



# **Evaluation of the Terms of Reference on resettlement and their implementation for the Ilisu Dam Project in Turkey**

**Berne Declaration (BD/EvB), Switzerland,  
WEED, Germany,  
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- ECA-Watch, Austria; Fern, Belgium;
- The Cornerhouse, UK;
- The Kurdish Human Rights Association, London, UK
- The Hasankeyf Initiative, Turkey

### **Abbreviations:**

CoE	Committee of Experts
DSI/SHW	Devlet Su Isleri Genel Mudurlugu, General Directorate of State Hydraulic Works (SHW)
ECAs	Export Credit Agencies
ERG	Exporttrisikogarantie Switzerland (now SERV: Swiss Export Risk Insurance)
EIAR	Environmental Impact Assessment Report
FAM	Final Assessment Meeting
IFC	International Finance Corporation
MARA	Turkish Ministry of Agriculture
NGOs	Non-Governmental Organizations
OEKB	Oesterreichische Kontrollbank
PAP	Project affected people
PIU	Project Implementation Unit
ToR	Terms of Reference
URAP	Updated Resettlement Action Plan
WB	World Bank

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## Executive Summary

The purpose of this review is to evaluate the Ilisu dam project's Terms of Reference (ToR) regarding the expropriation and resettlement process and the project's recent implementation activities.

1. This review found that the Ilisu Hydroelectric Project's ToR "on resettlement" and the overall process still **does not comply with the World Bank standards on involuntary resettlement**. This is of serious concern given that the ToR are supposed to bridge the gap between Turkish law and World Bank standards, in order to bring the project into compliance with World Bank policies.
2. The ToR and the entire project approval process do not comply with WB OP 4.12 because the Governments of Switzerland, Austria and Germany approved funding for the project **before the fundamental resettlement documents were available**. These documents (although required in the ToR) are still missing. They include:
  - A comprehensive Resettlement Action Plan and Resettlement Policy (required under paragraphs 6 and 18 of the ToR) which needs to be backed by a legally enforceable contract outlining the obligations of the government and project developers and must be made available for public comment before a final funding commitment. This was not the case.
  - A census (Paragraph 14) to identify the persons who will be affected by the project and their living conditions before and after the project. The procedure includes provisions for meaningful consultations with affected persons and communities, local authorities, and, as appropriate, Nongovernmental organizations (NGOs), and it provides a grievance mechanism.
  - Resettlement planning instruments (required under paragraph 19) including early screening, scoping of key issues and the information required to prepare the resettlement components. The view of the persons displaced by civil war was not taken into account as requested.
  - The ToR do not demand the execution of the project as a sustainable development project. Therefore the project is not in line with WB OP 4.12/Para 2b.<sup>1</sup>
3. The ToR incorporates some of the demands of Non-Government Organizations for significant improvements in resettlement conditions. However, the ToR is not precise enough to ensure that World Bank standards are met and it is **not backed by a legally-enforceable framework**. Even when a contract like an "Environmental Default Clause" is in place, there is still leverage for DSI to use the much weaker Turkish laws because the minutes of the Final Assessment Meeting (FAM)<sup>2</sup> do not specify that non-compliance with the ToR will be penalized. Also, the undertakings outlined in the RAP are not legally enforceable.
4. Further, the **full costs of resettlement activities have not been included in the total costs** of the project – although this is mandatory under WB OP 4.12 (paragraph 20)<sup>3</sup>. According to FAM between Turkey and the ECAs as well as statements on the Ilisu consortium homepage, Turkey will secure and earmark within the national budget a

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<sup>1</sup> See OP 4.12, Para 2b: "Where it is not feasible to avoid resettlement, resettlement activities should be conceived and executed as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits.

<sup>2</sup> See Minutes of the Final Assessment Meeting of October 2006, between the Export Credit Agencies of Austria, Switzerland and Germany and the Turkish Government

<sup>3</sup> Para 20: "The full costs of resettlement activities necessary to achieve the objectives of the project are included in the total costs of the project."

separate budget line for all aspects of resettlement and income generation. This has not been made public, therefore we do not know whether it has happened. However, we estimate that the resettlement budget will still be insufficient because only 100,000 YTL (56'000 Euros) per year is earmarked in the Turkish Government budget for all resettlement processes for all dam construction projects in Turkey.

5. **The expropriation process has begun even though the project implementation structures are not in place** and the affected people remain uninformed about either the ToR or their rights and benefits as required by World Bank OP 4.12. So far DSI has not conformed to the ToR or WB OP 4.12 but continues to use the lower standards of Turkish law. By using Turkish law and not the ToR, the Turkish Government appears to be trying to keep the expropriation and resettlement budget as low as possible, making the project more attractive for investors and reduces the burden on the national budget. International lending and World Bank standards specifically reject and condemn this practice, since significant costs are effectively “externalized” to the affected population who already carry a heavy burden by having to establish new lives.
6. Thus far DSI has offered to the villages only land of poor quality, thus they chose cash compensation even though under World Bank OP 4.12 (6b) and ToR 12, 13 and 18, land of the same value needs to be offered. Further, DSI offered these families **extremely poor monetary packages which are insufficient to rebuild their lives** and which do not comply with WB OP 4.12 (paragraphs 6a and b) and do not reflect the replacement value as required in Paragraph 24. If the DSI continues to base the implementation of the ToR on weaker Turkish laws, Project Affected People (PAPs) will continue to choose cash compensation as government-enforced resettlement is very unattractive under Turkish law. However, there is no ToR or point in the Final Assessment Minutes (FAM) addressing this issue.
7. Also, the Implementation Resettlement Report delivered by DSI in February 2007 in response to ToR 32 as well as our evaluation of those elements of the ToR which were required to have been completed by March 2007, reveal that **implementation of the project to date does not conform to the ToR, the DSI continuing to employ the lower standards of Turkish law.**
8. Information on designated resettlement sites is unavailable, in violation of the ToR 13. Further, ToR 31 requesting that the agricultural ministry puts at DSI’s disposal agricultural land of equal dimensions and quality does not explicitly state resettlement land shall be given at no cost to displaced families. Under Turkish law, **PAP need to buy resettlement land and this might be unaffordable for them**, if it is not subsidized. Yet, the ToR does not tackle this issue.
9. The Implementation Resettlement Plan indicates that not all affected people will receive cash compensation, which is in contrast to the requirements of the ToR and World Bank OP 4.12 (paragraph 6b (ii)). Under the Plan, Project Affected People (PAP) without property **will only receive loans to rebuild their lives**. But loans are not cash compensation. There is even no guarantee that PAP will ever receive the promised loans as banks usually do not lend to people without guarantees – a problem experienced by those resettled by other dam construction projects in Turkey.
10. The **income restoration measures** suggested by the DSI, which foresee employment in fishery, caper farming, construction work and, by providing loans, will not generate enough income. The primary problem is that the DSI **underestimated the amount time and money necessary to start-up and develop these businesses**.
11. In response to ToR 27, which requires PIU to develop a grievance redress mechanism for all resettlement issues including income restoration and implementation schedules and a

monitoring concept, the DSI developed a grievance process. However, the measures suggested are not yet in place, **are too complex and will take a long time to set up**, further disadvantaging displaced people. Also, the PAP feel they cannot trust the grievance process because claims can only be prosecuted under Turkish law, as the promises of the ToR and the Resettlement Action Plan have no legal base.

12. Finally, public information available regarding the ToR and the expropriation and resettlement processes have not been clearly stated. The information was hard to find amongst the 14 large documents, and it was difficult to locate on the various web sites. In some documents essential annexes are missing. Even with all this information, **it is still unclear how the entire expropriation, resettlement and compensation process will be implemented, nor is it clear how difficult cases will be handled.** None of the project documents are in Kurdish, “locking out” locally-affected people from the project’s process. Deadlines to meeting two thirds of the ToR’s conditions have passed with no information on their progress. These unmet conditions included the preparation of essential project implementation documents.

## Demands

- **The implementation of the project must not start until all project documents are produced to conform to at least World Bank standards and until all points of our critique have been corrected. Further, we demand:**
  1. The RAP and the ToR must be embedded into a legal framework to enable the affected people to legally prosecute non-compliances.
  2. The ToR must be improved to bring them up to international best practice (compliance with IFC performance standards, OECD guidelines on involuntary resettlement and World Commission of Dams recommendations).
  3. The documents required by the ToR need to be implemented according to the ToR. The implementation must be approved by the affected people and other stakeholders before the final project approval by the ECAs.
  4. The ECAs and the Committee of Experts must ensure that the displaced persons of the ongoing expropriation and resettlement process in the “Pilot Project” villages are not discriminated by early expropriation. The expropriation should stop until all agreements are signed and the Project Implementation Unit started operating. Displaced families must receive compensation according to the ToR.
  5. Further, all project documents must be:
    - put on one web site where documents are easily found;
    - written in a clear and concise manner so the process is transparent as required by WB OP 4.1; and
    - translated into good quality English, and appropriate Kurdish translations made which are accessible to locally-affected people.
  6. ECAs and DSI must deliver immediate information about why promised deadlines were not met and new deadlines must be determined. We also demand to receive public information on the measures taken to ensure the Turkish government meets these deadlines.
  7. The new procedures outlined in the ToR need to be made available to all affected people in a simple, clear and short brochure with pictures so the people can take an “active” part in this project.

# **1. Introduction**

## **1.1 Purpose of review**

The purpose of this review is to evaluate the Ilisu dam project's Terms of Reference (ToR) regarding all aspects of the expropriation and resettlement process and the project's recent implementation activities. This involves considering the ToR compliance with World Bank Operational Policy OP 4.12 and gaps between the ToR and Turkish expropriation and resettlement laws.

## **1.2 Documents reviewed**

The documents reviewed were:

- The ToR for the Project Implementation Unit;
- The nine implementation reports (called "evaluation" and "re-evaluation") which needed to be provided prior to ECA approval; and
- The so-called "Resettlement Implementation Plan," produced by DSI according to ToR 26 as a pilot project for the first displaced villages.

# **2. Background information**

## **2.1 Overview of process which lead to the Export Credit Agency's project approval**

The Turkish government's Ministry of Energy and Resources, and its sub-division State Hydraulic Works (DSI), are implementing the Ilisu hydropower project. The Ilisu Consortium, lead by the Austrian company VA Tech Hydro (part of Andritz), will be responsible for construction. Other building companies involved are: Alstom, Stucky and Maggia from Switzerland; Züblin from Germany; and Nurol, Cengiz, Celikler and Temelsu from Turkey. The Austrian, German and Swiss companies applied for export risk coverage with their national Export Credit Agencies (ECAs) which are Oesterreichische Kontrollbank of Austria (OeKB), Euler Hermes of Germany (Euler Hermes) and Exportrisikogarantie of Switzerland (ERG), called SERV as from 2007.

All three Export Credit Agencies are party to the OECD's "Common Approaches on the Environment and Official Export Credits," under which they have committed to ensuring that the projects which they support meet three of the World Bank environmental and social Safeguard policies. The ECAs and the consortium state the Ilisu project will comply with the World Bank's Operational Policy on Involuntary Resettlement (WB OP 4.12). However these guidelines are quite general and international best practice usually refers to the International Finance Corporation's performance standards and the OECD Development Assistance Committee's (DAC) guidelines which are more specific. Switzerland's SERV also promised to compare this project with key aspects of the World Commission of Dams (WCD) recommendations, which they have yet to do.

All these policies dictate that an Environmental Impact Assessment Report (EIAR), including a Resettlement Action Plan (URAP), must be prepared for large dam projects before final funding approval. However, the Ilisu project's 2005 EIAR and URAP including amendments did not comply with the WB OP 4.12 or WCD recommendations. For the project to reach compliance with the WB standards, at a "final assessment meeting" (FAM) on 6 October 2006, the three participating ECAs agreed with DSI to establish 150 conditions including 37 conditions



regarding resettlement. Each condition is called Terms of Reference (ToR). DSI needed to fulfil a total of 27 ToR, of which 9 related to resettlement needed to be completed by March 2006.

**Listed below are the nine ToR resettlement conditions needing fulfilment before ECAs could give their final approval (According to the FAM minutes, ToR with a star had to be partially completed before final commitment.)**

R-10*	RAP – Long-term income restoration
R-14*	RAP – Income restoration: benefit sharing
R-24*	RAP – Income restoration: replacement value
R-26	RAP – Communities affected by construction: ToR 26 requires a comprehensive resettlement plan (which DSI refers to as “Implementation Resettlement Plan”), to be completed before March 2007.
R-27	RAP – Grievance redress mechanism
R-30*	RAP – Article 27 of the Turkish Expropriation Law
R-31	RAP – MARA’s commitment to provide agricultural land
R - 36	RAP – Revised budget
R – 37*	RAP – New resettlement law

ECAs approved the project at the end of March 2007, based on the agreements listed in the FAM, which include in summary:

- a) that the Turkish government make available the budget for all measures regarding the resettlement process and in the current budgets in parallel to the project financing<sup>4</sup>;
- b) a legally-binding document is embedded in the loan agreement with the financing banks, the ECAs and the Turkish government. The agreement called Environmental Default clause stipulates the suspension of further disbursements and declares outstanding advances due and payable in the case that the borrower (Turkey) does not meet clearly-stated conditions (the ToR);<sup>5</sup>
- c) the implementation of the ToR shall be monitored by an international Committee of Experts (CoE) (with a specific monitoring ToR criteria) who will report back to the ECAs.

## **2.2 Summary of relevant World Bank Standards**

The Export Credit Agencies (ECAs) agreed to apply the World Bank Operational Policy 4.12 regarding involuntary resettlement for the Ilisu dam project. This policy’s major objectives are:

- (a) ***Involuntary resettlement should be avoided where feasible***, or minimized, exploring all viable alternative project designs.
- (b) Where it is not feasible to avoid resettlement, ***resettlement activities should be conceived and executed as sustainable development programs***, providing sufficient ***investment resources to enable the persons displaced by the project to share in project benefits***. Displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs.
- (c) Displaced persons should ***be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels*** or to levels prevailing prior to the beginning of project implementation, whichever is higher.<sup>6</sup>

<sup>4</sup> see <http://www.ilisu-wasserkraftwerk.com/page.php?modul=HTMLPages&pid=32>

<sup>5</sup> The contract of the “Environmental Default Clause” is not public.

<sup>6</sup> see details at [www.worldbank.org](http://www.worldbank.org) – Operational Manual for OP 4.12 – Involuntary Resettlement



## 2.2.1 Relation between the ToR, WB standards and Turkish law

The aim of the ToR is to bridge the gap between Turkish law and World Bank standards. However, if existing Turkish laws continue to be used instead of the ToR then World Bank standards will not be met. Therefore, it is **essential** for this project to implement ToR conditions rather than reverting back to existing Turkish laws. The World Bank requires a “gap-analysis”, which is a comparison of the World Bank standards with the host law and which requires measures to bridge these gaps. As this has not been provided by DSI nor been required by the ToR, in table 2.3 we compare the WB standards and Turkish laws regarding resettlement to show the differences.

## 2.3 The turkish resettlement and expropriation laws

### a) Major differences compared with WB OP 4.12

In Turkey, two different laws apply to resettlement - **the resettlement law** and the **expropriation law**. These Turkish laws are weaker than WB OP 4.12 (see table below) as they **do not include the World Bank’s OP 4.12 key objective: to restore and improve the welfare and livelihoods of the displaced persons**. The Turkish expropriation and resettlement laws rather make resettlement by the government (called “government resettlement”) unattractive and instead put the focus on cash compensation. Further, they do not require that a resettlement plan be produced nor that PAP are informed and consulted about their options and rights nor that adequate planning instruments, like those requested by the WB, be put in place. They do not foresee prompt compensation, and exclude people without property from compensation. This triggers the danger that displaced persons will be impoverished after displacement. Prof. Cernea, former World Bank specialist on resettlement, criticized the RAP in his comments in February 2006:

“Turkey’s current policies and laws about land expropriation and population displacement are not in line with internationally-accepted policies and standards on development-induced displacement and resettlement. [...] The major fallacy in this respect is a reverse tilt in the URAP to the means for displacement rather than to the means and end-goals of resettlement. (M.Cernea, *Comments on the Ilisu RAP 2005; February 2006, p. 15*).”

### b) The new resettlement law does not make resettlement attractive

In October 2006, Turkey introduced **a new resettlement law** (Art. 5543/Residence Act). However, this law and its measures for resettlement are still not in line with the WB OP 41.2 and Prof. Cernea’s critique is still valid, as we show below with some key aspects:

- Displaced families cannot choose the resettlement location.
- According to Art. 21, Abs.1 of the new resettlement law, PAP 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.
- PAP who own land or infrastructure and choose resettlement have to agree that their compensation will be deposited into a resettlement fund. If the determined resettlement location by the authority is more expensive, displaced persons have to pay the difference themselves, but may take a loan to cover this expense.
- PAP 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.

World Bank OP 4.12	Turkish expropriation and resettlement law
<p><b>Required measures:</b></p> <p>6. The borrower prepares a resettlement plan or a resettlement policy that covers the following</p> <p>(a) The resettlement plan or resettlement policy framework includes measures to ensure that the displaced persons are</p> <p>(i) informed about their options and rights pertaining to resettlement;</p> <p>(ii) consulted on, offered choices among, and provided with technically and economically feasible resettlement alternatives; and</p> <p>(iii) provided prompt and effective compensation at full replacement cost for losses of assets attributable directly to the project.</p> <p><b>Planning instruments:</b> Requirement to produce a resettlement plan; a resettlement policy framework; a process framework</p>	<ul style="list-style-type: none"> <li>• No requirements to a) produce resettlement plan; b) inform or consult PAP about options and rights or choices, produce planning instruments.</li> <li>• No prompt and effective compensation.</li> <li>• Compensation of property on market value.</li> <li>• Opportunity losses and transaction costs of the displaced persons are not or only partly recognized.</li> <li>• If the Turkish government exceeds its national 100,000 NTL annual compensation and resettlement budget and has no budget left to compensate displaced persons, PAP (except for small farmers) may be compensated in annual installments within 5 years. (Source: Turkish Expropriation law)</li> <li>• No land to land based preference.</li> </ul>
<p><b>Entitlement for compensation</b></p> <p>11. Preference should be given to land-based resettlement strategies for displaced persons whose livelihoods are land-based.</p> <p>12. Payment of cash compensation for lost assets may be appropriate where (a) livelihoods are land-based but the land taken for the project is a small fraction of the affected asset and the residual is economically viable;</p> <p>Cash compensation levels should be sufficient to replace the lost land and other assets at full replacement cost in local markets.</p>	<p><b>Entitlement for cash compensation:</b></p> <ul style="list-style-type: none"> <li>• Only people belonging to the “Turkish culture” (the law specifies who belongs to the Turkish culture) are entitled to compensation.</li> <li>• Only people owning land or infrastructure are entitled to compensation payments</li> </ul> <p><b>Not entitled for any compensation are:</b> Business losses, tenants, employees, government employees etc.<sup>7</sup>. (Source: Turkish expropriation law)</p>
<p><b>Eligibility for benefits and resettlement</b></p> <p>15./16. <i>Person</i> who have formal legal rights [...] or claim to such land or assets and those who have no recognizable legal right or claim to the land they are occupying are provided resettlement assistance in lieu of compensation for the land they occupy, and other assistance, as necessary, to achieve the objectives set out in this policy.</p>	<p><b>Some groups are not entitled to resettlement</b></p> <p>a) Retired persons, government officers or workers with a permanent contract; and</p> <p>b) Artisans and small traders earning more than 12 times the annual minimum official wage (regardless of time spent in area).</p> <p>PAP who do not own property but demand resettlement have to pay for the new land or house or may take credit.</p>

<sup>7</sup> See ToR 10, Table A on “Trade Income Restoration” and Implementation RAP, Table 4.1: “Whether they are owners of their store or whether they rent them from someone else, the commercial PAP will lose their trade income as a result of the resettlement. The expropriation money that the storeowners receive will just cover the loss of their building without compensating them for any trade income loss.”

### **3. Evaluation of the project information and documents**

1. The public information available on the ToR and the expropriation and resettlement process was not clearly stated and was partly kept secret. There is for example no public information on whether or not Turkey has signed the “environmental default clause” or a similar legally-binding contractual obligation to adhere to the ToR. There is also no public information as to whether the required separate budget for the resettlement process has been earmarked within the national budget.
2. Information on the resettlement process and the implementation of the ToR must be gathered by now in various large documents (URAP, RAP amendments and nine implementation reports, called “evaluation” and “reevaluation” as well as “Implementation Resettlement Plan”) which are difficult to locate on the web sites of the consortium constructing the dam. DSI’s homepage does not even mention the ToR. Even when this information has been obtained, it is still unclear how the entire expropriation, resettlement and compensation process will be implemented and difficult cases handled.
3. In some documents essential annexes or information are missing. For example: a) the relevant Turkish law on expropriation is missing; or b) Annex 2 of the Implementation Resettlement Report on alternative resettlement sites;
4. Further, the quality of project documents remains poor and is not up to international standards. Some examples: a) Only half of the new resettlement law, called “Residence Act” by DSI, has been translated into English, and the translation is very poor; b) the Resettlement Implementation Report of February 07 is incoherent in places and does not fully meet the requirements of the ToR and the World Bank. (See Chap. 4.4.1)
5. The deadlines for meeting two thirds of the ToR’s conditions have passed with no information on their progress. These unmet conditions included the preparation of essential project implementation documents.
6. The expropriation and resettlement of five villages near the dam construction site has been presented as a pilot resettlement case for which ToR 32 requires that the Resettlement Implementation Plan had to be produced. However, those five villages are not adequate to predict the quality or problems to be anticipated for the coming entire expropriation and resettlement process for 15,000 people. The structure of property rights in these villages is not as complex as in other villages and most men will find employment in dam construction, which will not be the case for villages further away.

### **4. Evaluation of the ToR on resettlement**

#### **4.1 Positive aspects of the ToR**

The ECAs have incorporated into the ToR some essential features of the World Bank’s OP 4.12 safeguard policy addressing involuntary resettlement. Positive aspects of the ToR include:

- The requirement to provide robust figures on the number of people affected, on ownership, on absentee owners, as well as information on inequities and a cadastral survey, which should all have been delivered by March and June 2007. People who do not own land, or who had to leave their villages during the civil war, are supposed to receive some compensation.
- Compensation and resettlement measures, implementation schedules, and monitoring plans must also be developed for all affected people. Money paid for expropriation shall

reflect the replacement value. Several ToR emphasize the importance of participation and consultation of affected people and the need for income restoration.

- Land shall be made available by the Turkish Agricultural Ministry (MARA) to all, including landless households or those with less than adequate land ownership, to support their families. Inequities of land ownership shall be addressed, and measures taken to avoid disadvantage. After a feasibility study, the adequacy of resettlement sites has to be confirmed through consultation with the PAP.
- The newly developed villages for displaced shall receive water and electricity supplies, mosques, improved health services, schools, irrigation and other infrastructure. Income restoration measures, including a model farm, will be developed.
- Grievance redress mechanisms for all resettlement issues must be produced.
- Income restoration measures shall be provided for all affected people.
- Finally, an updated Resettlement Action Plan, including all required measures of ToR 1-37 and an updated budget should have been prepared by June 30 2007. A complete resettlement action plan shall be delivered.

## **4.2. The ToR are incomplete**

However, despite the ToR's provisions, our evaluation of their implementation (see Section 3.5) shows that the ToR remain often too vague and incomplete. The ToR do not even require that the following mandatory WB OP 4.12 documents shall be provided:

- Alternatives to the project to minimize resettlement,
- A cost-benefit analysis of the project,
- A social baseline study including indicators for the overall project and resettlement process to assess ex-post whether affected people are better or worse off after expropriation and resettlement,
- A separate development project,
- A comprehensive policy framework,
- Measurable and enforceable performance criteria, available to the public to evaluate whether the ToR have been implemented adequately,
- No clear indicators are given to measure if the objectives are realized (WB OP 4.12/ 24). Further, neither the Final Agreement Minutes (Oct. 2006) nor the ToR include any obligations in case the Committee of Experts (CoE) finds that the ToR are not fully met. It also remains unclear what the ECAs are going to do with the comments of the CoE and what leverage they have to press for implementation of the ToR. There is further no information about who is going to press the Turkish government to take action in case of non-fulfilment. This information has to be delivered and made public.
- The WB OP 4.12 requirement to embed the URAP and the ToR into a legal framework to make them legally enforceable;
- WB standards require that the project's benefits are shared with the affected people. This includes sharing the economic profit of the power project to restore income and livelihoods which has been common practice in Switzerland for over one hundred years. However, DSI only lists the building of infrastructure and mosques as benefit sharing.
- The ToR should at least have required a gap analysis to show how Turkish law differs from WB standards and require measures to overcome these shortcomings.

### **4.3 Project's approval process does not meet World Bank standards**

#### **1) *Project approval process is reversed***

WB OP 4.12/Para 22 requires that fundamental resettlement instruments (see Para 25-29: including the Resettlement Plan or the Resettlement Policy and Process Framework) have to be met *before* project appraisal and *before* a final funding commitment. The reason is that at this early stage, the project could still be stopped or major shortcomings approved, which is nearly impossible after funding approval. However, the Ilisu project has already been approved by the participating ECAs and financing contracts have been finalized. A project like the Ilisu Dam, for which fundamental documents are still missing, would have never been accepted by the World Bank even for the appraisal process.

#### **2) *Fundamental documents were not produced before project approval***

The ToR show that not even the most fundamental data and documents have been produced so far. The most important document which is still not completed is the Updated Resettlement Action Plan (URAP). According to WB OP 4.12 it should be the first and not the last document to be completed. Further, it should be backed by a legally-enforceable contract outlining the obligations of the government and the project developers and must have been made available to public comment before a final funding commitment. Condition 35 of the ToR requires that the URAP including all new information and plans presented in accordance with ToR R 1 – 37 must be completed by June 30, 2007. This deadline passed without further information.

#### **3) *No separate budget for resettlement measures earmarked***

WB OP 4.12/Para 20 requires that “The full costs of resettlement activities necessary to achieve the objectives of the project are included in the total costs of the project.” According to the Final Assessment Minutes (FAM) between Turkey and the ECAs of October 2006, an agreement should have been published by March 2007 to show that Turkey secured and earmarked the necessary financial funds for the expropriation, compensation and resettlement process in the national budget. This document has not been made publicly available, raising questions as to its existence. Further, it is against public sector rules in Turkey to earmark project-specific funds unless there is a Cabinet decision to this effect, which has not happened.

#### **4) *Expropriation started although project implementation structures are not in place***

It is scandalous that expropriation has started in the so-called pilot project villages (five villages near the dam construction site) before any of the promised structures listed in the Final Agreement Minutes of October 2006 are in place, like for example the Project Implementation Unit or the grievance and redress process or the monitoring Committee of Experts on resettlement. Indeed, the Committee of Experts has never even visited the area.



## **4.4 Evaluation of the implementation of the ToR regarding expropriation, compensation and resettlement**

### **Project implementation does not comply with the ToR and WB standards**

Our review of the ToR-implementation documents (Implementation Resettlement Plan of February 2007 and the “evaluation” of the first nine ToR which had to be completed by March 2007), show that DSI did not adequately implement the requirements of the respective ToR conditions. Instead, DSI continues to base measures on the less demanding Turkish law, which is in breach of World Bank standards, as we demonstrated in Section 2, Background. This creates inconsistencies and makes the ToR obsolete.

#### **4.4.1 Examples of ToR breaches regarding compensation and resettlement**

##### **1) Expropriation started not based on ToR: Extremely poor expropriation packages offered to affected villagers**

Interviews by the Hasankeyf Initiative and accounts of villagers<sup>8</sup> show that DSI applied none of the promised procedures to the expropriation of the first villages. Nor are the structures promised in the FAM, like the PIU<sup>9</sup> or the grievance mechanisms, in place yet. The majority of expropriated families were not informed about the ToR.

According to those displaced, they were not offered land of good quality in a participatory process as required in the ToR. They were told they had to move to designated land above the river, which is very arid and infertile. As nothing can be cultivated there, the majority of families (with the exception of only 2 families) refused to move to the designated plots. They chose cash compensation because no other option was presented to them. DSI offered the affected families extremely poor expropriation packages of only 25,000 to 30,000 YTL for a house. (Currently, the minimum cost for a three-bedroom apartment in Diyarbakir would be 50,000 to 100,000 euros.) The affected families used an expert to estimate the value of their properties, who confirmed the value of their houses between 40,000 and 50,000 YTL. They have filed legal cases against the Turkish government for breach of promise. However, they are forced to bear the costs for the law case, which contradicts promises of the consortium. DSI filed a case against the PAP’s expert.

##### **2) *The Implementation Resettlement Plan does not comply with the ToR and WB standards***

The Implementation Resettlement Plan, published in February 2007 in response to ToR 26, does not give objectives and therefore its status and scope is unclear. The report itself is unclear and mixes information and measures on the overall resettlement process with information only relevant for the first villages which are already expropriated. Examples:

- a) It quotes World Bank standards and pretends the project is in compliance with them but gives no analysis as to how far the project complies with these standards.
- b) It does not address important requirements of the ToR, for example demonstrating where resettlement land is available, or the process for expropriation and resettlement or the handling of complex cases.

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<sup>8</sup> See: Interview with expropriated villagers in Ilisu, July 2007 in Annex 2

<sup>9</sup> According to the Final Assessment Meeting, a Project Implementation Unit (PIU) will be established and together with the resettlement sub-committees will be responsible for meeting ToR resettlement requirements (FAM. p. 5).

### 3) **Breach of ToR 31: no information on resettlement land and its hidden costs**

*ToR 31 calls on the Turkish Ministry of Agriculture (MARA) to “put at DSI’s disposal agricultural land of equal dimensions and quality as those expropriated for the rural resettlement of the people affected by the Ilisu HEPP project.”*

- However, the Implementation Resettlement Plan of February 2007 suppresses information on available land as well as designated resettlement sites. As mentioned above, land of good quality and near water is rare in the area. Land away from the Tigris is generally dry and infertile. Buying good quality land will be expensive as the landowners will raise prices. The URAP indicates that resettlement land will include the Ceylan Pinar state farm. In contrast, visits to this major and profitable state farm clearly show that MARA is not prepared to transfer a highly-profitable government-owned enterprise to landless resettlers if it doesn’t have to. The ToR don’t specify that land in Ceylan Pinar must be given to displaced persons, which makes it unlikely that someone will ever move there.
- ToR 31 does not state that this land shall be given for free to displaced families. We therefore assume the PAP will need to buy this land, according to Turkish law, which might be unaffordable for them, if it is not subsidized. Yet, the ToR do not tackle this issue.

### 4) **Breach of ToR 12: Compensation unjust, unavailable to some affected and based on loans**

*According to ToR 12, compensation and resettlement measures as well as the implementation schedule and monitoring plans shall be available to all affected populations.*

However, ToR 12 does not specify the type or the amount of compensation. This leaves room for interpretation and under-compensation. Indeed, the income generation matrix of the “evaluation” for ToR 10 and the Resettlement Implementation Plan of February 2007 (Table 4.1) show, contrary to the ToR requirements, that not all affected people shall receive cash compensation. DSI suggests that PAP without property, who under Turkish law are not entitled to claim cash or land compensation, shall receive loans to rebuild their lives.

Compensating PAP with loans is not acceptable according to international best practice. Moreover the ToR are not precise enough to avoid this injustice. International best practice condemns the practice of providing loans to people without material assets, who just lost their entire livelihood, because of the high risk of impoverishment – yet this is precisely what is being proposed for Ilisu. Further, there is no guarantee that PAP will ever receive the promised loans as banks usually do not lend to people without guarantees – a problem experienced by PAP from other dams in Turkey.

#### ***Proposed loan packages<sup>10</sup>***

Apart from our critique that loans are no adequate compensation, the review found that the February 2007 Implementation Resettlement Plan makes no link to the loans mentioned in the URAP of 2005 and the amendments of 2006, but introduces new loan systems. It is completely unclear which loans apply. It also reveals that wage owners in non-agricultural sectors can’t even obtain loans:

- a) According to the Updated Resettlement Action Plan (URAP, Chapter 7), and the “URAP Amendments”, ***“tenants, sharecroppers or those people who are not entitled to compensation according to the new law but earn agricultural income will receive agricultural loans.”*** This will enable them to purchase land in the new settlement area and

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<sup>10</sup> For details see Annex 3. Source: URAP, Chapter 7, Amendments, page 17



earn the same amount of money as at present”. However: **“Wage earners without agricultural income are not entitled to loans.”**<sup>11</sup>

- b) The Implementation Resettlement Plan of February 2007 states that the following loans are available for people who qualify for government-assisted resettlement: **Equipage credit; Operational Credit; Non-repayable resettlement aid; Credit for cases of non-availability of resettlement sites; Construction credit for people who choose government-assisted resettlement with credit above the reservoir.**<sup>12</sup>

## **4.5 Breaches of the ToR on income restoration**

**ToR 10, 19, 20, 21, 22, 23** in summary require **income restoration forecasts and concrete measures for all PAP** during dam construction and after completion of dam construction, including time schedules, etc. until income restoration is reached to the satisfaction of the CoE. PIU shall also provide a forecast of labor/skill demand and define how apprenticeships/training programs for the affected communities will be organized and paid. PIU will further prove that a minimum of 60% of the construction workers are recruited from PAPs.

### **Implementation measures by DSI:**

The “Evaluation” of R-10 (PIU is to provide information on all measures for income restoration) lists a matrix structure which indicates the income restorations measure, the potential benefits, the number of PAP beneficiaries, the overall cost (in USD) and the responsible entities. The authors suggest that

- 1) **fishing cooperatives** shall be established and properly-trained fishermen will be equipped to secure an income,
- 2) some farmers shall be trained as **caper farmers**,
- 3) job opportunities will be provided for eight years at the **construction site**
- 4) again, the authors clearly indicate that several groups of PAP – those without land and earning a living of agricultural income or farming (poultry and cattle), or others who receive salaries from governmental organizations, or make a living by trade income etc. – **are also not entitled to income restoration measures and shall receive different loans according to the sub-groups** to increase their income (see above 4.4.1./4).

### **Comments:**

After evaluating the major income generation measures, we conclude that the income generation schemes proposed do not constitute a concrete plan and are simply wishful thinking. The measures ignore that it takes time to build up a business and do not foresee measures for the interim period:

#### **(1) Unrealistic and unachievable fishery option**

- The panel of expert report on the Nam Theun 2 dam project in Laos warns that: “Contributions of the future reservoir fishery to household diet and income cannot be expected until after reservoir impoundment occurs.” (Panel of experts report 23.2. 2007, p 11). In the case of Ilisu this will be 2015 at the earliest, and further delays are possible. Usually, it takes another 5 years until a fish farm yields income. No information is given on how people will survive over this long time period.

<sup>11</sup> See details: a) URAP Chapter 7, URAP amendments P. 17

<sup>12</sup> See “Entitlement matrix” in the Implementation Resettlement Plan (Table 4.1, P. 14)

- It is not mentioned that the river fish species will most likely die in the reservoir water (see report by Eawag (The Water Research Institute of the Federal Polytechnic Institute-ETH, Zurich, Switzerland) of Feb. 2006) and that new fish will have to be put into the reservoir. Costs for new fish are not taken into consideration. Furthermore, no information is provided on who will pay for the cold fish storage houses or trucks for transport, training etc.
- According to the Swiss Eawag study, setting up a fish industry will only be possible if sewage systems are built to clean the Tigris water. The sewage treatment plants were promised orally, but there is still no public information that they will actually be built and by when.
- No information is given on what will happen to existing fishermen downstream of the Ilisu building site. Due to the dam building activities, it is very likely that fish downstream will die. However, mitigation measures are not mentioned in the matrix, nor required in the ToR.

## **(2) Poorly thought-out caper farming option**

- The idea of getting PAP involved in caper farming could be promising. However, the same question applies: What will people live on for the first years until income can be generated, especially since they have to take out loans to buy the land and the caper bushes? Furthermore, marketing of the capers is essential to establish a business. How are people with a literacy rate of 70% going to know about customers and markets outside of Turkey? Who will pay for training, marketing services and transport etc.?

## **(3) Employment problems in construction work**

*According to ToR 22 and 23 a minimum of 60% of the construction workers must be recruits from PAP and a minimum recruitment quota after construction shall be given.*

- The evaluation matrix Table A of ToR 10 lists that 700-900 PAP will receive jobs at the construction site. This figure is highly confusing as it differs considerably from the announcement in the RAP and on the consortium's homepage that 4,700 PAP will receive jobs.<sup>13</sup> Given the low numbers, we assume that the workers will all come from the region near the construction site of the dam where expropriation has started. This is a disadvantage to other PAP in villages further away who will be deprived of this income opportunity.
- DSI's evaluation of ToR 23 (Feb. 2007) states that the minimum recruitment quota for PAP for the power plant staff after construction will be 50%. However, this is meaningless without the number of staff. Will the 50% be out of 10, or 100, or more employees? It will most likely not be a high number as hydropower plants do not need many staff once they are running.
- The authors of the evaluation suggest that after completion of the Ilisu dam, PAP will likely get good jobs on other construction sites all over Turkey. This is too vague for being an acceptable income generation measure and Kurdish people may want to stay in the area and might likely have difficulties to find jobs elsewhere.

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<sup>13</sup> See: <http://www.ilisu-wasserkraftwerk.com/page.php?modul=HTMLPages&pid=35>

## **4.6 Evaluation of the updated grievance mechanisms**

*ToR 27 on grievance redress mechanism: PIU will develop a grievance redress mechanism for all resettlement issues including income restoration. PIU will provide a list of actions necessary for implementation, an implementation schedule and a monitoring concept*

On paper, the grievance mechanism proposed appears impressive and suggests that PAP can use multiple sources to find solutions to their problems.

### **Comments**

However, the grievance procedures delivered by DSI is not in line with World Bank guidelines and the following difficulties are to be expected:

1. The picture painted in this section of the RAP is excessively optimistic, especially in view of the fact that a large majority of the PAP were not allowed to participate in decisions of the construction of the dam and of the RAP.
2. Huge numbers of complaints about the construction of the Ilisu dam together with over 35,000 signatures were already forwarded to several of the “channels” listed in the Grievance Procedures. They were ignored for the past 7 years. Based on this evidence, it is highly unlikely that the PAP will find more receptive ears during project implementation.
3. The document promises to provide information about a toll-free number and the procedures on booklets, leaflets, etc. Yet the majority of the affected women are illiterate and speak Kurdish.
4. The procedures described about grievance concerning strawberry production<sup>14</sup> clearly shows that there will be no rapid solution.
5. The procedures described for the court appeals also shows that it will take a long time and at large expenses on behalf of the PAP to have their problems solved. In addition, as current resettlement projects show (e.g., Baku-Tiblisi-Ceyan Pipeline Project) most complaints arrive in the local courts at the same time, but the courts do not have the capacity to handle cases within the time frame specified.
6. The grievances will come in two waves: a) now as the first 4-5 communities near the construction site are being moved; and b) when the remaining 195 communities, including several urban areas, are vacated when the construction is completed. The schedule of proposed activities does not reflect this.
7. Neither the law nor the ToR specify a deadline by when complaints by resettled persons have to be resolved.
8. It is stated that the information about the grievance process will be provided during the participatory meetings; however, there is no evidence that the Turkish State Hydraulic Works (DSI) has the capacity to hold participatory meetings based on its past performance and the performance it displayed during the preparation of the RAP.

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<sup>14</sup> We are astonished to find the example of strawberry production here, as cultivating strawberries doesn't appear in the income generation section.

## **4.7 Evaluation of the DSI's updated budget**

*ToR 36 requires that PIU will update the budget for the implementation of all resettlement actions, including the ones outlined in ToR R1 – R 37 and reflecting full legal costs and budgeting for the resettlement related tasks and staff described in the ToR of Project Implementation Unit and the Committee of Experts*

In response to ToR 36, DSI submitted an updated budget in March 2007, which we analyzed. The consortium promises on their homepage that: *“estimated 600 million USD will be spent for expropriation and further 200 million USD for resettlements and the building of new infrastructure. The means for it are made available by the Turkish government in the current budgets in parallel to the project financing.”* (www.ilisu-wasserkraftwerk.com)

### **Comments**

This information contradicts the figures and information delivered in the DSI evaluation. There is also no evidence that these funds are being made available by the Turkish government:

1. The total budget of the RAP is 1.02 billion US dollars. The bulk of this amount will be used to compensate the small percentage of PAP that own most of the land and for the immovable assets. The next largest expenditure relates to the reconstruction of roads and community property. If 200 communities are to be vacated, at least partially, it is unclear how the majority of the PAP will benefit from this. Only 25 million US dollars of the entire RAP costs are for income restoration measures (in contrast with 6 million for monitoring!).
2. The source of the funds is not indicated and the ToR do not require that it is specified. Nor is there any evidence that SHW/DSI will receive an earmarked budget for this project. As we explain in Section 4.3/3, it is against the public sector rules in Turkey to earmark project-specific funds. Unless we receive public information on this, the budget consists of meaningless figures.
3. Most large dam projects of SHW/DSI in the past and those ongoing have suffered from inadequate resource allocation. There are still people waiting to be resettled and compensated from large-scale dams completed several decades ago.
4. In the original budget, the sources of the funds were identified. For instance, all credit was to be given by the Ziraat Bank. However, this version of the budget does not indicate the source of funds. SHW will most likely not provide credit to farmers as it is not entitled to do so.
5. ToR 1 – 8 and 37 (asking for a comprehensive RAP and figures) as well as sections of the RAP show that the total number of affected populations are yet to be determined. Thus, it is impossible to judge whether the resettlement budget is sufficient.
6. The moving assistance should be given to all affected households that have to move physically. However, given the current cost of transport and the location of many of the affected communities, the amount allocated for this purpose is insufficient (unless, as per local law, such assistance is only provided to those few that trust SHW for resettlement expenses).
7. No amounts are indicated for the purchase of new land for resettlement. If indeed MARA provides good land as is required in ToR 31 and if this land can be obtained for free or at affordable prices by the displaced persons, there will be a substantial increase in the total number of PAP asking for state support with resettlement. If this happens, the funds for income restoration and resettlement will be insufficient.

## **5. Conclusion**

### **1) *ToR are flawed and their implementation is in breach of WB OP 4.12 but based on Turkish law***

We conclude that the ToR are flawed and lack teeth, as evidenced by DSI more or less ignoring them. Furthermore, we consider it unacceptable that the governments of Switzerland, Austria and Germany approved national export risk insurance for exports to the project, although fundamental data and documents are still missing and although the ToR implementation reports are flawed and still based on Turkish law, which does not have the objective of restoring livelihoods and thus breaches World Bank standards.

Further, despite the ToR on resettlement, the project still breaches World Bank standards (WB OP 4.12/) because it does not, as required by WB OP 4.12/Paragraph 1 and 2, plan and execute the resettlement activities as part of a sustainable development program. In addition, insufficient investment resources are provided and the persons displaced by the project are not enabled to share in the economic benefits of the energy project. Displaced persons have been neither meaningfully consulted nor have they had the opportunity to participate in planning and implementing resettlement programs. Due to the fact that DSI continues to base expropriation and resettlement activities on Turkish law, and no legal contract exists to make the ToR legally binding, an impoverishment risk cannot be excluded, contrary to the main objective of WB safeguard 4.12.

### **2) *PAP will choose cash compensation because government resettlement remains unattractive***

From our evaluation and the experience of the expropriation of the first villages, we conclude that despite the efforts of the ToR, resettlement will remain unattractive to affected people and thus they will mostly choose cash compensation. The Implementation Resettlement Plan, Chap.10.2 confirms: "...participants from the affected villages preferred the self-resettlement."

#### **We found the following reasons:**

- No ToR or Agreement requires that Turkish law, making resettlement unattractive<sup>15</sup>, shall not be enforced. ToR 37 only demands a comparison of the old and new resettlement law, which has no impact. If Turkish law continues to be applied, most PAP are better off choosing cash compensation.
- The ToR and the RAP are not legally enforceable. Thus, the PAP cannot trust the promises of the ToR as only claims on the basis of Turkish law can be prosecuted. Even with a contract like an "Environmental Default Clause" (see Section 2.1) in place, there is still leverage for DSI to use Turkish law because the Final Agreement Minutes don't specify that non-compliance with the ToR will be punished.
- Affected people are not informed about the ToR and their rights and benefits. Resettlement was not made attractive to them and the income restoration measures are flawed and not realistic enough to convince PAP to choose government resettlement. Further, for young people to start a new life in the city seems more promising than to sit on a dry piece of land which is not their ancestral land.

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<sup>15</sup> See Section 2/Background: The new Turkish resettlement law requires that affected people who chose government resettlement have to move to a designated area. In case they don't like it or can't cultivate or earn money there and move away, they will lose their entire entitlement for resettlement and compensation but still have to continue to pay a monthly rent to the government. Further, they are not allowed to sub-let, mortgage or sell the new property for at least ten years.



- Most PAP know about the experiences of other displaced persons by Turkish dams who now live in disastrous conditions.<sup>16</sup> They learned that Turkish resettlement laws are unfair and that promises were never fully met (see Section 2.1). The negative experiences of the first expropriated villages will not give them confidence that this time the government will improve their livelihoods.

**c) *DSI tries to limit the resettlement budget***

Based on the fact that DSI has proposed few measures to make government resettlement attractive, that there is no integrated development plan, no realistic income generation measures and grievance mechanism, that the expropriated families did not receive the replacement value for their properties, and because the budget is insufficient, we conclude: By using Turkish law and not the ToR, the Turkish government seems to be trying to keep the expropriation and resettlement budget as low as possible, which makes the project more attractive for investors and reduces the burden on the national budget.

However, international lending and standards highly reject and condemn this practice, as significant costs are externalized to the affected population that already carries a heavy burden by having to establish new lives.<sup>17</sup>

## **6. Demands**

- **Implementation of the project must not start until all project documents are produced to conform to at least World Bank standards and until all points of our critique have been corrected. Further, we demand:**
  1. Also the RAP and the ToR must be embedded into a legal framework to enable the affected people to legally prosecute non-compliances.
  2. The ToR must be improved to bring them up to international best practice (compliance with IFC performance standards, OECD guidelines on involuntary resettlement and World Commission of Dams recommendations).
  3. The documents required by the ToR need to be implemented according to the ToR. The implementation must be approved by the affected people and other stakeholders before the final project approval by the ECAs.
  4. The ECAs and the Committee of Experts must ensure that the displaced persons of the ongoing expropriation and resettlement process in the “Pilot Project” villages are not discriminated by early expropriation. The expropriation should stop until all agreements are signed and the Project Implementation Unit started operating. Displaced families must receive compensation according to the ToR.
  5. Further, all project documents must be:
    - put on one web site where documents are easily found;
    - written in a clear and concise manner so the process is transparent as required by WB OP 4.1; and
    - translated into good quality English, and appropriate Kurdish translations made which are accessible to locally-affected people.

<sup>16</sup> The massive complaints by the people from the Batman reservoir resettlement site and protest letters by the people resettled in Halfeti (Keban Dam) are known in the Ilisu area.

<sup>17</sup> WB OP 4.12/Para 2b states: “Where it is not feasible to avoid resettlement, resettlement activities should be conceived and executed as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits.”

6. ECAs and DSI must deliver immediate information about why promised deadlines were not met and new deadlines must be determined. We also demand to receive public information on the measures taken to ensure the Turkish government meets these deadlines.
7. The new procedures outlined in the ToR need to be made available to all affected people in a simple, clear and short brochure with pictures so the people can take an “active” part in this project.



## ANNEX 1

The Minutes of the Final Assessment Meeting (FAM) state (summarized):

1. The **Project Implementation Unit (PIU)** shall be established (Annex 1), and it shall be responsible for carrying out various tasks relating to the Project involving environmental, cultural heritage, and resettlement issues.
2. The **Committee of Experts (CoE)** shall be established (Annex 2), and it shall be responsible for carrying out various tasks relating to the Project involving environmental, cultural heritage, and resettlement issues.
3. **Terms of Reference (ToR)** describing the various responsibilities, tasks, and other parameters concerning the activities of the PIU and the CoE have been agreed to by the Parties during the FAM (Annex 3.).
4. Prior to the ECAs seeking a final commitment from each of their Guardian Authorities to issue the Guarantees, **DSI shall fulfill to the satisfaction of the ECAs the list of obligations presented in Annex 4.** The Parties agree that the list in Annex 4 is complete in terms of DSI's obligations to the ECAs prior to the ECAs seeking a final commitment from each of their Guardian Authorities to issue the Guarantees. No other ToR are linked to the ECAs' seeking of final commitment from their Guardian Authorities.
5. If for any reason the obligations of DSI shall be transferred to an operational company after the dam construction, the transfer conditions shall reflect the requirements of the Transfer Protocol as comprised in Annex 5.
6. **To fulfil the requirements of the respective Guardian Authorities concerning the financial means needed for the Project, the Turkish government shall provide a Letter of Comfort to demonstrate its commitment in accordance with TOR F-2 included in Annex 3.** A sample of such Letter of Comfort is presented in Annex 6.
7. The Parties agree that having in mind the ECA Ilisu Concept as of August 24, 2006 (the "ECA Ilisu Concept"), all conditions that are conditions of a final commitment to be decided by the respective Guardian Authorities and that are comprised in the ECA Ilisu Concept are considered in these Agreed Minutes. On the request of DSI for an indication for final commitment, ECAs stated that based on these Agreed Minutes and its annexes and when the actions which are identified to be accomplished before final commitment are fulfilled, the ECAs shall apply to their respective Guardian Authorities for final commitment.
8. The parties agreed on two Terms of Reference concerning the procedures of contacting the riparian countries Iraq and Syria as presented in **Annex 7.** (missing in document)
9. The list of participants for the FAM is presented in **Annex 8.**

The full ToR on resettlement are listed on the Ilisu homepage: <http://www.ilisu-wasserkraftwerk.com/page.php?modul=HTMLPages&pid=62>

## **ANNEX 2**

### **Interview conducted by the Hasankeyf Initiative with the affected people in the village of Ilisu, regarding the ongoing expropriation and compensation process (July 2007)**

**(for original document, see page 26)**

*Interview: Kerem Ceagcil, English translation: Kane Barwick*

**Question 1) How much land does each family in Ilisu and Karabayir own?**

Answer 1) On average each family owns around 1 hectare (10,000m<sup>2</sup>). One-tenth of this land is used for growing vegetables and flowers and is, therefore, irrigated. The rest of the land is unirrigated.

**Q2) When one family owns 2 hectares of land, how much of it would be irrigated?**

A2) One-tenth hectare would be irrigated. On average, each family owns 1 hectare of land.

**Q3) How much must each family earn from their land?**

A3) The family needs to be able to earn their entire livelihood from their land.

**Q4) How much does the DSI contribute to each household?**

A4) The DSI pays between 25,000 and 30,000 new Turkish Liras

**Q5) In regard to the new resettlement plan, what has the DSI done up until now? What alternative arrangements has the DSI suggested for the affected people? Will the affected people be offered resettlement or money?**

A5) There is no talk whatsoever of a new resettlement. The dominant opinion is that the people who have the money, will do as they please.

**Q6) In terms of the new resettlement plan and the other policies, should the DSI, before the dispossession takes place, visit those affected by the dispossession and gauge their feelings regarding the resettlement? Have they tried to do something of this nature?**

A6) At the moment we're hearing nothing new regarding the resettlement. No official documents have been given to those in the affected villages. All the related files are in the hands of solicitors. The solicitors are supposed to give the people, who are to be dispossessed, one-tenth of the "dispossession money" as a security. But the trouble is, that this "dispossession money," that was suggested by the DSI and the consultants involved, is nowhere near enough for the affected people in *Batman* to lead a normal life.

**Q7) What sort of deadline have the affected people been given in order to voice their grievances regarding their dispossession? In the case of a grievance: how long would it take before a judge comes to a decision? In the course of events have the affected people been informed that they are allowed to take this course of action?**

A 7) In 2006 the minimum value (for the land) was quoted and it is these prices that are, at the moment, to be paid. 25,000 to 40,000 new Turkish Liras was offered for each house and one-tenth hectare of land was valued at between 1,000 and 2,000 new Turkish Liras. It was expected that an agreement would be reached within a month. The villagers were not satisfied with the offer and made an official complaint against the DSI. In response the DSI

made a counter-claim against the villagers. While the related case was being heard the consultants decided that one-tenth hectare of land was worth 2,500 new Turkish Liras and one-tenth hectare of irrigated land was worth on average 4,500 new Turkish Liras. The value of the houses increased to between 30,000 and 40,000 new Turkish Liras. These new prices were put forward by the consultants but at the same time the DSI made an official complaint against these consultants. The court case ended with the state being allowed to make the necessary decisions in relation to *Ilisu* and *Kayabayir*. In *Kayabayir* the richest land was flooded.

**Q8) It is important that the villages archive all the official documents (and even the dates from the files are important.)**

A8) The villages have no files; the solicitors have them all.

**Q9) When did the officials come to the villages to explain everything regarding the dispossession and listen to the concerns of those who would be affected? What did they explain? Did they say: “If you don’t accept our offer you’ll get nothing”? It is also important that that sort of information is noted and kept.**

A9) The people almost played no role in the decision. Everything was left to the courts to decide. And in cases where the villages refused to obey the court’s decision and leave the village, they would be forced to pay rent.

**(1 New Turkish Lira = 0.56 Euros or 0,93 Swiss Franks)**

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**Interview by Kerem Ceagcil (Representative from the Initiative to Save Hasankeyf),  
5. August 2007 in Ilisu:**

Today I visited the village of Ilisu, where a number of the residents have received their “dispossession money.” All the residents, who received money for the value of their gardens, houses and land were forced to contest the (original) offers made to them in court. The result of the trial is still pending. The residents were offered 10,000 new Turkish Liras for one-tenth hectare. For example, one expropriated man received 20,000 new Turkish Liras for 1.3 hectares of unirrigated land. Earlier he was forced to deduct 8% from the price in order to pay off the solicitors, the villagers had contracted. For his house he received 40,000 new Turkish Liras. I asked the villagers and they told me that they had received no tools or machinery as promised in the new resettlement law, rather the compensation was paid in cash.

The villagers refused the resettlement plans offered by the DSI, because other people already owned all the land near the new settlement. That would mean that they could not access and work their own land, additionally there were no employment opportunities in the region where they were to be resettled. The people who have remained have made an official complaint on this too. The ruling of the case is still pending.

**S-1) Ilı su ve Kara bayır köyünde bir hanenin ortalama kaç dönümü var? 10 ile 20 arası mı?**

C-1) Ortalama olarak 10 dönüm arazi bulunmaktadır. Bunun bir dönümü sulu ve meyve sebze bahçesidir. Diğer 9 dönüm ise kuru arazidir.

**S-2) Bir hanenin 20 dönümü varsa bunun ne kadarı ortalama sulanan arazidir?**

C-2) Ortalama 10 dönümdür. Bunun bir dönümü sulu arazidir.

**S-3) Bir dönümden ortalama yıllık gelir nedir? Sulanan ve kuru arazi için ayrı değer iyi olur. En son yılda elde ettikleri gelir nedir?**

C-3) Ortalama bir ailenin yıllık getirisi sadece yıllık masrafını karşılamaktadır ancak.

**S-4) Bir ev için DSI ne kadar para vermek istiyor?**

C-4) 25-30 milyar karşılamaktadır.

**S-5) Yeniden Yerleşim Eylem Planı (YYEP) ve sonraki belgelere göre, DSI insanlara kamulaştırma/yeniden yerleşim konusunda ne gibi alternatifler sundu? Devlet eliyle yeniden yerleşme veya para almak mı?**

C-5) Yeni yerleşim diye bir şey yok. Verilen parayla 'nereye yerleşiyorsanız, yerleşin' mantığı hakim.

**S-6) Yeniden Yerleşim Eylem Planı (YYEP) ve sonraki belgelere göre, DSI kamulaştırmaya başlamadan önce yeni yerleşim yerini köylülerle gezip yerin uygun olup olmadığını sorması gerekiyor. Böyle bir şey yapıldı mı?**

C-6) Şu anda yeni yerleşim konusunda bir şey yok ortada. Köylülere herhangi bir belge verilmemiş. Belgelerin tümü avukatla da ve davaları avukat takip ediyor. Köylüler alacak paranın % 10 da avukatlara verecek. DSI nin ve Bilirkişi heyetin verdikleri miktar Batmanda ortalama yaşam kuracak veya bir daire alacak bir meblağa değil.

**S-7) Kamulaştırma resmi olarak başladıktan sonra ne kadar süre içinde önerilen miktar paraya itiraz etme süresi verildi? Ve buna itiraz edildikten sonra hangi süre içinde mahkeme son kararı vermesi gerekiyor? Bu yönlü bir şey belirtildi mi?**

C-7) 2006 tarifesine göre çok cüzi meblağ tarifesine bulunduğu ortalama dönümüne 1-2 milyar evlere ise 20-30 milyar biçtiği. 2006 yılında bunlar esas alındı. Bir ay süre içinde uzlaşma teklifinde bulundu. Köylüler bu miktarı az bularak DSI verdiği çok düşük olduğunu söyleyerek DSI ye dava açtı. Ama diğer taraftan da DSI de köylülere dava açtı. Dava aşamasında bilirkişilerin çıkardıkları fiyat ise Kuru arazi dönümüne 2,5 Milyar ve Sulu araziye ise ortalama 4,5 milyar fiyat biçiyor. Evler ise 30,40 milyar arası fiyat biçiyor. Bu rakamlar bilirkişi tarafından veriliyor ve aynı zaman da DSI bu miktara itiraz ediyor. Davalar sonucun da ılı su köyü tamamıyla devletin mülkiyetine geçmiş olacak. Kara bayır köyü ise en verimli arazileri tamamen sular altında kalıyor.

**S-8) Köylüler verilen tüm belgeleri arşivlemesi önemli (hangi tarihte verildiği de önemli).**

C-8) Köylülerde herhangi bir belge yok. Var olan belgelerin tamamı avukatlarda.

**S-9) Hangi tarihte kimler gelip kamulaştırma sürecini nasıl anlattılar? Neler anlatıldı? Su mu denildi: "Ya bunu kabul et yoksa sana bir şey yok". Bu bilgi de kaydedilmeside önemlidir.**

C-9) Vatandaşın dayanışma çağrılmamış. Her şey mahkeme kararına bırakılmış. Mahkemenin verdiği tarihte köylüler köyü terk etmediği takdirde kira ödeme zorunda kalacaklar.

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## ANNEX 3

### Loan packages suggested by DSI as compensation:

**a) According to the Amendments of the URAP, the following loans are available for different sub-groups:**

In the URAP Chapter 7 and the URAP amendments, DSI admits that PAP now owning land or infrastructure will face significant income loss due to their displacement. In order to restore their declared income to current levels, DSI suggests that they may take out loans, according to the following categories.<sup>18</sup>

- **Tenants, sharecroppers or those people who are not entitled for compensation according to the new law with agricultural income will receive agricultural loans** (0% interest rate, 15-years repayment period with the first five years deferred), which will enable them to purchase land in the new settlement area and earn the same amount of money as at present.
- **Wage earners without agricultural income are not entitled to loans:**  
DSI estimates that there are between 722 and 936 households with an average income of \$4,065/yr, who earn wages and will not be compensated according to the Turkish expropriation law (see Chapter 2, Background) because they don't own property. This group is not entitled to loans according to the URAP.

**b) The Implementation Resettlement Plan of February 2007 states that the following loans are available for people who qualify for government assisted resettlement:**

- **Equipage credit:** is to promote production at the resettlement areas. The required number of livestock, motor vehicles and other items may be provided in kind or in cash for eligible PAP. The credit is to be repaid within 7 years after a max 2-year grace period with a 10% per year interest rate after this time.
- **Operational Credit:** This credit is provided in kind or in cash for production expenditures. The Interest rate is 10% per year to be repaid within 1-year. This credit may be received for 3 years.
- **Non-repayable resettlement aid:** Non-repayable aid is provided for resettlers. Once a resettler starts to earn a living<sup>19</sup>, this aid becomes severed. Extension is possible for people who cannot work for 2 years.
- **Credit for cases of non-availability of resettlement-sites:** In case a resettlement area is not available or the construction of the site cannot be completed on time. So land and residence credit will be provided to these affected people.
- **Construction credit for people who choose government assisted resettlement with credit above the reservoir:** construction credit for housing and agricultural infrastructures or other relevant infrastructure at 75% of the total cost. This credit is to be repaid within 20 years after 5-year grace period with annual 12% per year interest rate after this time.

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<sup>18</sup> See for details: a) URAP Chapter 7 and Entitlement matrix in the Implementation Plan (Table 4.1, P. 14:)

<sup>19</sup> The plan doesn't precise what "to earn a living" means