together, it has become clear that a comprehensive program is needed in which with the collaboration of civil society and the IDPs, all material and mental losses are aimed to be redressed, where each incident and trauma can be talked about openly, and those responsible can be found out, and above all these are conducted in a sensitive, kind and genuine manner, demonstrating an integrity of law and implementation, and taking social and economic measures together.