

Submission to the UN Committee on Economic, Social and Cultural Rights
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Dam construction in Turkey and its impact on economic, cultural and social rights

Parallel report in response to the
Initial Report by the Republic of Turkey
on the Implementation of the
International Covenant On Economic, Social and Cultural Rights

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CounterCurrent – GegenStrömung

In cooperation with:

Çoruh Basin Environment Conservation Union

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Information on contributing organisations

The following report has been compiled by non-governmental organisations and initiatives in Turkey and Europe that represent dam affected people or have monitored one or more dam projects over a long period of time. It has been coordinated by CounterCurrent. Contributing organisations do not necessarily endorse all opinions expressed in this report which lie outside of their own area of expertise.

CounterCurrent - GegenStrömung is an initiative of non-governmental organisations in Germany founded to monitor the involvement of the German export credit agency (ECA) in the Ilisu dam project in Turkey. It campaigns for compliance with international standards by the German government, German banks and companies in their economic activities abroad. After the withdrawal of German ECA coverage for the Ilisu project, GegenStrömung - CounterCurrent continues to support the campaigns in Turkey demanding the observance of human rights in relation to dam building.

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Executive Summary

The State party is one of the major dam building countries in the world, intending to build approximately 2,000 dams and hydro-electric power plants (HEPP) within the next decade in addition to 2,000 existing ones. Despite the extraordinary size of this plan, leaving hardly any river in the country unaffected, no environmental or social impact assessments at the basin or country level have been conducted. Impacts on the water resources and the livelihoods of possibly up to 2 million people are therefore indetermined. In its reply to a question raised by the Committee in its list of issues, the State party contends inter alia that the laws on expropriation and settlement as well as Resettlement Action Plans conducted for large dams are designed to protect the rights of those affected. Contrasting with this answer however, dam and HEPP projects implemented in the past or currently under construction reveal severe human rights violations, and the relevant legislation shows great deficits in relation to human rights, raising great concern about impending infringements on economic, social and cultural rights in the future.

Dam-related legislation infringing upon economic, social and cultural rights

The State party's legislation displays significant deficiencies in fulfilling the rights covered by the Covenant as well as relevant international guidelines designed to prevent human rights violations through development and infrastructure projects. These include the Basic Principles and Guidelines on Development-Based Evictions and Displacement, the recommendations of the World Commission on Dams as well as the World Bank Safeguard Policies which are also used as a benchmark by export credit agencies.

Ignoring the above mentioned standards, **legislation on expropriation** (Law No. 2942) and **resettlement** (Law No. 5543) do not provide for the restoration of livelihoods and impose a high risk of impoverishment on dam affected people, as compensation paid for lost assets does not reflect replacement value and is too little to build up new means of existence. Resettlement programs are not open to all affected persons, constitute a high risk of indebtedness as they are loan-based and do not provide a secure title to the new houses. The laws therefore constitute a violation of the rights to food as well as housing.

Both laws do not provide for the participation of project affected people, an issue repeatedly dealt with by the Committee, e.g. in General Comments No. 15, para 48 on the right to water and General Comment No. 21, para 55 (e) describing participation of affected communities and the obtainment of their free and informed prior consent concerning the preservation of their cultural resources as a core obligation of State parties. Of special concern are the facts that art. 27 of the expropriation law allows for immediate expropriation even before court cases are dealt with, and that resettlers lose their entitlement to resettlement if they do not accept the resettlement site offered by the authorities.

Regulation on Environmental Impact Assessments (EIAs) further aggravates the situation as it defines various grounds on which project sponsors are exempt from the duty to provide an EIA which should allow for a certain degree of participation.

Further **environmental legislation** – notably recent changes to the Renewable Energy Resource Law as well as the draft Law on Nature and Biodiversity Conservation – infringes upon the rights to an adequate standard of living (art. 11), health (art. 12) and to take part in cultural life (art. 15). General Comments relating to all three articles state the importance of healthy natural environments¹, of sufficient and safe water for present and future generations²,

¹ Gen. Comm. 14 on health, para 12.2(b)

and of the availability of “nature’s gifts, such as seas, lakes, rivers, mountains, forests and nature reserves, including the flora and fauna found there, which give nations their character and biodiversity”³. By allowing the construction of dams and HEPPs in and near protected areas and by creating an administrative body authorized to revoke decisions by the local Boards for the Protection of Natural and Cultural Artefacts to establish nature protection areas, the laws constitute a retrogressive measure regarding the above mentioned rights.

Case studies of violations of economic, social and cultural rights

Case studies from various regions of Turkey illustrate the deficits in the legal system and constitute severe violations of economic, social and cultural rights in themselves.

The **Ilisu dam** on the Tigris river in Southeast Turkey will affect up to 78,000 mainly Kurdish people in Turkey and many thousands more downstream in Iraq. It will inundate 400 km of riverine ecosystem hosting dozens of threatened species, about 300 archaeological sites and the 12,000 year old town of Hasankeyf. The **Munzur valley** in Eastern Turkey is a protected nature reserve hosting 1,528 plant species out of which 227 are endemic to Turkey and 55 to the Munzur valley. 20 dams out of which 3 have been constructed threaten the reserve and the core of Alevi culture and will interrupt access between towns and villages. Like the Munzur valley, the **Çoruh river** and its tributaries is a highly attractive place for tourists which provide income for the region in Northeast Turkey. The valley hosts five different climatic zones offering very fertile conditions in the valley bottom allowing for three harvests a year. A series of dams including the large Yusufeli dam is planned which would destroy the riches of the valley and its inhabitants. The **Yortanlı dam** in Western Turkey led to the flooding of the Roman spa Allianoi in February 2011 despite court cases still pending. A small HEPP on the **Yuvarlakçay river** in the Southwest of Turkey threatened the water source of six villages; it is currently stopped due to massive protests by affected people and court decisions overturning several permissions for the project. **Nomads** are specifically affected by dams in the Göksu-Ergene-basin and the Tigris valley, as they will lose their livelihoods as well as their culture.

In all the cases studied, **participation** of the affected people was either non-existent or very inadequate. Nomads have not been informed at all about the numerous dams and HEPPs impacting on their lives. In case of the HEPP on the Yuvarlakçay river and the Arkun dam on upstream Çoruh river, villagers learned about the planned project when construction machinery appeared at the site. In other cases like the Ilisu dam and newly planned dams in the Munzur valley, public hearings took place, but partly under intimidating circumstances and without observable effect on the project planning. Alternative projects to save the cultural heritage of Allianoi and Hasankeyf as well as alternative proposals regarding the resettlement site for Ilisu were ignored by the State party, as well as the huge public protests sparked by the dam projects.

Expropriations in several cases were conducted on basis of art. 27 of the expropriation law No. 2942 allowing for evictions to go ahead before court cases are resolved. Expropriation money paid to owners of land and houses was very low in all cases with people striving to survive in cities throughout the country. Villagers of Ilisu have received some 20,000 Turkish lira (TL), while the new houses cost 70,000 TL. This severely infringes on the people’s right to an adequate standard of living including the right to food and housing.

In many cases the affected population was not offered any **resettlement** program at all, but was left on its own with the meagre compensation they had received. In cases where support of export credit agencies was envisaged (Yusufeli, Ilisu), resettlement action plans were

² Gen. Comm. 15 on water, para 28

³ Gen.Comm. 21 on the right to take part in cultural life, para. 16(a)

conducted but utterly failed to fulfil international standards and to protect the rights covered by the Covenant. Residents of Ilisu found the houses in New Ilisu of poor quality and unhealthy design, preventing them from growing food and raising livestock and without sustainable and adequate income opportunities accessible. Construction of the Yusufeli dam was re-initiated in 2010 despite the absence of feasible resettlement sites for 17,000 people. The resettlement practice of the State party therefore results in serious violations of the rights to food, housing and health.

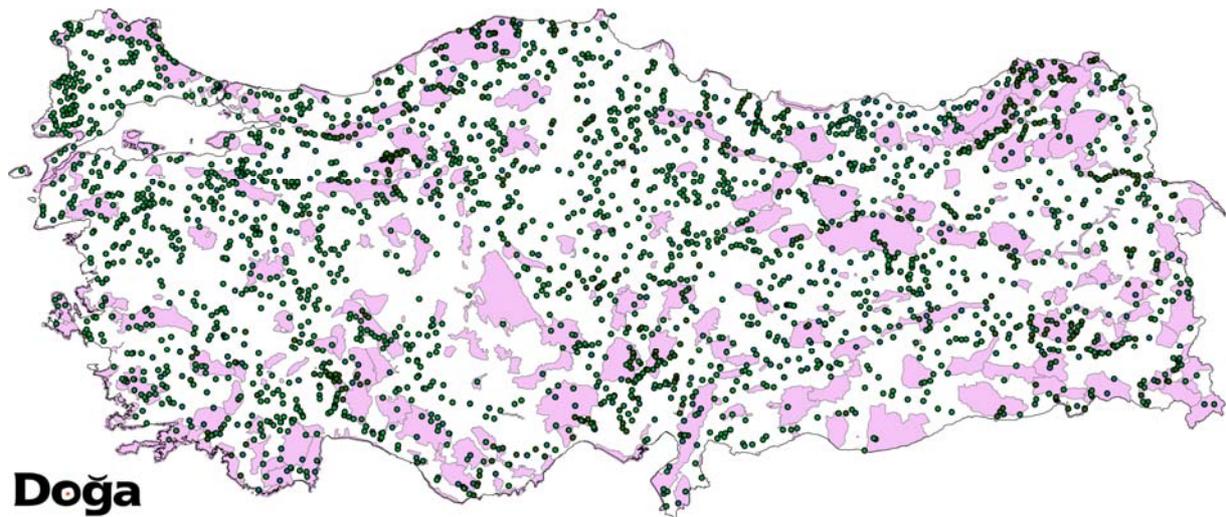
Large dam schemes like on the Tigris, Munzur and Çoruh rivers as well as small HEPPs like on the Yuvarlakçay river severely violate the **rights to water and to health** by destroying access to safe water, leading to a sharp deterioration of the water quality, and resulting in a huge loss of biodiversity. Furthermore all the case studies illustrate violations of the right to take part in **cultural life** by destroying access to cultural and natural sites; dams in the Göksu-Ergene and Tigris basins additionally infringe upon the cultural rights of the nomadic population by impeding the continuation of the nomadic lifestyle.

Although the vast majority of the affected population belongs to **vulnerable groups** like the rural poor, nomads, Alevi or Kurds, the State party fails to address this issue in violation of art. 2.2 of the Covenant. The State party also fails to fulfil its **extraterritorial obligations** in respecting the right to food and water in Iraq, where hundreds and thousands of farmers would be affected by construction of the Ilisu dam, as it has failed to conclude an agreement with the neighbouring country on a fair and equitable sharing of the water.

Introduction

The Committee on Economic, Social and Cultural Rights has addressed the issue of human rights impacts by large infrastructure projects including dams in its General Comment No. 7 on the right to adequate housing and General Comment No. 15 on the right to water, both of them relating to art. 11 of the Covenant on the right to an adequate standard of living. In addition, the Special Rapporteur on adequate housing, Miloon Kothari, has established Basic Principles and Guidelines on Development-Based Evictions and Displacement, which reflect on the right to adequate housing as a component of the right to an adequate standard of living and the right to non-discrimination in this context (E.CN.4/2006/41). Furthermore, the World Commission on Dams (WCD), which has comprehensively assessed how large dam projects infringe upon the rights of the affected population, has developed recommendations for the construction of dams⁴.

The State party is one of the major dam building countries in the world. It intends to build 1,783 dams and hydro-electric power plants (HEPP) by 2023 as well as 2,000 irrigation and drinking-water dams throughout the country, which may affect up to two million people⁵. Implementation of the projects goes ahead already, although no environmental or social impact assessments at the basin or country level were conducted and the impacts on the biodiversity and the rural population are therefore indetermined. It is therefore pivotal that at the earliest stage possible utmost attention is given to the protection of the rights enshrined in the Covenant to the affected population. However, as the analysis provided in this submission brings to light, projects currently under construction are accompanied by major violations of the economic, social and cultural rights of those affected. These stem from relevant legislation as well as its implementation which neither allow for participation in the project planning nor protect the population from violations of their right to an adequate standard of living, including to food, water and housing (art. 11), their right to the highest attainable standard of health (art. 12) and their right to take part in cultural life (art. 15). It is therefore of great importance that the issue of dam related human rights violations be included in due form in the Committee's assessment of the state party's compliance with the Covenant.



Map 1: Key Biodiversity Areas, planned dams and HEPPs.

⁴ www.dams.org

⁵ Turkish Water Assembly (2011): HEPP's, Dams and the Status of Nature in Turkey. http://anadoluyuvermeyecegiz.net/dosyalar/hepp_report_web.pdf

1. Comment on the State party's reply to question no. 26 in the list of issues (E/C.12/TUR/Q/1)

In its list of issues the Committee raised the following question regarding large infrastructure projects like the Ilisu dam:

26. Please indicate what policies and measures the State party has undertaken to ensure that the Covenant rights of people affected by large infrastructure construction projects, including the Ilisu dam, are protected.

In its response (E/C.12/TUR/Q/1/Add.1) the State party explains that in order to protect the rights of those affected by infrastructure projects **Expropriation Law (No. 2942)** and **Settlement Law (No. 5543)** are applied to expropriate and where required resettle the affected population. As stated earlier in a submission by CounterCurrent and the Initiative to Keep Hasankeyf Alive (http://www2.ohchr.org/english/bodies/cescr/docs/ngos/CCHI_Turkey_44.pdf), these laws are not adequate to safeguard the rights enshrined in the Covenant, as they do not prescribe the re-establishment of the previous standard of living which risks the impoverishment of the affected population. A more detailed analysis of these laws is contained in this submission.

The State party further contends that **Resettlement Action Plans** are prepared in large dam projects to ensure that resettlement takes place. However, while Resettlement Action Plans should be developed for ALL projects and not only for large dams, the case studies described in this submission show that in practice even in the case of large dams feasible Resettlement Actions Plans are either not developed or not known to the affected population.

Further concern rests with the quality of Resettlement Action Plans as the case of the Ilisu dam clearly demonstrates. In General Comment No. 7, para 18 the Committee states that full respect for guidelines like those by the World Bank and the Organisation for Economic Cooperation and Development (OECD) on relocation and/or resettlement is essential with a view to limiting the scale of and human suffering associated with forced evictions. As the governments of Germany, Austria and Switzerland which were requested to provide export credit guarantees for the project assessed the Ilisu project against the World Bank Safeguard Policies, these will also be used as a benchmark in the following analysis.

The Ilisu dam is a hydropower project planned on the Tigris river in Southeast Turkey. Up to 78,000 people will be affected by the project in Turkey, thousands more in the downstream neighbouring country Iraq. The Ilisu reservoir will inundate more than 400 km of river ecosystem as well as 300 archaeological sites, including the 12,000 year old town of Hasankeyf. The project stirred international attention due to a broad civil society campaign in Turkey and Europe and the governments of Germany, Austria and Switzerland in 2009 withdrew the export credit guarantees they had granted for the project in 2007 due to unmet conditions designed to bring the project in line with World Bank standards.

The **Ilisu Resettlement Action Plan (RAP)** which was prepared by the Turkish consultant company ENCON in 2005 is mainly based on the Turkish laws on expropriation and resettlement. While it describes deficiencies of these laws in fulfilling World Bank standards⁶, it does not propose any viable solutions to fill these gaps. In addition, the RAP is not legally binding, so that project affected people cannot enforce that promises made in the RAP are actually implemented.

⁶ General Directorate of State Hydraulic Works (DSI), Real Estate and Expropriation Department, Ilisu Consortium: Ilisu Dam and HEPP Project: Amendments on Updated Resettlement Action Plan (URAP), 12.1.2007, p.22. <http://www.designconsult.com/ilisu/page.php?modul=HTMLPages&pid=32>

Non-governmental organisations have provided detailed analysis on deficits of the RAP in fulfilling international standards⁷. In addition, Prof. Michael Cernea⁸, one of the leading social scientist in the field of population resettlement who has served as the World Bank's Senior Advisor for Social Policies and Sociology, assessed the RAP against internationally accepted policy principles and standards in resettlement like the guidelines on involuntary resettlement by the World Bank⁹ and the OECD¹⁰. He came to the conclusion that **“international lenders intent on consistency with accepted international policies and standards cannot regard this RAP version as ready for decision making (...) and starting actual project implementation.”** He states that “the most serious deficiencies of the RAP are: the absence of a full-planning for income restoration and the absence of an adequate plan and outline for creating the organisational set up and capacity for managing the enormous process of displacing, resettling and reconstructing the economic basis for over 54,000 people (likely more).” Prof. Cernea describes three fundamental issues: a) inadequacies in Turkey's Resettlement Policy and Legal Frameworks; b) the organizational set-up and management of the resettlement and reconstruction process (...); c) gaps, inconsistencies and certain fully inadequate chapters in the RAP.

Prof. Cernea determines that the RAP **does not commit to restore and improve the welfare and livelihoods** of the vast populations involved and that there is a “reverse tilt in the document to the means for displacement rather than to the means and end-goals of resettlement. Namely, the emphasis is primarily on the conduct of expropriation and dislocation of the population resident in the project area, while much less attention and detail are dedicated to (...) the proper and well-planned, tenacious reconstruction of the economic basis, productive systems and communities of the uprooted population.”

The RAP itself warns that no exact numbers on how many people will be affected by the project exist. As there is no substitute land available for the vast majority of project affected people which lives from agriculture, besides short term income at the construction site a training and consultation program to support local investment and development actions is considered most appropriate alongside with loans for the start-up of new business. These constitute a high risk of impoverishment for the population which has sacrificed all its land and assets for the construction of the project. As Prof. Cernea concludes the RAP “is not a plan for income restoration but a vague wishful thinking description of things that might happen”. Grievance and redress mechanisms are also inappropriate to protect the rights of the population.

In 2006, amendments to the RAP were provided by the Turkish authorities. The State party's answer leaves it open if it still endorses these amendments.

⁷ WEED / Erklärung von Bern / ECA Watch Austria: Vergleich türkischer Gesetze und des Ilisu-Umsiedlungsplans mit internationalen Standards http://www2.weed-online.org/uploads/ilisu_vergleich_internationalestandards_2006_09_14.pdf

Eberlein, Christine (2007) Evaluation of the Terms of Reference on resettlement and their implementation for the Ilisu Dam Project in Turkey. Submitted by Berne Declaration (BD/EvB), Switzerland, WEED, Germany, ECA-Watch Austria. http://m-h-s.org/ilisu/upload/PDF/Analysen/ToR_Ilisu_Evaluation_resettlement_2007-09-11-1.pdf

⁸ Prof. M. Cernea: Comments on the Resettlement Action Plan for the Ilisu Dam and HEPP Project. Prepared for The Berne Declaration, Switzerland and the Ilisu Campaign Europe, 23rd Feb. 2006. http://www2.weed-online.org/uploads/Ilisu%20RAP_Cernea%2002-2006%20fin2.pdf

⁹ The World Bank, OP/BP (Operations Policy and Bank Procedures) on Involuntary Resettlement No. 4.12, Washington DC: 2001.

¹⁰ OECD (Organization of Economic Cooperation and Development) Development Assistance Committee, Policy Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects, No. 3. OECD, Paris: 1992.

However, as the export credit agencies from Germany, Austria and Switzerland found the RAP even with the amendments not in line with international standards, they attached 153 conditions to the export credit guarantees which they granted for the project in 2007. While non-governmental organisations hold that even with these conditions World Bank standards would not be fulfilled, the ECAs found in 2009 that the conditions were not implemented by the Turkish authorities, which triggered the withdrawal of the export credit guarantees, an unprecedented measure in the realm of export finance¹¹.

We conclude that the Resettlement Action Plan for the Ilisu dam project shows huge deficiencies in fulfilling World Bank standards and thus is not an adequate instrument to ensure that the rights covered by the Covenant are protected. The fact that the State party does not even commit to implement the conditions already agreed upon with the European export credit agencies to heal some of the RAP's deficits is of additional concern and substantiates the assessment by project affected people and non-governmental organisations that the rights to food, water, housing, health and to take part in cultural life will be violated by the implementation of the Ilisu project.

¹¹ http://www.agaportal.de/en/aga/nachhaltigkeit/umwelt/projekt/ilisu/presseinfo/2009-07-07_ilisu.html

2. Economic, social and cultural rights and dam building in Turkey

2.1 The right to an adequate standard of living (Art. 11)

In article 11 of the Covenant States Parties recognize the right of everyone to an adequate standard of living, including adequate food, water and housing, and to the continuous improvement of living conditions. The right to an adequate standard of living is further explained in the General Comments No. 4 and 7 on the right to housing, General Comment No. 12 on the right to food and General Comment No. 15 on the right to water. Further guidance is contained in the Basic Principles and Guidelines on Development-Based Evictions and Displacement established by the Special Rapporteur on adequate housing, Miloon Kothari, in 2006.

The analysis of the State Party's legislation relating to dam construction and the case studies contained in this submission illustrate that the State party's dam building policy and practice fail to respect the right to an adequate standard of living and partially include retrogressive measures not in line with the Covenant.

2.1.1 The State party's Legislation and the right to an adequate standard of living

2.1.1.1 Turkish legislation on expropriation

In its General Comment No. 7 on housing the Committee has established that forced evictions must be avoided or at least minimized by all means. Whenever they are inevitable they must be conducted in a way "compatible with the nature of these [i.e. economic, social and cultural] rights"¹². The Basic Principles and Guidelines on Development-Based Evictions and Displacement (hereafter: Basic Principles) establish further criteria for a human rights oriented conduct of evictions¹³. As stated above, the Committee in its General Comment No.

¹² General Comment No. 7 stresses inter alia that forced eviction should be minimized to the greatest extent possible. It obliges States to ensure that no form of discrimination is involved, that all feasible alternatives are explored in consultation with the affected persons, and that all affected persons have the right to adequate compensation. The State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land is available. (General Comment No. 7, paras 10, 13 and 16)

¹³ The Basic Principles and Guidelines on Development-Based Evictions and Displacement (hereafter: Basic Principles) stress that all persons, groups and communities have the right to resettlement including the right to alternative land of better or equal quality and to adequate housing, including livelihood sources. Compensation should also cover lost opportunities, including employment, and land-to-land compensation should be prioritized. The Basic Principles state that differential impacts on marginalized sectors of society must be assessed; that timely and appropriate information to groups particularly vulnerable must be given; and the whole process should be conducted with full consultation and participation throughout the entire process. The Basic Principles clearly state that no resettlement shall take place until a comprehensive resettlement policy consistent with the Basic Principles and internationally recognized human rights principles is in place; that the right to the

7 also considers the fulfilment of international guidelines like those of the World Bank essential.

International experts, non-governmental organisations and even the Resettlement Action Plan for the Ilisu dam project¹⁴ conclude that Turkish legislation fails to provide for the key objective of resettlement planning as perceived by the World Bank: to restore and improve the welfare and livelihoods of the displaced persons. As the World Bank has learned from numerous failed projects around the world, large-scale resettlement projects tend to fail if resettlement is not planned as a development project and well designed BEFORE construction starts. According to former World Bank expert Prof. Michael Cernea expropriation and resettlement should not be dealt with in separate laws but every expropriation should be implemented together with the entailed resettlement and economic reconstruction¹⁵. The Turkish laws however split expropriation and resettlement into two separate processes. Households need to decide whether they opt for self-resettlement which usually means moving to a city with the (usually insufficient) cash compensation they have received – or for government resettlement offering the chance to stay close to their ancestral land, but prone to the restrictions and risks described below.

The **Law on Expropriation No. 2942** regulates compensation levels for people who lose their assets due to an infrastructure project. However, the law is far from being in line with General Comment No. 7 and the Basic Principles. Owners of immovable property receive the market value of their material assets as compensation which cannot be considered “adequate” as stipulated in General Comment No. 7. The market value of e.g. a clay house and few hectares of land in a remote area will by far not be enough to buy a house and new land in the surrounding towns, especially as prices tend to rise sharply in the surrounding area as soon as the influx of resettlers is expected. This is why international standards like those of the World Bank prescribe compensation of the replacement value of lost assets. Furthermore, the loss of business opportunities is not compensated for, in contrast to the Basic Principles. This leaves people affected by dam projects with a gap in their income which in most cases will be hard to overcome.

Like General Comment No. 7 and the Basic Principles, General Comment No. 15 on water also puts great emphasis on the **participation and consultation** of the project affected population. As article 56 states: “Before any action that interferes with an individual’s right to water is carried out by the State party, or by any other third party, the relevant authorities must ensure that such actions are performed in a manner warranted by law, compatible with the Covenant, and that comprises: (a) opportunity for genuine consultation with those affected; (b) timely and full disclosure of information on the proposed measures; (c) reasonable notice of proposed actions; (d) legal recourse and remedies for those affected; (...)”.

According to law No. 2942, **expropriation is possible and done in many cases without the participation of the owners**. A value commission consisting of architects and engineers appraises the value of the immovable property without any active participation of the owner. Afterwards, a bargaining process with the owner takes place. If the owner agrees to compensation below the value appraised by the commission, the expropriation is done and cannot be appealed. If no agreement is reached, a court will determine the compensation amount, usually going along with the appraisal, and orders the registration of the

continuous improvement of living conditions may not be infringed upon; and affected persons, groups and communities’ right to full and prior informed consent regarding relocation must be guaranteed.

¹⁴ Cf. chapter 1 of this submission and footnotes 6 to 8

¹⁵ Prof. M. Cernea, cf. footnote 8

expropriation with the title deed office. Once this is done, evacuation can take place even when objections and complaints of the owner are still pending.

It is of further concern that **Article 27 of the expropriation law allows for immediate expropriation** in cases that Cabinet decrees an emergency as per the provisions of the Law on National Defense Obligations No. 3634. Expropriations for dam projects have repeatedly been conducted by use of this article. The courts order the expropriation money - appraised by the value commission - to be deposited in an account on behalf of the owner. The owners themselves are not heard in this process. Only after the expropriation is conducted, they can go to the courts to contest the compensation value. As experience by the Turkish Water Assembly shows, the quality of the expropriated land is often inadequately taken into account and it usually takes at least a year until court cases are opened. Thus participation of the affected population is prevented by this article.

We conclude therefore that the law on expropriation No. 2942 does not provide for the participation of the affected population as stipulated in General Comments No.7 and 15 as well as the Basic Principles and Guidelines on Development-Based Evictions and Displacement. This is especially relevant in case of immediate expropriation under art. 27 of the law. Nor does the law provide expropriated people with sufficient financial means to restore their livelihoods and obtain an adequate standard of living according to art. 11 of the Covenant.

2.1.1.2 Turkish legislation on resettlement

The new **Settlement Law No. 5543** which regulates the resettlement of those households that opt for government resettlement was enacted in 2006. Despite this recent date, it ignores what has become generally accepted as prerequisites for human rights oriented resettlement¹⁶:

- There is no provision for livelihoods having to be restored and benefits shared, for analysing risks and mitigating them, nor for minimizing resettlement. Neither a comprehensive resettlement plan nor an income restoration strategy are required.
- There is no provision for informing the affected people about their options and rights pertaining to resettlement.
- Participation of affected people in the planning of projects that are to completely uproot their lives is not provided for. Consultation of affected people on choices of technically and economically feasible resettlement alternatives is not envisaged. A resettlement commission composed of officials from different departments is authorized to determine who will be resettled and to decide on the allocation of immovable property.
- Displaced families cannot influence the resettlement location. If they do not accept the site offered by the Ministry, they lose the entitlement to be resettled.
- People who own land or infrastructure and choose resettlement have to agree that their compensation will be deposited into a resettlement fund. If the resettlement location determined by the authority is more expensive, displaced persons have to pay the difference themselves, but may take a loan to cover this expense. In case of non-payment of the debt service, the property falls back to the Treasury.

¹⁶ Cf. Footnote 12 on General Comment No. 7, Footnote 13 on the Basic Principles and Guidelines on Development-Based Evictions and Displacement, Eberlein (2007) *ibid.*, Cernea (2006) *ibid.*

- Affected people have to apply for resettlement within 90 days after the end of the announcement period. Afterwards, the right of resettlement is lost forever. However, there is no deadline for when court cases regarding resettlement issues have to be settled.
- Affected people are forbidden to sell, sublet, or mortgage the new house/flat/property for the next 10 years and must live at their allocated site and pay rent to the government, otherwise they lose their entitlement. They will only become owners of their allocated property after 10 years.
- Beyond the payment of expropriation money, only loans are offered to affected people to establish new income. Loans for the replacement of economic opportunities, like agricultural loans or loans to set up a business, are charged with interest. Loan based income restoration measures are seen as completely insufficient by the World Bank, as they bear the high risk of long term indebtedness and impoverishment of large parts of the affected population.
- Preference for land-to-land resettlement strategies for displaced persons whose livelihoods are land-based is not envisaged.
- Certain groups are not entitled to resettlement, e.g. artisans and small traders earning more than 12 times the minimum official wage annually; government officers or permanent workers in government agencies who reside in the expropriation area; people who sold their immovable property within the past 3 years before the announcement of the resettlement and did not acquire new property of the same value; people who have not lived on the land at a certain cut-off-date, which may exclude those who have involuntarily left their homes due to the armed clashes in the 1990ies and will be deprived of the chances to return by the inundation of the area, thus perpetuating their vulnerability; immigrants not belonging to the “Turkish culture” (as specified in the law).
- There is no special focus on vulnerable groups.
- There are no provisions for grievance and redress mechanisms.

We conclude that the law on settlement No. 5543 does neither provide for the minimization of resettlement nor for livelihoods to be restored or improved and thus violates the right to housing as described in General Comment No.7 and the Basic Principles and Guidelines on Development-Based Evictions and Displacement. By offering only loan based income restoration measures, it leaves resettlers with a high risk of indebtedness, preventing them from reaching an adequate standard of living according to art. 11 of the Covenant. The law furthermore infringes on the right to housing by excluding certain groups from resettlement and withdrawing property titles if settlers rent, sell or mortgage the houses or cannot serve their debts. By not providing for resettlement being conducted with the full and prior informed consent of the affected population it further violates the Basic Principles.

2.1.1.3 Turkish environmental legislation

Environmental legislation affects the right to an adequate standard of living in two ways: a) regarding the right to genuine public consultation as described in General Comment No. 15, para 56, and b) regarding the right to safe water for present and future generations as described in General Comment No. 15, para 28.

While there is no provision for Social Impact Assessments (SIA) under Turkish legislation, differing procedures exist for **Environmental Impact Assessments (EIA)**. The main legislation is the Law on Environment No. 2872; regulation on EIAs is issued under Article 10 of this Law. Although according to the law the responsible bodies should allow for the **participation of civil society**, in practice this is prevented by several factors.

- Projects that were designed before 1997 are exempt from an EIA.
- Since 2008, provincial environmental committees within the governors' offices are authorized to decide whether an EIA is needed or not for dams and hydro-electric power plants (HEPP) below 25 MW, while before projects below 10 MW were exempt from an EIA. Since 1993, 26,000 projects were found not to be in need of an EIA. The Yuvarlakçay case described below shows how even small HEPPs can impact on the right to food and water; an exemption from a meaningful environmental impact assessment process therefore directly paves the way for breaches of the rights covered by the Covenant.
- Regulation on how participation and consultation are to take place to be meaningful is lacking. In practice even for large dams no effective participation took place and EIAs are – if they were conducted – not available to the affected population. For example, the EIA for the Ilisu dam project was only made available in Turkish after the European Ilisu Campaign had pressured the European governments considering support for the project to demand its publication in Turkish.

One of the State Party's obligations to fulfil as described in General Comment No. 15 on the right to water, para 28, is to “adopt comprehensive and integrated strategies and programmes to **ensure that there is sufficient and safe water for present and future generations**”, explicitly mentioning “(d) ensuring that proposed developments do not interfere with access to adequate water; (e) assessing the impacts of actions that may impinge upon water availability and **natural ecosystems watersheds**, such as climate changes, desertification and increased soil salinity, deforestation and loss of biodiversity” as elements of these strategies and programmes.

Environmental legislation recently changed or currently under preparation by the State party, notably the Renewable Energy Resource Law and draft Law on Nature and Biodiversity Conservation, raises great concern on the State party's fulfilment of this obligation.

In December 2010, the State party decided on changes to the **Renewable Energy Resource Law** which allows for the construction of dams, HEPPs and other energy projects in and near nature preserves.

According to the amendment No. 6094/5 from 29 December 2010,

“[i]t is permitted to construct electric power production facilities based on renewable energy resources on national parks, nature parks, natural monuments, nature protection areas, protected forests, wildlife protection and development areas and special environment protection areas. Permissions will be given with the positive opinion of the responsible Commission of the protected area.”

In Article 3, Paragraph 11 “renewable energy resources” are defined as “wind, sun, geothermal energy, biomass, gas produced from biomass (including waste), waves, stream energy and tide turns are resources of electric power production that are appropriate to establish tunnel or run-of-the-river hydroelectric centrals or dams with a reservoir of less than 15 km squares.”

By this law, national parks, nature parks, natural monuments, natural protection areas, protected forests, wildlife protection and development areas and special environmental protection areas have become available for any facility to produce electricity by renewable energy resources.

In addition, a draft “**Law on Nature and Biodiversity Conservation**” was presented to the Turkish parliament by the Ministry of Environment at the end of 2010 which may lead to the protection status of all nature preserves being revoked.

According to art. 6 of the current draft, a to-be-founded “National Biological Diversity Board” will be established, in which representatives of national ministries and agencies including those in charge of dam construction, mining, agriculture and housing will have the voting majority. The Board will have authority over registered protected areas and would be tasked with determining whether they should keep their protected status. It will thus be able to overturn decisions by the local Boards of Protection to establish nature protection areas which until now had the sole authority to do so.

Nature Conservation organisations are deeply concerned that central concepts of the act have been re-defined compared to the previous act in a way to open the path for the utilisation of the resources, including for investments with the potential to devastate nature instead of conserving biodiversity (art. 1, 2, 3 and 4 of the draft). Also, crucial issues relating to definitions and implementation of the act are left to regulations to be drafted at a later stage, seriously weakening the main aim and effectiveness of the draft.

Although the draft law itself states that “transparency and a sufficient level of participation shall be ensured at the decision-making process of the management of nature and biodiversity”, preparation of the draft law was not participatory. It was almost impossible for civil society organisations to get information regarding the legislative process.

Environmental organisations see a direct relation between the speedy and clandestine legislative process and the initiative by the Trabzon Board for the Protection of Cultural and Natural Artefacts in Northern Turkey to cancel 22 planned hydroelectric power plants in İkizdere Valley by declaring the area a Natural Site.

The two laws are intended to form the **basis for implementation of the State party’s plans** to construct 1,738 dams and hydroelectric power plants by 2023 as well as 2,000 irrigation and drinking-water dams. The Turkish Water Assembly estimates that around 10,000 kilometres of rivers will be converted into reservoirs leaving hardly any healthy free-flowing river systems in the country. As no environmental nor social impact assessments at the basin or country level were conducted, it is completely unknown how these dams will impact the biodiversity and the people living in the countryside, while at the same time the implementation of the projects goes ahead.¹⁷

The Turkish Water Assembly therefore fears that more than 100 endemic plants could go extinct and additionally numerous bird, amphibian and mammal species in Turkey could disappear or sharply decline due to the construction of dams and HEPPs. As stated below,

¹⁷ Turkish Water Assembly (2011): HEPP’s, Dams and the Status of Nature in Turkey. http://adoluyvermeyecigiz.net/dosyalar/hepp_report_web.pdf

further impacts are to be expected on the quality of the water caught in reservoirs affecting human health and on water availability downstream of dams.

Some examples of biodiversity hotspots under threat are presented further below.

We conclude that changes made to the Renewable Energy Resource Law and the draft Law on Nature and Biodiversity Conservation constitute retrogressive measures in respect to protecting safe water and biodiversity for current and future generations as described in General Comment No. 15, para 28. Thus they constitute a violation of the State party's core obligations to fulfil the right to water.

We further conclude that the drafting process of the Law on Nature and Biodiversity Conservation as well as the Regulation on Environmental Impact Assessments provided for in the Law on Environment No. 2872 do not fulfil affected peoples' right to meaningful participation as described in General Comment No. 15, para 56.

2.1.2 Case studies

The following case studies constitute major concerns in themselves about the failure of the State party to respect the right to an adequate standard of living for dam affected people and at the same time further highlight the deficiencies of the State party's legislation.

2.1.2.1 Case Study 1: The Ilisu dam



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Basics: The Ilisu dam is a 12,000 MW hydropower project planned on the Tigris river in Southeast Turkey. Up to 78,000 people, mainly Kurds, but also members of other ethnic origin (Aramean, Arab) and Turks, will be affected by the project in Turkey. Thousands more will be affected in the downstream neighbouring country Iraq. The 313 km² reservoir will inundate the habitat of numerous species, several of them, like the Euphrates soft shell turtle, endangered, and 300 archaeological sites, including the 12,000 year old town of Hasankeyf.

Despite the withdrawal of export credit guarantees by the governments of Germany, Austria and Switzerland on grounds of unmet conditions intending to bring the project up to international standards in July 2009, the State party continues construction of the dam without an orientation towards human rights protection. The planning process as well as the current implementation show a continuous neglect to fulfil the standards established by the Committee and the Basic Principles.

Lack of participation: Although in reaction to the European ECAs' demand for participation of the population some consultations were held, they were not conducted in an environment that allowed for freedom of expression. After many years of armed clashes between security forces and the Kurdish Workers' Party PKK and prevailing human rights violations in the region, people were intimidated by security forces sitting in consultation meetings. Furthermore, the state authorities threatened to terminate the meetings if people continued to voice their opposition against the project. In addition several military posts around the construction site were established, leading to a further militarization of the area.

Also, although the Turkish Water Authority (DSI) agreed to take peoples' views on the resettlement site for the village of Ilisu into account when visiting the place with international experts, it did not keep these promises and decided itself on the place of the new resettlement area without any participation of the affected population. The resettlement site had insistently been objected by the villagers as it was not seen fit for agricultural purposes.

Current state: Construction at the dam site and the resettlement sites for the villages to be affected first (including Ilisu) as well as for Hasankeyf, the only town in the reservoir area, was started in 2010.

Expropriation in Ilisu: Expropriations near the construction site (Ilisu and Karabayır villages) started in 2008 on the basis of article 27 of the expropriation law, allowing for immediate expropriation and further impeding participation and legal redress mechanisms (see above). In February 2011, the expropriation announcement for two more villages in the area (Ilica and Koçtepe) was made in the official gazette, also referring to article 27¹⁸.

Villagers of Ilisu had to move into the new houses at the end of 2010, as life in the old village got insupportable by the dust and noise created by the construction site. While villagers received some 20,000 to 35,000 Turkish Lira as compensation for their old houses, they are charged 70,000 Lira for the new houses. As the Turkish newspapers *Hürriyet* and *Radikal* report, compensation for their land has been taken even for orchards with trees hundreds of years old. Many family members ended up with shares of 2,000 Lira which will soon be spent on daily needs.¹⁹

Life in New Ilisu – inadequate housing, lack of income²⁰: Villagers contend that the houses are of very poor quality and not adapted to their needs. For example, sheds for livestock were built next to the kitchens which rendered them unusable.

In New Ilisu there is no land to grow grains for the livestock, as all the fields in the vicinity are owned by people from other villages. As there were no suitable sheds built for the animals, the villagers were forced to sell their livestock before moving to the new place. In New Ilisu it is forbidden to grow vegetables, which is especially hard for the former subsistence farmers.

Up to now, no income restoration measures have been conducted; neither the land, nor suitable sheds nor the greenhouses that were promised in reaction to the European ECAs' demand have been provided. Nor have any training courses as described in the RAP been conducted. Grievance procedures or other sorts of redress mechanisms are lacking as well.

Income is derived from some work on the construction site. Wages are very low though. In early 2011, unrest took place at the construction site which in consequence was closed for some days as local workers protested the presence of workers from other parts of the country earning much higher wages than themselves²¹. The low wages will make it impossible to serve the debt incurred for the new houses. Once construction is over, villagers will be forced to search for work in the metropolises of the country. By doing so, working individuals will have to leave their families, or else, if the families move, they will lose the entitlement to the new houses. So many of the inhabitants of New Ilisu are facing ruin with huge debts and no place to go.

Thousands more affected: As not even in the case of Ilisu and the other villages closest to the construction site adequate income restoration measures have been implemented, it is of great concern that at least 11,000 more people will lose all their land and houses in the Ilisu reservoir, while estimates regarding the total number of affected people in Turkey range from

¹⁸ *Rezmi Gazete*, 16 February 2011, announcing decision No 2011/1402 from February 1st, 2011.

¹⁹ <http://www.hurriyetdailynews.com/n.php?n=an-absurd-village-for-Ilisu-villagers-2010-12-13>

²⁰ This paragraph is based on the article mentioned in footnote 18 and sporadic interviews with villagers. We note that it is difficult to obtain first hand information as villagers appear very intimidated by the heavy military presence in the area and access to the site is difficult due to its remoteness and strict controls by the military.

²¹ *Firat News Agency*, 10 March 2011.

55,000 to 85,000. The situation for them will be even worse without work at the construction site providing at least a small income.

The fate of Hasankeyf: Inhabitants of Hasankeyf 77 km upstream of the dam site are especially affected as the town completely depends on tourism. With the inundation of the town, people will lose their income²². The State party states that some of the monuments will be transferred to an archaeological park. However, after many years of research, there is still no evidence that the relocation of the monuments is feasible. Furthermore, the design of the archaeological park has been disqualified by the international experts working for the European ECAs as not being fit to attract tourists.

In addition, inhabitants of the village Kesmeköprü III were expropriated in 2009 to make space for the relocation of the antique town of Hasankeyf. The compensation awarded to them left them with an amount totally inadequate to start a new life (43 ct per square meter), as their land was classified as pasture, while it is actually also used for agriculture and will be sold as construction land at much higher amounts. Acquiring apartments in the surrounding towns would cost several times the amounts they received.²³

Villagers around Hasankeyf have been summoned to apply for relocation in December 2010. According to state plans resettlement houses will be built for them at the “New Hasankeyf” site. However, social tensions between the inhabitants of Hasankeyf, mostly of Arab origin, and the surrounding villages are common so that people of Hasankeyf are very reluctant to be resettled at the same site as the neighbouring villages. Nonetheless, no consultation was conducted and the affected population again was not able to participate in the resettlement planning.

Extraterritorial impacts: Another issue of major concern are the impacts on the right to food and water of the farmers downstream in Iraq. The issue will be dealt with further in the section on the State party’s extraterritorial obligations.

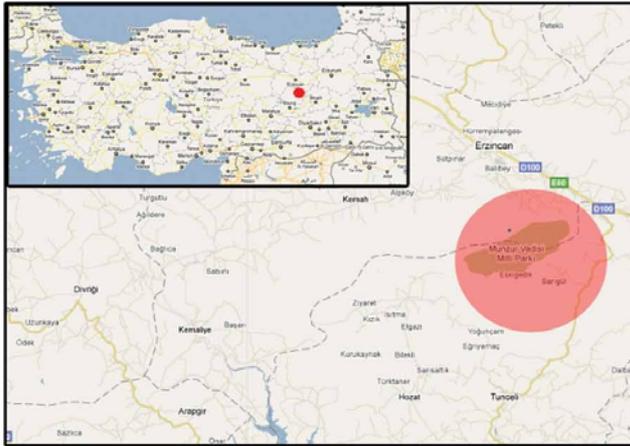
We conclude that construction of the Ilisu dam has been started without meaningful participation of the affected population violating the rights to food and to housing²⁴. Expropriation and resettlement near the construction site further violate the right to an adequate standard of living as they were conducted without any measures in place to avoid impoverishment. A severe infringement on the right to food occurs from the fact that subsistence agriculture is not possible anymore. Resettlers are highly indebted and face a deadlock from not having access to substitute land, nor to sustainable income restoration measures, nor being able to leave without losing their entitlement to the houses. Construction of the houses not according to the needs of the families and of poor quality constitutes a further violation of the right to housing. The fact that 50,000 to 78,000 more people will be affected without feasible income restoration measures being designed is utterly disturbing.

²² After a rockfall on 13 July 2010 most of the tourist attractions, including the Roman fortress on the cliff, and access to restaurants on the river bench were closed by the State authorities leaving residents in a very precarious situation. Fortunately, the authorities have reacted to local protests and announced to re-open the sites in April 2011.

²³ <http://www.swr.de/blog/tuerkei/2009/12/08/der-Ilisu-staudamm-verstaatlichung-auf-tuerkisch/>, <http://www.gegenstroemung.org/drupal/node/67>

²⁴ The Basic Principles and Guidelines on Development-Based Evictions and Displacement demand full and prior informed consent of those affected; General Comment No. 7, paras 13 and 15.

2.1.2.2 Case Study 2: The Munzur Valley



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8 large and 12 smaller dams are planned on the Munzur river in the province of Dersim (Tunceli). Out of these, one small dam is under construction and three have been finished, including the large Uzunçayır dam which was impounded in fall 2009. Two large dams, Konaktepe I and II, are currently suspended by court decisions as no development plan for the river basin has been designed. All hydro-electric power plants in Dersim combined have a designated capacity of 534 MW by expected costs of 1,4 bn EUR²⁵ (compared to the Ilisu dam which is designed to produce 1.200 MW by 1.2 to 2 bn EUR construction costs).

The construction of the dams would have severe economic impacts on the population, as the valley of the Munzur and its tributaries is protected as a nature reserve. The whole region depends on the tourism attracted by the natural beauty of the area. The inundation of the river valleys would severely impair its attractiveness and reduce the income in the region.

The Uzunçayır reservoir flooded several villages; inhabitants were expropriated according to Turkish legislation. If all of the planned dams should be constructed, 84 more villages will be displaced and lose their houses, fields and pasture for their livestock in the reservoirs. No expropriations were conducted until now except for those dams under construction, but as experience with other dam projects shows, compensation amounts will not be sufficient to resettle and generate new income without additional support. Although construction of some dams has been started, the affected population, mostly small landowners, has been neither informed of any resettlement options nor offered any income restoration measures.

The Uzunçayır reservoir divides the provincial capital Dersim into two parts. Should the other dams be built and the river be turned into a sequence of reservoirs, these will separate the district cities from the capital. It is unclear if alternative roads will be built to all affected settlements. This will infringe on the possibilities of inhabitants of the smaller towns to access medical services and higher education which can only be found in the provincial capital. Residents of the city Dersim will be affected by losing access to the Munzur river and the towns hinterland, and by construction of the Pülümür dam which is planned in the municipal area. In addition, severe health impacts must be expected, as the town will be surrounded by dam reservoirs (cf. section 2.2).

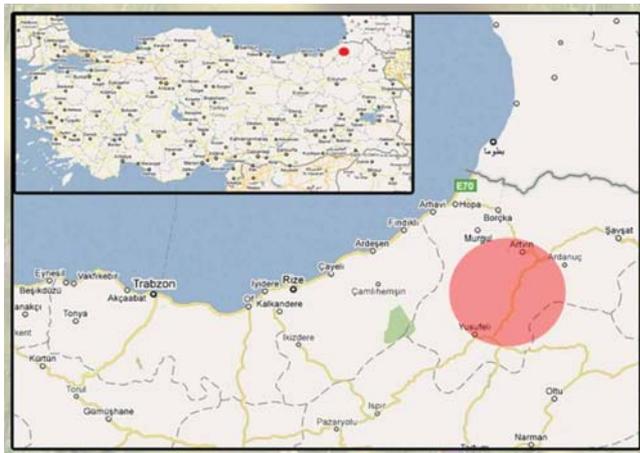
²⁵ Turna, Celal: The Munzur Valley and the Problem of Dams, Tunceli Solidarity commission and Dersim Initiative, Istanbul 2009

Despite the massive impacts on its lives, the affected population was completely denied any participation in the planning of the dams and the resettlement of the eight large dams. As according to Turkish legislation no Environmental Impact Assessments (EIAs) are necessary for projects planned before 1997, neither EIAs nor Resettlement Action Plans were conceived. For at least 3 out of the 12 newly planned HEPP, EIAs were conducted and public meetings held with the attendance of hundreds of residents and community representatives. Participants almost unanimously voted against the construction of the HEPPs. It is unclear though in which way the position of the affected population will be addressed by the State authorities.

Resistance against the dams and HEPP is widespread in the region. On 10 October 2009 20,000 people demonstrated against the Uzunçayır and other dams, making up the largest manifestation on an environmental issue in Turkey up to today. On 8 January 2011 another manifestation took place with 10,000 participants against the commissioning of a Turkish company to build the Pülümür dam at the end of December 2010.

We conclude that the Munzur dams will uproot the communities of the valley and severely infringe upon the right to an adequate standard of living, including the rights to food, water and housing, by depriving the valley of its natural wealth and income generated from it. Participation and expropriation for projects in operation have been insufficient to non-existent; participation for dams currently under preparation was improved, but sincere doubts on its meaningfulness persist and there is no indication that the State party is intending to obtain the full and prior informed consent of the affected population.

2.1.2.3 Case Study 3: The Çoruh River



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The Çoruh river runs from near Erzurum in Northeast Turkey through the province of Artvin in the neighbouring country Georgia where it flows into the Black Sea. Several large dams on the Çoruh and its tributaries as well as 170 HEPP in the province of Artvin alone are planned. Upstream from the Georgian border, two large dams have already been built: Muratlı (completed in 2005) and Borçka (completed in 2006). A third major dam, Deriner, is under construction since 1998 and scheduled to be completed this year²⁶. Further large dams include

²⁶ <http://www.derinerprojesi.com/en/Deriner-Baraji.aspx>. Accessed 03/03/2011

the Artvin and Yusufeli dams on the middle part of the river and the Laleli, Işpir, Güllübağ, Aksu und Arkun projects upstream.

The Çoruh valley is famous for its **natural beauty and high biodiversity**. It is world-famous for its rafting opportunities and the beauty of the surrounding mountains attracts many tourists as well. Due to the mild climate and fertile ground in the valley, the agricultural productivity is very high. Fruit, olives, rice and other produce flourishes, enabling three harvests per year. Olive oil from the region has won international awards.

Approximately 30 villages have been **expropriated** for the dams already built. As no surveys were conducted, the exact number of affected people is unknown. Most people have moved to the provincial capital Artvin or other cities throughout the country where they are striving to survive. Expropriation amounts paid to land owners were higher per acre as in Central Anatolia, however, as families usually only owned small albeit productive plots, the total amounts were small. While some land owners still await payment of their compensation, residents who did not own land were left without any compensation or support whatsoever to find a new life as no resettlement or income restoration scheme was developed.

Although the dam projects in the Çoruh basin are propagated as a huge state investment for the development of the region, a sharp **population decrease** in the province of Artvin from 192,000 in 2000 to 164,000 in 2010 is noted. The insecurity of the population about their fate in the wake of the projected dams is seen as a major cause for this, highlighting the lack of a genuine scheme to share the benefits of the projects with the affected population.

No meaningful participation of the population occurred. On the contrast: On 11 March 2011 the governor of Artvin province **prohibited a public hearing** on the impacts of dams and hydro-electric power plants organised by the Green Artvin Society. In the case of the Arkun dam for which preliminary construction started in 2010, people learned about the project when machinery was detected in the area. Although there are no villages in the reservoir area as it is situated far upstream, the area is used as pasture and the land users should have been notified and consulted.

The centrepiece of the Çoruh dam projects is the **Yusufeli dam**. The project was stalled temporarily in 2004 and again in 2008, when the export credit agencies (ECAs) from Switzerland and France announced that they would only grant guarantees for the project under conditions derived from international standards²⁷. The State party in consequence refrained from drawing on the ECA backed financing and in 2010 acquired funding from Turkish sources. Preparations for the construction site and road building were initiated. About 17,000 people are directly affected by the Yusufeli dam, including the 7,000 inhabitants of the district capital Yusufeli. A Resettlement Action Plan was drafted for the European ECAs in 2006/7. Site visits at the projected resettlement site uphill from the reservoir revealed however that the ground was completely inadequate. In the mountainous extremely rocky area it would not even be possible “to dig a grave”, as villagers contended. Agricultural experts confirmed that a permanent conversion of the site into farmland was impossible even with huge investment. As road construction in the steep mountains would demand tremendous costs not provided for in the state budget, residents feared that the resettlement sites – as well as villages cut off from the district centre by the reservoir – would not or only partially be connected to the outside world. Up to date, no other resettlement site has been found. Notwithstanding construction has been initiated again.

Dams in the Çoruh valley violate the right to an adequate standard of living in several respects: They threaten to flood highly productive agricultural land. Past expropriation

²⁷ For more information on the Yusufeli dam and envisaged ECA support cf. Berne Declaration: <http://www.evb.ch/p17384.html>

utterly failed to compensate for the loss of this land. The fact that the State party has re-initiated construction work on the Yusufeli dam without having presented a resettlement site for the affected population is utterly disturbing. Equally, the Arkun dam highlights that the lack of participation of the affected population is still ongoing even for projects for which construction is being started in 2010.

2.1.2.4 Case Study 4: The Yortanlı Dam



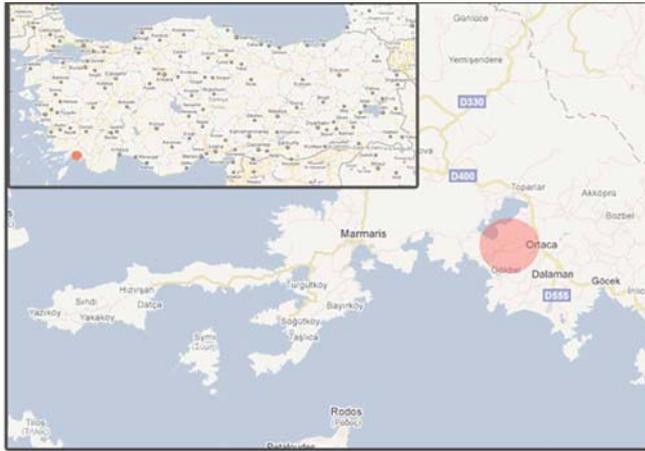
© Doğa Derneği

The Yortanlı dam on the Yortan river is planned for irrigation of the Kınık area in the West of Turkey. It achieved international attention as it threatened to inundate the Allianoi archaeological site described in section 2.3. About 1,500 people in the reservoir were affected, the two villages of Paşaköy and Çaltıköy were completely evacuated. Expropriation was conducted in two stages, with lower compensation paid in the second stage. The mostly poor farmers convey that they were not informed of their rights and a “hidden message to take the money now or never” was conveyed to them by the state officials, so that they felt too powerless to contest the decrease in compensation. Residents were not offered any resettlement nor counselling on how to spend the compensation money which constituted an amount they had never seen before. After moving to the city of Bergama, families are individually striving to survive and build up new lives. There was no research done however on whether they managed to adapt to the new situation and how many of them fell into poverty.

The Yortanlı reservoir and the ancient site Allianoi were flooded in February 2011 despite court cases still pending.

We conclude that by expropriating residents of the Yortanlı dam reservoir the State party did not respect the right of affected people to take part in decisions concerning their lives. Further violations of the rights covered by the Covenant are likely to have occurred, but cannot be documented as no assessment was done on whether people managed to restore their livelihoods after they left their land.

2.1.2.5 Case Study 5: HEPP construction on the Yuvarlakçay river



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The impacts of small hydro-electric power plants (HEPP) are highlighted by the Yuvarlakçay power plant project on the Yuvarlakçay river, which lies within Köyceğiz town territory in the province of Muğla in the Southwest of Turkey.

The project is a canal-type HEPP and consists of a regulator dam to be built just off the river source in order to collect the water, a 2,5-km long concrete canal that will divert the water from its natural bed and carry it to the power plant area, an artificial collector reservoir to be built 75m above the power plant, and a 3.4-MW hydro-electric power plant with two turbines to be built on the river bed about 3-km downstream from the regulator dam. The project area has been rented by the constructing company from the Ministry of Environment and Forestry for 48 years and 2 months.

Yuvarlakçay is an important element of the whole Köyceğiz-Dalyan basin, feeding Lake Köyceğiz as the only cold carstic water source that runs year round and strongly helps prevent the lake to be salinated. It serves as **major water source** for the rich flora and fauna, as well as for some 14,000 locals living in 6 villages and a municipality located around it. The river flow is around 3,500 ccm per second on the average and just enough to feed the area. It flows into the lake of Köyceğiz, which is connected to the Mediterranean Sea by the famous river reed bedded delta of Dalyan.

The area affected, 14,000 m², lies within the Köyceğiz -Dalyan Special Environmental Protection Area (Köyceğiz- Dalyan Özel çevre Koruma Bölgesi) and the river spring section is located at an officially declared “Group of Oriental Plane Monumental Trees” area. It consists of government owned forest and private fields which are used by small farmers to grow different sorts of vegetables and fruits, primarily citrus and pomegranate, on a very fertile soil. Until construction started (in the form of cutting all the trees to clear the project area) the farmers were not expropriated and had not received any compensation and were not even informed of the upcoming loss of their fields and water. Also affected were approximately 100 out of 6,000 people living in the forest. Although dwelling on government owned land is illegal, their presence has been tolerated for more than 20 years, some with paid penalties as well as jail sentences of various periods, and some of them have been used as outsourced forest workmen by the Ministry of Forestry. In reaction to their resistance to the project, the very same people were questioned and taken to court for their illegal dwelling and houses. If construction of Yuvarlakçay HEPP project was to go ahead, they would lose their houses and their land which fully depends on the river water.

Above all, **villagers fear the loss of their drinking water**. Six villages with approximately 14,000 inhabitants obtain their drinking water directly from more than 50 springs of the river. As according to scientific analysis the water quality is very good, the villages withdraw the water by simply laying pipes into the springs without any further equipment or treatment of the water. As the HEPP is planned very close to the source of the river, villagers fear that the water will be contaminated by turbulences created from it which will stir up mud and pebbles and the reservoir created by the dam will lead to the spread of bacteria and diseases in the up to now very pure water.

The loss of access to the water may be permanent, because the reservoir dam would leave the water springs under water suppressing them with high pressure and river silt and eventually forcing the water to escape to some other unknown media, a common phenomenon which is said to happen in this carstic landscape. Also, out of the total average amount of water of 3,500 ccm/second, villagers use some 1,500 to 2,000 ccm for irrigation and drinking. But according to the project plan, only 450 ccm were set aside for the use of the villagers and 500 ccm were to flow through the original river bed for wild life, while the remaining more than two thirds were to flow through the canal to the turbines. Although this amount would be released into the river bed afterwards, it would be of no use for the villages upstream, as this would be beyond the village borders, nor would it be of the same quality as before, especially due to warmer waters collected at the reservoir in summer months and thrown through the turbines. Hence, conflict over the use of water with neighbouring villages and an eventual migration of villagers due to lack of water and an over-all deterioration of their welfare is predictable.

The effect on the flora and fauna would also be substantial as the river feeds Liquidamber trees (*Liquidamber orientalis*) which are endemic, endangered and under special protection; monumental Plane trees (*Platanus orientalis*), located near the source and some are already cut for the project, and Otters (*Lutra lutra*) which live near the source and are also endangered and under protection.

Despite of these impacts, no Environmental Impact Assessment (EIA) was conducted as the project was exempted from an EIA on grounds of the 2003 Environmental Impact Assessment Regulation²⁸.

Nor was there any social impact assessment, **nor any official announcement** of the project to the affected population. Villagers learnt about it when machinery appeared in the valley in order to prepare the construction site. When requesting access to the detailed construction plans, the administration referred them to Akfen Holding, the company constructing the HEPP and has a total of 19 canal-type HEPP projects and a dam-type HEPP under construction or in planning stage throughout Turkey, which in return denied release of the plans. Only a brief description of the project was published.

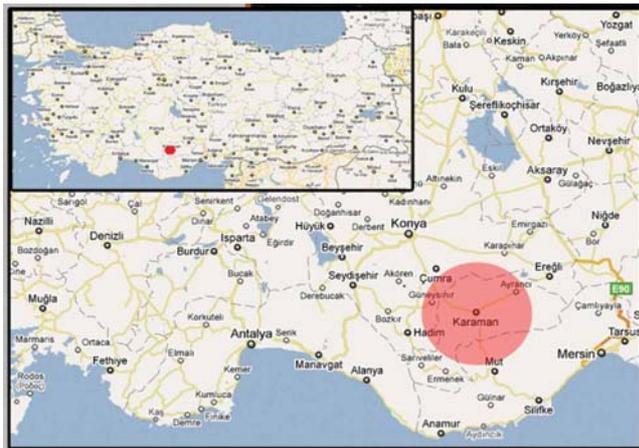
Villagers set up a protest camp on the designated construction site from Dec. 2009 to Nov. 2010 and lawyers filed 16 court cases against the various permissions granted for the project. As several judgements ruled in favour of the affected population, the project is currently stopped. Permissions overturned by the courts include the water using agreement between the governor's water office and the company; the permission by the Muğla Regional Board for Protection of Cultural and Natural Heritage for the cutting of old monumental trees; and the architectural plan for the power plant. Cases contesting the granting of a license to the company and the governor's decision to exempt the project from an EIA are still pending.

We conclude that the granting of a license without conducting an Environmental Impact Assessment and without any participation of the affected population severely infringes

²⁸ The Environmental Impact Assessment Regulation was changed in 2008.

upon the rights covered by the Covenant.²⁹ Implementation of the project would constitute a serious violation of the right to housing, food and most notably the right to water, as the water quality would be severely deteriorated and access to the water restricted. This is in special violation of para 16 (c) of General Comment No. 15 stating that access to traditional water sources in rural areas should be protected.

2.1.2.6 Case Study 6: Impacts on the nomadic population



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The construction of dams and HEPPs also severely impacts on nomadic life in Turkey.

In the Göksu-Ergene-basin hundreds of nomadic families face the extinction of their traditional life-style and culture, as the Association for Assistance and Solidarity with the Sarıkeçili Yürük (Sarıkeçili Yardımlaşma ve Yaşatma Derneği) reports. Leading a subsistence life based on their herds, nomads completely depend on intact river valleys and the access to water and pasture which they provide. Dam construction therefore poses a major threat to the nomadic culture and its economic basis. With the construction of many small dams and hydroelectric power plants in the Göksu-Ergene-basin, the traditional routes between winter and summer pastures are obstructed by construction works or inundation. Between the HEPPs, water is lacking, as rivers are reduced to creeks. Over the past years, it has become increasingly difficult to find alternative routes. Currently many families in their winter quarters are in a dire condition, as they do not know how to move their herds to the summer pasture on the higher plateaus. With the lack of water and food for the herds being the main problems, herding is further complicated by the need to move the herds out of the paths they are used to and to calm the animals disturbed by the noise of the construction works.

As a fact-finding mission by CounterCurrent and Berne Declaration in May 2009 established, thousands of nomads in the Tigris and Botan valleys face the same difficulties should the Ilisu dam be built³⁰.

It must be noted that the nomadic population already faces severe problems in keeping up its traditional lifestyle. The Law On Forestry from 2004 poses a major threat for their culture and

²⁹ as described General Comments No. 15, para 48 on the right to water as well as General Comment No. 21, para 55 (e) and in the Basic Principles and Guidelines on Development-based Evictions and Displacement demanding for full and prior informed consent.

³⁰ Ilisu Trip Report from May 18 to 24, 2009. Report of a fact-finding mission by Berne Declaration and CounterCurrent.

http://www.gegenstroemung.org/drupal/sites/default/files/Report%20NGOs%20Ilisu%20May2009-p_0.pdf

livelihood, as the law prohibits them to enter the forests to graze their goat herds. Thus the basis for their economy is further reduced, with heavy fines for trespassing in place.

Over the past years, about 2,000 nomads in the South of Turkey were forced to give up nomadism due to lacking access to water and pasture and have settled in the region, many of them in the provincial capital Karaman. The settlement established for them by the Ministry of Public Works and Housing lacks central infrastructure like a mosque or shopping centre. A school was only built last year, until when many children could not access a school due to the long distance. The unemployment rate of settled nomads is high, and the fact that settlers have to pay for the houses they live in leads to high indebtedness. In some houses electricity has been cut off in reaction to unpaid rent. Both women and men show great difficulties in adapting to the new way of life and bad living circumstances, leading to an increase in psychological disorders and violence. Should more dams in the valleys used by nomads be constructed, even more families will experience this situation.

Despite the severe impacts on the economic situation and culture of the nomads, neither in the Göksu-Ergene basin nor in the case of the Ilisu dam, any information about the planned construction has been put forward to the affected families. Nor have any consultations taken place or any support or compensation been offered to them. The affected population which belongs already to the most vulnerable part of the society, is completely left on its own to cope with the threat of its very livelihood through projects conducted by the state party.

We conclude that the construction of dams severely impacts on the ability of nomads to sustain themselves. It constitutes a severe infringement on their economic wellbeing and a violation of their rights to food and water. The State party specifically fails to fulfil its obligations under General Comment 15, para 16(e) that nomadic and traveller communities must have access to adequate water at traditional and designated halting sites. We conclude further that this constitutes a discrimination in effect on the nomadic population by putting an unjustifiable burden onto a group which is already vulnerable. Dam construction thus also violates art. 2.2 of the Covenant prescribing non-discrimination in the enjoyment of the economic, social and cultural rights. In addition we note that the lack of infrastructure at the settlement site in Karaman is not adequate in respect the right to housing.

2.1.2.7 Case Study 7: Impacts on biodiversity

Representative for many more dams planned in or near nature protection sites, the three following cases highlight the tremendous impact of dam building on the biodiversity of the country.

The valley of the **Munzur** river and its tributaries are protected as a nature reserve, the “Munzur Vadisi Milli Parkı“. They host 1,518 plant species out of which 227 are endemic to Turkey and 55 to the Munzur valley³¹. The implementation of the dam scheme would lead to the total flooding of 165 km of the Munzur river and its main tributary Pülümür (also known as Harçık). Downstream the large Keban dam has already converted the river into a reservoir. This would severely impact the biodiversity of the region. In addition, scientists fear that the creation of large scale reservoirs would alter the local climate further increasing stress on the ecosystem³².

³¹ Ulaşılabilir Yaşam Derneği – Association for accessible Life: Munzur Vadisi'nin Biyolojik Çeşitliliğinin Korunması. Research conducted by Prof. Dr. Mehmet Koyuncu and Prof. Dr. Neşet Arslanç Ankara 2009.

³² Mikdat Kadioğlu, Chamber of Meteorology Engineers, Marmara Region, 2001.

The **Çoruh** valley is famous for its natural beauty and high biodiversity. Surrounded by 4,000 meter high mountains, the valley displays five climatic zones from Siberian climate on the mountain tops to Mediterranean climate in the valley bottom. This results in the Çoruh basin being recognized a biodiversity hotspot: it contains 7 Key Biodiversity Areas, 104 nationally threatened plant species of which 67 are endemic to Turkey as well as many endangered animal species like bears, wolves, mountain goats, several butterfly and trout species. The Çoruh salmon trout has already become extinct as it cannot reach the upper part of the river anymore for spawning.

The far reaching damming of the country's rivers will have cumulative impacts which until now have not been addressed by the State party. For example, the endemic - up to one meter long - Euphrates soft shell turtle is almost extinct on the Euphrates river from which it derived its name. As it is dependent on flowing water, the last large populations nowadays inhabit the Tigris valley. The construction of the **Iisu dam** and other dams on the Tigris river will deprive the species of its last habitats. However, no assessment of cumulative dam impacts was conducted although this is part of the World Bank standards.

We conclude that a comprehensive and integrated strategy as suggested by General Comment No. 15, para 28 assessing the impacts of the State party's dam building plans upon the watersheds and their biodiversity is urgently needed. The continued construction of dams in the absence of such a strategy constitutes a severe violation of the right to water for present and future generations. It also constitutes violations of the rights to health and to take part in cultural life as described below.

2.1.3 The State party's extraterritorial obligations

General Comment No. 15 on the right to water, para 31 explicitly states that “States parties have to respect the enjoyment of the right in other countries”.

Turkey hosts numerous springs of transboundary rivers, including the Çoruh running into Georgia, the Euphrates flowing through Syria into Iraq and the Tigris forming the border to Syria for some 40 km and then also passing on into Iraq.

In Iraq, thousands of farmers depend on the Tigris river. Over the past three years, the country has experienced severe droughts. As the UNESCO notes, “the continuing water crisis has directly contributed to rising levels of food deprivation, displacement and poverty in Iraq”³³. This has led to riots in the country and heavy political tensions between the governments of Iraq and Turkey over amounts of Euphrates water to be released to Iraq.

Hydrologists³⁴ have pointed out that the Ilisu dam would have severe impacts on Iraq: it would lead to a severe deterioration of the water quality and to variations in the seasonal flows as well as an overall reduction in water flows, especially when seen in connection with the smaller Cizre dam, which is planned directly downstream of the Ilisu dam and designed for irrigation purposes.

However, no assessment has been done of the downstream impacts of the Ilisu dam, nor have there been any substantial negotiations with the riparian countries³⁵. As no agreement has been reached between the countries on the sharing of the Tigris waters, the Iraqi government has voiced its strong opposition against the project. It fears that its own population may face severe impacts on its food security if the spring floods are kept back in the Ilisu reservoir.

We conclude that the State party is failing to fulfil its extraterritorial obligations to respect the right to water of the farmers and other residents in Iraq depending on the Tigris river and thus affected by the Ilisu dam project.

³³ <http://www.unesco.org/en/iraq-office/natural-sciences-in-iraq/water-in-iraq/>

³⁴ Philip Williams and Associates (2006) A Review of the Hydrologic and Geomorphic Impacts of the proposed Ilisu Dam.

EAWAG aquatic research (2006) Independent review of the Environmental Impacts Assessment Report (EIAR) 2005 on the future Ilisu Dam (Turkey).

³⁵ The State party has for a long time rejected the notion of sharing rivers in an equitable and fair manner as stipulated by international law. It was one out of three countries voting against the 1997 UN Convention on the Law of the Non-navigational Uses of International Watercourses which establishes the principles of equitable and reasonable utilization, of not doing harm, of cooperation between riparian countries, and of notification and consultation. According to international law experts, these principles form part of the customary law binding also those countries that have not ratified the relevant conventions. The obligation to inform and consult with riparian countries at an early stage and to conclude an agreement before a project is realized is also part of the World Bank Safeguard Policies.

Cf. Epiney, Astrid (2000) *Völkerrechtliche Aspekte des Staudammprojekts Ilisu (Türkei)*. Freiburg.

Boisson de Chazournes, Laurence, James Crawford, Kate Cook and Philippe Sands (2007), Note on Ilisu Dam project/South-eastern Anatolia Project (“GAP”).

For a comprehensive analysis of the Ilisu dam’s impacts on Iraq cf. The Corner House and Kurdish Human Rights Project (2007), Ilisu Dam. Downstream Water Impacts and Iraq. Report of Fact Finding Mission to Iraq.

2.2 The right to the highest attainable standard of health (Art. 12)

Besides their impacts on the income and livelihoods of project affected people, dams also have severe impacts on their health.

The conversion of running rivers into stale reservoirs leads to a **dangerous deterioration of water quality**. As many cities in the Eastern part of Turkey have either none or only mechanical waste water treatment, a high influx of pollutants into the rivers occurs. As damming reduces the oxygen input into the water, the water quality severely suffers. Therefore hydrologists³⁶ have warned that the Ilisu dam would lead to a massive dying of fish, leaving the water unsuitable for many species. It can be inferred from this that the remaining fish will not be suitable for human consumption either, nor will the water released from the dam be suitable for agricultural use.

A report by the Secretary General of the Chamber of Medical Doctors in Diyarbakır, Dr. Ugur Işık³⁷, substantiates these concerns. He states that for example the waste water of Adıyaman, a city of 200,000 inhabitants, is directly led into the Atatürk dam reservoir. This water is then used for agricultural purposes.

A further impact is an alarming **increase of diseases**. As Dr. Işık states that in the 1990ies typhus has increased in Turkey, with 95 % of the increase occurring in the GAP region, GAP (= Southeast Anatolia Project) being a huge dam and irrigation scheme comprising 22 dams in the nine Southeastern provinces of Turkey. As he states, incidents of malaria, which had become almost extinct in the 1950ies, also sharply increased since 1994. He further states that Leishmania Tropica is fastly increasing as well and cites a study by the Medical Chamber of the province of Şanlıurfa coming to the same conclusion. Şanlıurfa is capital of the province in which the Atatürk (817 km², completed 1992) and Birecik dams (56 km², completed 2000) are located. A fact-finding mission to the region conducted in 2000 was also told that malaria had strongly increased since the flooding of the reservoir³⁸. A similar situation with a sharp increase in diseases must be expected for other regions of Turkey, if the State party's dam building plans are implemented.

In the case of the Çoruh river, **solid waste** creates a major problem as well. As it is usually dumped into the water, but no longer washed away by the river, all the waste, including dead animals, stays in the stale water converting it into a contaminative sewer and a constant threat to the health of the population. The municipality of Artvin completely lacks the financial means to address the problem, with no support from the state party.

It is of great concern that even the **newly built resettlement houses in New Ilisu do not fulfil adequate health standards**. Villagers bitterly complain that sheds for their livestock (besides being too small for their animals) are built right next to the kitchens of their houses, posing a severe risk to their health from insects flying back and forth between sheds and kitchens.

³⁶ Philip Williams and Associates (2006) A Review of the Hydrologic and Geomorphic Impacts of the proposed Ilisu Dam.

EAWAG aquatic research (2006) Independent review of the Environmental Impacts Assessment Report (EIAR) 2005 on the future Ilisu Dam (Turkey).

³⁷ Dr. Ugur Isik (2006) The Dam Lakes generated by Hydroelectric Power Plants affecting Health.

³⁸ Hildyard, Nick et.al. (2000) „If the river were a pen...”. The Ilisu Dam, the World Commission on Dams and Export Credit Reform. The Final Report of a Fact-Finding Mission to the Ilisu Dam Region. p. 94.

Dams also impact on the **mental health** of affected people in several ways. In many instances, the decade-long insecurity about their fate is showing an increasing effect on the inhabitants of the regions slated for inundation, with depression and psychological disorders on the rise and stalled economies. People who have lost their homes and livelihoods in the reservoirs and are mostly left completely to their own to build up a new existence, as well as the nomadic population forced to settle, are under great stress. No research has been done however to assess this problem and no help is offered to any of the affected people.

As the Committee states in its General Comment No. 14, para 4 the right to health “embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.”

It is therefore of utmost concern that – as described above - the overall impacts of the State party’s dam building plans on the **right to a healthy environment** have not been assessed. While the State party’s constitution recognizes the right of the people to a healthy environment, at the same time legislative changes and the implementation of dam schemes are underway, resulting in almost all rivers in the country being affected by dams and HEPPs and tremendous impacts on water quality, biodiversity and subsequently health.

Courts have referred to this article and lifted licenses for dams due to the lack of a watershed plan demonstrating that the right to a healthy environment is protected³⁹. While for none of the dams planned or under construction a watershed management plan has been conducted, the State party fails to draw consequences from this and change its dam building policy.

We conclude that the State party does not fulfil its obligation to protect the right to health of its population affected by dam construction as the State party’s actions provoke a deterioration of the water quality, an increase in diseases and the loss of healthy environments.

The planned construction of approximately 2,000 additional dams and HEPPs until the year 2023 without an overall impact assessment as well as changes to the Renewable Energy Resource Law and the draft Law on Nature and Biodiversity Conservation constitute a retrogressive measure in relation to the right to health and thus are a violation of the State party’s core obligations.

³⁹ E.g. the administrative court in Rize province has lifted the license for the İkizdere Barajı on this ground, cf. <http://www.hurriyetdailynews.com/n.php?n=environmentalists-to-have-strong-card-to-play-against-hydro-plants-2010-02-02>

2.3 The right to take part in cultural life (Art. 15)

The Committee in its General Comment No. 21 states that availability of cultural goods is a necessary condition for the full realization of the right of everyone to take part in cultural life. It explicitly includes nature's gifts which shape the character and biodiversity of a nation in this paragraph (16a). It further states that States parties are obliged to respect and protect cultural heritage in all its forms (para 50a) and that the obligation to respect includes measures "to take part freely in an active and informed way, and without discrimination, in any important decision-making process that may have an impact on his or her way of life and on his or her rights under article 15, paragraph 1(a)." Para 55 (e) lists as one of the States parties' core obligations applicable with immediate effect the obtainment of the "free prior informed consent of persons belonging to minority groups, indigenous peoples or to other communities when the preservation of their cultural resources, especially those associated with their way of life and cultural expression, are at risk".

The ongoing and impending destruction of biodiversity without even conducting a comprehensive environmental impact assessment as described in section 2.1.2.7 therefore also constitutes a violation of the right of the population to take part in cultural life.

Furthermore, tremendous cultural heritage is threatened. Some examples are given below.

The **Ilisu dam** project will inundate 300 archaeological sites of which only few have been excavated. The scientific progress that could be derived from them will be forever lost. Of special significance is the 12,000 year old town of **Hasankeyf**, which is of great importance to the local Kurdish population and was classified a 1st degree national monument under Turkish Law No. 2863 on the protection of cultural and natural assets in 1978. Twenty distinct cultures of the East and the West have left traces in the town, and hundreds of monuments and up to 6,000 man-made caves carved into the steep rocks along the riverside reflect the importance of the place throughout the centuries. Researchers from universities in Turkey indicate that Hasankeyf fulfills 9 of 10 UNESCO World Heritage Criteria. Its significance does not only stem from its cultural monuments, but also from its unique blending with the natural cliff mounting over the river bend. While the Turkish government has promised to save Hasankeyf by transposing some of the monuments to an archaeological park, international experts came to the conclusion in 2009 that there was no proof of the feasibility of these plans, which means that the cultural goods will be submerged and inaccessible if construction is continued⁴⁰. In the affected region and throughout Turkey, there is widespread opposition against the flooding of Hasankeyf due to its cultural significance. The affected population insists that Hasankeyf must be preserved in situ in order to provide access to its cultural heritage. An alternative plan to build five smaller dams instead of the big Ilisu dam which would save Hasankeyf was presented by scientists from the Middle East Technical University in Ankara, but has been ignored by the State authorities. A case against the inundation of Hasankeyf was accepted by the European Court of Human Rights in 2006 and is still pending.

In February 2011, the **Yortanlı reservoir** was flooded and inundated the ancient thermal spa of **Alliano**, an ancient thermal spa dating back to at least the Roman Empire period. The site was discovered in the 1990ies and in 2001 it was designated a 1st class archaeological site by the Ministry of Culture and Tourism. As it lies within the reservoir area, affected people and

⁴⁰ Ilisu Trip Report from May 18 to 24, 2009. Report of a fact-finding mission by Berne Declaration and CounterCurrent.

http://www.gegenstroemung.org/drupal/sites/default/files/Report%20NGOs%20Illisu%20May2009-p_0.pdf ,
<http://www.designconsult.com/Ilisu/page.php?modul=HTMLPages&pid=67>

initiatives in the region suggested to develop the site as a geothermal and tourist area as an alternative to the Yortanlı dam. This suggestion was however ignored by the state authorities and no impact assessments or feasibility studies undertaken. At least 14 court cases were opened with numerous rulings passed for the protection of the site and against its flooding. However, as lawyers and scientists dealing with the cases contend, the High Committee for Monuments and the Regional Committee for the Protection of Heritage circumvented implementation of the court rulings by repeatedly enacting minimal changes in the permissions and the executional setup of the project, like changing the material to cover the site before flooding, which rendered the rulings void. At the time of the flooding, court cases were still pending, including a case with the European Court of Human Rights accepted by the Court in 2008.

Dersim province with the **Munzur valley** is the only part in Turkey where **Alevi** form the majority of the population and sacred sites are located. Most Alevi religious sites are situated along flowing waters to honour water as the source of life. The most famous are the Munzur River sources and ‚Göle Çetü‘, a holy water source in the city of Dersim which was flooded by the Uzunçayır dam in 2009 and sparked a heated controversy about cultural destruction provoked by the dam. In addition, the **Kurdish culture** which is under general repression in Turkey, will be further impacted by the Munzur dams. The Kurds in Dersim speak mostly the smaller Kurdish dialect ‚Kirmancki‘ (also called Dimili, Zazaki) which is more under threat than the bigger dialect Kurmanci. Dispersion of the population by resettlement would degrade both the Kurdish and Alevi culture.

The **Çoruh** valley is an area of high cultural diversity hosting population of inter alia Armenian, Greek and Georgian origin. **Georgian churches** from the 9th to 11th centuries and places of pilgrimage will be lost to reservoirs, if the planned dams are built.

As described above, dam construction also poses a major threat to the **nomadic culture**. Leading a subsistence life based on their herds, their culture is deeply connected to the surrounding landscape. Knowledge about the environment and migration routes has been passed on over generations, along with songs and myths reflecting natural features of the region. Should the migratory life-style not be possible anymore, this important intangible part of cultural heritage will be lost –while the affected population has expressed its strong wish to continue their traditional lifestyle and their consent has not been sought. The Association for Assistance and Solidarity with the Sarikeçili Yuruks as well as the nomads interviewed by a fact-finding mission in 2009⁴¹ state that they wish to follow their traditional lifestyle and do not want to settle to a sedentary life.

By inundating biodiversity and cultural heritage to such a tremendous extent, the State party violates numerous **international treaties** which according to Article 90 of the State party’s constitution are considered domestic law as well, including the European Convention on the Protection of the Archaeological Heritage, Convention on Biological Diversity et. al.⁴².

In its Initial Report, the State party contends that determination, documentation and property-saving works are carried out by the Ministry of Culture and Tourism in coordination with other public and non-public institutions. The State party refers to a model project on

⁴¹ Ilisu Trip Report from May 18 to 24, 2009. Report of a fact-finding mission by Berne Declaration and CounterCurrent.

http://www.gegenstroemung.org/drupal/sites/default/files/Report%20NGOs%20Ilisu%20May2009-p_0.pdf

⁴² For more detailed information cf: Turkish Water Assembly (2011): HEPP’s, Dams and the Status of Nature in Turkey. http://anadoluyuvermeyecegiz.net/dosyalar/hepp_report_web.pdf.

Setton, Daniela and Heike Drillisch (2006) Zum Scheitern verurteilt. Der Ilisu-Staudamm im Südosten der Türkei. http://www2.weed-online.org/uploads/060710_weed_ilisu_netzversion.pdf

archaeological sites submerged by the Keban dam and to other excavations including the antique city of Zeugma which was flooded by the Birecik dam.

However, most of the excavations are not adequate to preserve the cultural heritage. Usually archaeological work only takes place during the construction period of the dams. Furthermore, as it was documented for the Ilisu dam, excavations take place only during part of the year and with limited capacities. This is fully inadequate to at least document the voluminous heritage concerned in cases like the Keban and Ilisu dam with hundreds of sites. For example, in the Ilisu reservoir area with its approximately 300 sites and the town of Hasankeyf, excavations at only 14 archaeological sites have been conducted. Once the dams are completed, excavations are usually stopped and sites submerged. Only in few cases like Zeugma and Allianoi a delay of the flooding was granted, case of Zeugma as little as three months. In the case of the Keban dam, the level of documentation was very limited and far from fulfilling international standards. Many sites were only mentioned without further description. A bridge, which the State party had promised to rebuild when construction of the dam started in 1966, still has not been re-erected. The current effort undertaken by the State party must therefore be considered to be insufficient in relation to the valuable heritage at stake.

We conclude that the large-scale inundation of cultural and natural heritage without the participation of the affected population and without comprehensively assessing possible alternatives violates art. 12 of the Covenant on the right to take part in cultural life⁴³ and also violates the core obligation of the State party to obtain the free prior informed consent of the groups affected when the preservation of their cultural resources is at risk⁴⁴. Several dams like those in the Munzur valley and those affecting nomads also violate the rights of minorities to conserve, promote and develop their own culture⁴⁵. As vulnerable groups like the rural poor, Kurds, Alevi and nomads are disproportionately affected by the dams, we conclude that the State party's dam building policy constitutes a discrimination in effect in violation of art. 2.2 of the Covenant.

⁴³ General Comment No. 21, paras 16 (a) and 50 (a)

⁴⁴ General Comment No. 21, para 55 (e)

⁴⁵ General Comment No. 21, para 32

3. Conclusion and Recommendations

In regards to dam construction the State party violates several of the rights covered by the Covenant on Economic, Social and Cultural Rights, notably the right to an adequate standard of living including the right to food, water and housing (art. 11), to health (art. 12) and to take part in cultural life (art. 15). It also violates some of the State party's core obligations, namely the obtainment of the free and informed prior consent of minorities and other communities in the design and implementation of policies affecting them when the preservation of their cultural resources is at risk⁴⁶ and to adopt and implement a national water strategy on the basis of a participatory and transparent process⁴⁷. The fact that vulnerable groups like nomads, Alevi, Kurds and the rural poor carry a disproportionate burden of dam-related impacts constitutes a discrimination in effect, violating art. 2.2 of the Covenant. The failure of the State party to pursue a human rights oriented approach to forced evictions further violates art. 4 of the Covenant⁴⁸.

In the light of these violations of the Covenant on Economic, Social and Cultural Rights in the wake of dam construction, the State party should reconsider its dam policy as a matter of principle. In doing so it should give special attention to considering the cumulative nationwide impacts of its dam policy and to ensure a participatory approach providing for meaningful consultation of civil society and the free prior and informed consent of affected communities as well as that appropriate measures are taken to ensure that no form of discrimination is involved.

Bearing in mind that the Basic Principles and Guidelines on Development-Based Evictions and Displacement state that no resettlement shall take place until such a time, that a comprehensive resettlement policy consistent with the present guidelines and internationally recognized human rights principles is in place, and that it is a core obligation of the State party to adopt a national water strategy, we suggest that the State party should take the following steps:

- Construction of dams and hydroelectric power plants – including the Ilisu dam and dams in the Munzur and Çoruh valley – should be halted until social and environmental impact assessments on the river basin and/or national level have been conducted and the feasibility of mitigation measures has been proven. Assessments and mitigation plans should give special attention to the restoration of livelihoods, the situation of vulnerable groups and impacts on the rights covered by the Covenant such as, but not limited to: the right to an adequate standard of living including the rights to adequate housing, food, safe water for present and future generations, protection from the loss of cultural and biological diversity; the right to health including protection from water borne diseases and the right to a healthy environment; and the right to take part in cultural life. Assessments and plans should be conducted with the full and effective participation of the affected population.
- The laws No. 2942 on expropriation and No. 5543 on settlement should be amended to ensure that livelihoods are restored in a sustainable way, the rights covered by the Covenant are protected and full and effective participation of project affected people is

⁴⁶ General Comment No. 21, para 55 (e)

⁴⁷ General Comment No. 15, para 37 (f)

⁴⁸ “The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.”

provided for. Article 27 of Law No. 2942 allowing for immediate expropriation should not be applied anymore for the construction of infrastructure projects. Law No. 5543 should provide for legally binding Resettlement Action Plans being developed with income restoration measures of proven feasibility available to all affected people and the free prior informed consent of the affected population. Special attention should be given to the protection of vulnerable groups.

- On short term, expropriation amounts paid to dam affected people under current Turkish legislation should be reassessed to reflect replacement value and the gap should be disbursed to the beneficiaries. Resettlement sites currently existing should be expeditiously upgraded to fulfil the rights to water and housing and to provide income opportunities to resettlers. Loans taken up to pay for resettlement houses should be covered by the State party and titles to the property immediately transferred.
- The State party should suspend the changes to the Renewable Energy Resource Law and put the draft Law on Nature and Biodiversity Conservation on hold until its impacts on the nature and biodiversity necessary to protect the right to a healthy environment and to ensure sufficient safe water for present and future generations are assessed in the light of the State party's plans to construct thousands of dams within the next decades.
- The State party should establish environmental legislation which ensures the protection of safe water resources and biodiversity in a sustainable way enabling the full participation of civil society and project affected people in the drafting of the legislation. The legislation should prescribe the conduct of Environmental Impact Assessments for all projects irrespective of their size demanding the free prior informed consent of affected communities to projects affecting their rights covered by the Covenant.
- The State party should establish an adequate framework of monitoring the impacts of dams already constructed including regular monitoring of the water quality in reservoirs, health impacts and the economic situation of displaced persons, especially vulnerable groups.